

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 18TH DAY OF NOVEMBER 2015/27TH KARTHIKA, 1937

WP(C).No. 34425 of 2015 (C)

PETITIONERS:

1. MUHAMMED ARSHAK, S/O.MOIDEENKUTTY, AGED 22 YEARS,
RESIDING AT PERAPURATHU HOUSE, NARUKARA P.O.,
ERANAD TALUK, MALAPPURAM.
2. SUMAYYA, W/O.MUHAMMED SHAFI, AGED 34 YEARS,
RESIDING AT PERAPURATHU HOUSE, NARUKARA P.O.,
ERANAD TALUK, MALAPPURAM.
3. KUNJIMUHAMMED, S/O.ABOOBAFKER, AGED 51 YEARS,
RESIDING AT MECHERI HOUSE, KARUVAMBRAM P.O.,
ERANAD TALUK, MALAPPURAM.

BY ADVS.SRI.T.C.SURESH MENON
SRI.P.S.APPU
SRI.A.R.NIMOD

RESPONDENT:

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

BY SRI.K.SHIBILI NAHA, SC, MANJERI MUNICIPALITY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 18-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C).No. 34425 of 2015 (C)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE TAX RECEIPT ISSUED BY THE VILLAGE OFFICE,
MANJERI TO THE PETITIONERS DATED 24.9.2014.

EXT.P2: TRUE COPY OF THE ORDER PASSED BY THE RESPONDENT
MUNICIPALITY TO THE PETITIONERS DATED 29.10.2015.

EXT.P3: TRUE COPY OF THE JUDGMENT IN WP(C) NO.13442/2014 ON THE
FILE OF THIS HONOURABLE COURT DATED 5.8.2014.

RESPONDENT'S EXHIBITS: NIL.

// True copy //

P.A to Judge.

smp

P.BHAVADASAN, J.

Writ Petition (Civil) No.34425 OF 2015

Dated this the 18th day of November, 2015.

J U D G M E N T

The petitioners, desirous of putting up a building of their own in their property comprised in resurvey Nos.94/15 and 95/16 of Manjeri Village, applied to the local authority for permit. Their application was turned down by Ext.P2 order observing that the property is classified as wet land. The petitioners challenge Ext.P2 order.

2. The petitioners point out that once upon a time the property was classified as wet land does not mean that it has to be so even now. The land has undergone considerable changes. It is also pointed out that around the property of the petitioners, structures have come up and to deny the benefit to the petitioners is not just and proper. In order to impress upon this Court that the present nature of the land is the criterion, attention was drawn to a judgment of this Court in W.P.(C) No.13442/2014 which was disposed of by judgment

dated 05.08.2014. This Court, after referring to few decisions of this Court and the law on point held that merely because the land was once shown as wet land does not mean that permit cannot be granted. This Court held that the local authority is bound to conduct local inspection of the area and ascertain the real and true nature of the land and thereafter take a decision on the application for permit filed by the petitioners. The principles laid down in the above decision applies to the present case and there is no reason as to why the same benefit should not be granted to the petitioners. This writ petition is disposed of as follows:

Ext.P2 stands quashed. The local authority is directed to conduct an inspection of the property of the petitioners to ascertain its real nature and also to ascertain if structures having put up in the nearby properties and thereafter take a decision on the application filed by the petitioners in accordance with law and in the light of the principles laid down in the decision referred to in Ext.P3. The decision shall be taken within a period of 30 days from the date of receipt of a copy of this judgment.

Sd/-

P.BHAVADASAN
JUDGE

smp