

(2015) 06 KL CK 0107

In the High Court Of Kerala

Case No : Writ Petition (C) No. 14014 of 2015 (B)

Gangadharan V.S. and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 10-06-2015

Acts Referred:

Kerala Conservation of Paddy Land and Wetland Act, 2008 — Section 11, 14, 3

Citation : (2015) 06 KL CK 0107

Hon'ble Judges : A.V. Ramakrishna Pillai, J

Bench : Single Bench

Advocate : Millu Dandapani and Anna Thomas, for the Appellant; T.R. Rajesh, Govt. Pleader, Advocates for the Respondent

Final Decision : Allowed

Judgement

A.V. Ramakrishna Pillai, J.—Ext.P6, 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 150.66 cents of property comprised in Re. Sy. Nos. 517/4 and 518 of Mukundapuram Taluk within the local limits of the respondent panchayath. The petitioners submitted an application for building permit, which was rejected by the 3rd respondent as per Ext.P6 stating that construction activities shall not be undertaken in properties classified as "nilam" as per the provisions of Sections 3, 11 and 14 of the Kerala Conservation of Paddy Land and Wet Land Act, 2008. According to the petitioners, the property was reclaimed as garden land more than two decades ago. They point out that the description of the property in revenue records is not relevant for the purpose of Conservation of the Paddy Land and Wet Land Act, 2008. Aggrieved by Ext.P6 rejection order, the petitioners have come up before this Court.

3. Arguments have been heard.

4. The learned counsel for the petitioners, inviting my attention to Ext.P5, which is the relevant extract of the draft data bank, would submit that even as per the

draft data bank prepared by the 4th respondent, the property of the petitioners is described as "garden land".

5. The decision of this Court in Mohammed Abdul Basheer Vs. State of Kerala, (2012) 3 KLJ 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 Vs. Killimangalam-Panjali 5th Ward, Nellulpadaka Samootham, (2012) 4 KLJ 724 : (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 Vs. Revenue Divisional Officer and others, (2012) 3 ILR (Ker) 601 : (2012) 3 KLJ 342 : (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.

Therefore, this writ petition is allowed. Ext.P6 is quashed.

The respondent panchayath 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 consider the application and pass positive orders granting building permit after affording the petitioners 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 one month from today.