

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

WP(C).No. 31936 of 2014 (N)

PETITIONER(S):

1. K.SATHYAN @ SATHIYAVRATHAN, AGED 46 YEARS,
S/O. LEELAMMA, KATTOOR HOUSE, IRINJALAKUDA P.O.
PIN-680 121.
2. MEENA SATHYAN, AGED 36 YEARS,
W/O. SATHYAN, KATTOOR HOUSE, IRINJALAKUDA P.O.
PIN-680 121.

**BY ADVS.SRI.AGINOV MATHAPPAN
SMT.K.SHERIN MOHAN**

RESPONDENT(S):

1. IRINJALAKUDA MUNICIPALITY,
REPRESENTED BY ITS SECRETARY, IRINJALAKUDA P.O.
PIN-680 121.
2. THE SECRETARY,
IRINJALAKUDA MUNICIPALITY, IRINJALAKUDA P.O.
PIN-680 121.

*** ADDL.R3 IMPEADED**

3. THE REVENUE DIVISIONAL OFFICER,
IRINJALAKUDA PO - 680 125.

ADDL.R3 IMPEADED AS PER ORDER DATED 06.01.2014 IN IA 17585/14

**R1 & 2 BY ADV. SRI.K.K.CHANDRAN PILLAI (SR.)
SMT.K.V.SHENU
SRI.ARUN ANTONY
SMT.S.AMBILY**

R3 BY GOVERNMENT PLEADER SMT.ANITHA RAVEENDRAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 : COPY OF THE SALE DEED NO.1155/1/09 OF IRINJALAKKUDA SRO.**
- P2 : COPY OF THE SALE DEED NO.1156/1/09 OF IRINJALAKKUDA SRO.**
- P3 : COPY OF THE BASIC TAX RECEIPT DTD.29.8.2013 FOR THE YEAR 2013-14.**
- P4 : COPY OF THE POSSESSION CERTIFICATE NO.32/14 DTD.9.1.2014.**
- P5 : COPY OF THE ORDER OF REJECTION ISSUED BY THE 2ND RESPONDENT SECRETARY OF MUNICIPALITY, IRINJALAKKUDA, DTD.7.5.2014.**
- P6 : PHOTOGRAPHS OF THE LAND (4 NOS.).**
- P7 : COPY OF THE RELEVANT PAGE OF THE DATA BANK.**
- P8 : A CERTIFICATE ISSUED BY THE AGRICULTURAL FIELD OFFICER DTD.3.9.2014.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

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A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 31936 of 2014

Dated this the 22nd day of July, 2015

J U D G M E N T

Ext.P5, by which the petitioners' application for building permit was rejected, is under challenge in this writ petition.

2. The petitioners are the owners in possession of an extent of 0.020 and 0.0081 Hectares of properties comprised in Sy.Nos.640/1 and 640/1 of Manavalassery Village in Thrissur District within the local limits of the respondent municipality. The petitioners submitted an application for building permit, which was rejected by the respondent municipality as per Ext.P5 for the reason that building permit cannot be granted as long as the description of the property remains as 'nilam' in the revenue records and in the possession certificate. The petitioners allege that the respondent municipality wrongly proceeded under the Conservation of Paddy Land

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and Wet land Act, 2008 for processing the application of the petitioners. The petitioners point out that the question regarding the permissibility of construction of buildings and utility of the land, which remained as 'nilam' prior to the coming into force of the above Act, was debated in detail by this Court and it resulted in the pronouncement of several judgments. According to them, their property remains as garden land (dry land) surrounded by various residential and commercial building. To substantiate their contentions, the petitioners have produced Ext.P6 series of photograph, Ext.P7 extract of data bank and Ext.P8 certificate issued by the Agricultural Officer. Therefore, according to the petitioners, Ext.P5 order is illegal and is liable to be quashed. Hence, this writ petition.

3. Arguments have been heard.

4. 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

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present position of the land has to be taken into consideration and on ascertaining these facts, permission can be granted for construction.

5. It is settled position that the applicant can choose the best land suited for construction of his house (**Sunil v Killimangalam-Panjai 5th Ward Nellupadaka 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.

6. 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.

7. The learned counsel for the petitioners invited

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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.

Therefore, this writ petition is allowed. Ext.P5 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 respondent municipality is also directed to reconsider the application and pass

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positive orders granting building permit after affording the petitioners an opportunity of being heard if the respondent municipality 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

bka/-