

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

MONDAY, THE 12TH DAY OF JANUARY 2015/22ND POUSHA, 1936

WP(C).No. 23633 of 2014 (D)

PETITIONER(S):

1. **GOPINATHAN**
S/O.KESAVAN NAIR, ARIpra HOUSE, VALAMBOOR
TIRURKAD P.O, PERINTHALMANNA, MALAPPURAM DISTRICT.
 2. **UMMER**
S/O.HUSSAINAR, THAVALENGAL, TIRURKAD P.O
PERINTHALMANNA, MALAPPURAM DISTRICT.
- BY ADV. SRI.SUNIL V.MOHAMMED**

RESPONDENT(S):

1. **ANGADIPPURAM GRAMA PANCHAYAT**
P.O. ANGADIPPURAM
MALAPPURAM DISTRICT-679321 REP. BY ITS SECRETARY.
 2. **THE SECRETARY**
ANGADIPPURAM GRAMA PANCHAYAT, P.O. ANGADIPPURAM
MALAPPURAM DISTRICT-679321
- R1-R2 BY ADV. SRI.K.I.SAGEER**

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 - THE TRUE COPY OF THE INTIMATION DATED 01-07-2014
ISSUED BY THE 2ND RESPONDENT REJECTING THE
PETITIONERS' APPLICATION FOR BUILDING PERMIT
- EXT.P2 - THE TRUE COPY OF THE DEED NO.1728/1/2012 OF SRO,
PERINTHALMANNA
- EXT.P3 - THE TRUE COPY OF THE POSSESSION CERTIFICATE DATED
05-03-2014 ISSUED BY THE VILLAGE OFFICER,
ANGADIPPURAM.
- EXT.P4 - THE TRUE COPY OF THE TAX RECEIPT DATED 07-06-2013
ISSUED BY THE VILLAGE OFFICER, ANGADIPPURAM.
- EXT.P5 - THE TRUE COPY OF THE PHOTOGRAPHS SHOWING THE
PRESENT CONDITION OF THE LAND AND ITS SURROUNDINGS.

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A. TO JUDGE

JJJ

K. SURENDRA MOHAN, J.

W.P.(C) No. 23633 of 2014

Dated this the 12th day of January, 2015

J U D G M E N T

The petitioners have filed this Writ Petition challenging Ext.P1 proceedings of the first respondent rejecting their application for permission to construct a commercial building in their property. Their application has been rejected for the reason that property is described as 'nilam' in the Possession Certificate.

2. According to the learned counsel for the petitioners, the ground on which Ext.P1 has been issued is unsustainable. The case of the petitioners is that though the property has been described as paddy field in the Possession Certificate, at present the same is a house plot or filled up land. The above is evident from Ext.P5 photographs. Therefore, they seek the issue of appropriate orders setting aside Ext.P1.

3. Advocate K.I. Sageer Ibrahim appears for the respondents.

4. Having considered the contentions advanced before me, it has to be held that Ext.P1 is unsustainable in view of the dictum laid down by this court in ***Shahanaz Shukkoor v. Chelannur Grama Panchayat*** [2009(3) KLT 899] and ***Praveen v. Land Revenue Commissioner***, [2010(2) KLT 617]. It has been held by this Court that it is not the description of a land in the Possession Certificate that is decisive, but the present condition of the land. If the land has ceased to be a paddy field on the date of coming into force of the Kerala Conservation of Paddy Land and Wet Land Act, 2008, building permit cannot be denied. A perusal of Ext.P1 shows that the above aspect has not been considered. Therefore, Ext.P1 is set aside.

This Writ Petition is accordingly disposed of directing the respondent to consider the application submitted by the petitioners afresh, after conducting an inspection of the land of the petitioners to verify whether the land is a paddy field as described in the Possession Certificate of the petitioners and whether the conversion was made before 2008 and thereafter, to pass appropriate orders on the application in accordance with law. Appropriate orders as indicated above shall be passed, as expeditiously as possible and at any rate within a period of one month of the date of receipt of a copy of this judgment.

Sd/-
K.SURENDRA MOHAN,
JUDGE

jjj