

Kerala High Court

Ayishabi vs The Perinthalmanna Municipality on 4 November, 2015

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 23RD DAY OF JUNE 2015/2ND ASHADHA, 1937

WP(C).No.17816 of 2015 (B)

PETITIONER:

-----  
AYISHABI, D/O. (LATE) SAITH SULAIMAN, AGED 64 YEARS,  
PATTANI HOUSE, KAKKOOOTH, PERINTHALMANNA,  
MALAPPURAM DISTRICT.

BY ADV. SRI. U. K. DEVIDAS

RESPONDENT:

-----  
THE PERINTHALMANNA MUNICIPALITY,  
REPRESENTED BY ITS SECRETARY,  
PERINTHALMANNA, MALAPPURAM DISTRICT - 676 322.

BY SRI. P. C. SASIDHARAN, SC, PERINTHALMANNA MUNICIPALITY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 23-06-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

pk

WP(C).No.17816 of 2015 (B)

-----  
APPENDIX

PETITIONER'S EXHIBITS:

- P1 - TRUE COPY OF THE SKETCH OF THE ABOVE PROPERTY.
- P2 - TRUE COPY OF THE POSSESSION CERTIFICATE DATED 04.11.2015.
- P3 - TRUE COPY OF THE ORDER DATED 11.02.2015 PASSED BY THE RESPONDENT.
- P4 - TRUE COPY OF THE PHOTOGRAPHS OF THE PROPERTY.

RESPONDENT'S EXHIBITS: NIL

-----

//TRUE COPY//

P.S.TO JUDGE

pk

A.V. RAMAKRISHNA PILLAI, J.

-----

W.P.(C) No. 17816 of 2015

-----

Dated this the 23rd day of June, 2015

#### J U D G M E N T

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

2. The petitioner is the owner of 0.0607 hectares of property comprised in Sy.No.19/3 of Perinthalmanna Village in Perinthalmanna Taluk within the local limits of the respondent municipality. The petitioner submitted an application for building permit, which was rejected by the respondent as per Ext.P3 for the reason that the description of land in the revenue records is 'nanja-2'. The petitioner points out that the said property is situated on the side of the Calicut Road - Manathumangalam bye-pass road and the portion of the property was acquired by the government for the aforesaid bye-pass road. According to the petitioner, though the land is W.P.(C) No. 17816 of 2015 ..2..

described as 'nanja-2' in the revenue records, the land is not fit for paddy cultivation and there are residential and commercial buildings in the lands surrounding the above plot. Therefore, according to the petitioner, Ext.P3 is beyond jurisdiction, illegal and liable to be quashed.

3. In the counter affidavit filed by the respondent, it is contended that rejection of building permit

was in terms of Section 14 of the Kerala Paddy Land and Wet Land Act, 2008, which states that no local authority shall grant any licence or permit under the said Act for carrying out any activity or construction in paddy land or a wet land converted or reclaimed in contravention of the provision of this Act.

4. Arguments have been heard.

5. The definite case of the petitioner is that after the acquisition of the portion of the property, the land is not fit for paddy cultivation and due to soil erosion from the adjacent lands, the land was naturally converted into garden land and the property is lying as a dry land after W.P.(C) No. 17816 of 2015 ..3..

1995. The petitioner is relying on Ext.P4 photographs, which shows the nature of land.

6. 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.

7. It is settled position that the applicant can choose the best land suited for construction of his house (Sunil v Killimangalam-Panjali 5th Ward Nellulpadaka Samooham [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.

8. 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 W.P.(C) No. 17816 of 2015 ..4..

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.

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 petitioner and surrounding properties. The respondent is also directed to reconsider the 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 bka/-