

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 4TH DAY OF SEPTEMBER 2015/13RD BHADRA, 1937

WP(C).No. 25897 of 2015 (J)

PETITIONER(S) :

- 1. SAFEEKH ALI, AGED 40 YEARS,
S/O.ALIYAPPU HAJI.**
- 2. IBRAHIM, S/O.MUHAMMED,
AGED 54 YEARS.**
- 3. MUHAMMED ASHIQUE,
S/O.ALAVI, AGED 25 YEARS.**
- 4. AJMAL SAFEER, S/O.ALIYAPPU HAJI, AGED 32 YEARS,**

**ALL ARE RESIDING AT THURAKKAL
MANJERI P.O., MALAPPURAM DISTRICT.**

**BY ADVS.SRI.T.C.SURESH MENON
SRI.P.S.APPU**

RESPONDENT(S) :

**MANJERI MUNICIPALITY,
REPRESENTED BY ITS SECRETARY, MANJERI P.O.,
MALAPPURAM - 676 121.**

BY ADV. SRI.K.SHIBILI NAHA, S.C, MANJERI MUNICIPALITY

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 04-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

WP(C).No. 25897 of 2015 (J)

APPENDIX

PETITIONER(S)' EXHIBITS :

- P1: TRUE COPY OF THE TAX RECEIPT ISSUED BY THE VILLAGE OFFICE,
MANJERI TO PETITIONERS 1 AND 4 DATED 08.04.2015.**
- P2: TRUE COPY OF THE TAX RECEIPT ISSUED BY THE VILLAGE OFFICE,
MANJERI TO PETITIONERS 2 AND 3 DATED 04.08.2015.**
- P3: TRUE COPY OF THE ORDER PASSED BY THE RESPONDENT
MUNICIPALITY TO THE PETITIONERS DATED 10.08.2015.**
- P4: TRUE COPY OF THE JUDGMENT IN W.P(C).NO.14858/2015 ON THE FILE
OF THIS HONOURABLE COURT DATED 16.06.2015.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

PA.TO JUDGE.

Msd.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 25897 of 2015

Dated this the 4th day of September, 2015

J U D G M E N T

Ext.P3, by which the petitioners' application for building permit was rejected, is under challenge in this writ petition.

2. The petitioners are the joint owners in possession of an extent of land comprised in Sy.Nos.52-39/72-2, 52-39/5-3, 52-39/72-3 and 52-39/5-4 of Manjeri Village in Malappuram District within the local limits of the respondent municipality. The petitioner submitted an application for building permit for construction of a commercial building, which was rejected by the respondent municipality as per Ext.P3 for the reason that the land is shown as 'nilam' in revenue records. According to the petitioners, the stand taken by the municipality is in gross violation of the dictum laid down by the apex court as well as this Court. They point out that the adjacent properties are put to use for construction purposes, for

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which the municipality has already granted building permits. Therefore, according to the petitioners, the rejection of building permit on the basis of the description of property in the revenue records ignoring the actual state of affairs is unfair and illegal. It is with this background, the petitioners have approached this Court.

3. Arguments have been heard.

4. Opposing the application, the learned Standing Counsel for the respondent municipality submitted that the property of the petitioners is described as 'nilam' in the revenue records.

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 position 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 - Panjal 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 petitioners' application.

8. The learned counsel for the petitioners 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

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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.

Therefore, this writ petition is allowed. Ext.P3 is quashed.

The respondent municipality is directed to conduct a local inspection of the property regarding the present lie as well as the condition of the property of the petitioners and surrounding properties. The respondents are also directed to reconsider the application and pass positive orders granting building permit after affording the petitioner an opportunity of being heard if the respondents are 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

bka/-