

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 15TH DAY OF JULY 2015/24TH ASHADHA, 1937

WP(C).No. 21251 of 2015 (F)

PETITIONER(S) :

1. DEEPA JOY, AGED 42 YEARS,
W/O.GEORGE A. THAYYIL,
THAYYIL HOUSE, EAST PIPE LINE ROAD,
CHEMBUKKAVU ROAD, THRISSUR – 680 001.
2. DIVYA MATHEW, EAST PIPE LINE ROAD,
CHEMBUKKAVU ROAD, THRISSUR – 680 001.

**BY ADVS.SRI.P.B.SAHASRANAMAN
SRI.T.S.HARIKUMAR
SRI.K.JAGADEESH**

RESPONDENT(S) :

**THRISSUR MUNICIPAL CORPORATION,
REPRESENTED BY ITS SECRETARY,
THRISSUR – 680 001.**

BY SRI.K.P.VIJAYAN, SC, THRISSUR CORPORATION

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
15-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

AMV

: 2 :

WP(C).No. 21251 of 2015 (F)

APPENDIX

PETITIONER(S) EXHIBITS :

**EXT.P1. : COPY OF THE BUILDING PERMIT ISSUED BY THE
RESPONDENT DATED 24.10.2001.**

**EXT.P2. : COPY OF THE TRADE LICENSE ISSUED BY THE THRISSUR
MUNICIPAL CORPORATION, DATED 30.10.2014.**

**EXT.P3. : COPY OF THE APPLICATION FOR BUILDING PERMIT ISSUED
BY THE RESPONDENT, DATED 17.03.2015.**

**EXT.P4. : COPY OF THE ORDER OF THE RESPONDENT,
DATED 29.05.2015.**

RESPONDENTS EXHIBITS : NIL

/TRUE COPY/

P.A.TO JUDGE

A.V.RAMAKRISHNA PILLAI, J.

.....
W.P.(C) No.21251 of 2015 (F)

.....
Dated this the 15th day of July, 2015

JUDGMENT

The petitioners are aggrieved by the rejection of their application for building permit for the reason that in the possession certificate issued by the village office concerned, the property is classified as 'Nilam'.

2. The petitioners are the joint owners of a piece of land within the local limits of Ayyanthol village, wherein the petitioners have constructed a two storied building on the basis of Ext.P1 building permit issued in October, 2001. The petitioners allege that, after the construction of the building, licence was granted by the respondent Corporation for running a two wheeler showroom in one of the rooms as per Ext.P2. Now the petitioners have decided to construct three additional floors in the very same building, and therefore, submitted Ext.P3 application, before the respondent Corporation. The same was rejected as per Ext.P4 order stating that no sanction could be given as the petitioners property is classified as 'Nilam', which is under challenge in this writ petition.

3.I have heard the learned counsel for the petitioners and the learned standing counsel for the respondent Corporation.

4.The application was opposed by the learned standing counsel for the respondent Corporation on the ground that as per the revenue records the petitioners property is a paddy field. In answer to the said argument, the learned counsel for the petitioners invited my attention to Ext.P1 building permit, where the respondent Corporation has granted permission to construct a multi storied building. As construction has been effected on the basis of Ext.P1, the very nature of property has been changed and therefore the contention now raised by the respondent Corporation that the petitioners property is a paddy field is quite untenable.

5.The decision of this Court in Mohammed Abdul Basheer C.P. v. State of Kerala and another [2012 (3) KLT 86] lays down the principle that the present nature of the land has to be taken into consideration and on ascertaining these facts, permission can be granted for construction.

6.It is settled position that the applicant can choose the best

land suited for construction of his house Sunil v. Killimangalam-Panjai 5th Ward Nellulpadaka Samootham [2012 (4) KLT 511]. Only if there is cultivation presently, then it will be considered as cultivating paddy land so as to attract the provisions of the Kerala Conservation of Paddy Land and Wetland Act and Rules.

7. In Jalaja Dileep v. Revenue Divisional Officer [2012(3) KLT 333], this Court observed that the description in the title deed or in revenue records will not be crucial if the property is reclaimed already. The aforesaid legal positions settled by this Court escaped the attention of the authorities while rejecting the petitioner's application.

8. The learned counsel for the petitioner invited my attention also to the decision of this Court in Adani Infrastructure & Developers Pvt. Ltd., Mumbai v. State of Kerala and Others [2014 (1) KLT 774] wherein it was held that an authority which has been conferred with the functions of preparing a data bank with the details of the cultivable paddy land and wetland within its area of jurisdiction with the aid of modern technology and institutions of science and technology under

sub-clause (1) of sub-section (4) of Section 5 could at any time, look into the ground realities and decide upon the suitability for prospective cultivation of such lands.

9. In the result, this writ petition is allowed. Ext.P4 notice is quashed.

The respondent Corporation is directed to conduct a local inspection of the property regarding the present lie as well as the condition of the property of the petitioner and surrounding properties. The respondent is also directed to reconsider Ext.P3 application and pass positive orders granting building permit after affording the petitioner an opportunity of being heard if the respondent is satisfied that the land in its present form is not suitable for paddy cultivation. This shall be done within a period of two months from the date of receipt of a copy of this judgment.

sd/-
A.V.RAMAKRISHNA PILLAI, JUDGE