

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 19TH DAY OF JUNE 2015/29TH JYAISHTA, 1937

WP(C).No. 955 of 2015 (T)

PETITIONER :

**ABHILASH.V., AGED 34 YEARS,
S/O.RADHAKRISHNAN, VALAPPIL HOUSE,
KARUVISSERY (P.O.), KOZHIKODE DISTRICT.**

**BY ADVS.SRI.R.BINDU (SASTHAMANGALAM)
SRI.PRASANTH M.P**

RESPONDENTS :

- 1. KOZHIKODE CORPORATION
REPRESENTED BY ITS SECRETARY, KOZHIKODE - 673 001.**
- 2. THE SECRETARY
KOZHIKODE CORPORATION, KOZHIKODE - 673 001.**
- 3. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
LOCAL SELF GOVERNMENT INSTITUTIONS,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM
PIN - 695 001.**

**R1 & R2 BY ADV. SRI.K.D.BABU,SC,KOZHIKODE CORPORATION
R3 BY GOVERNMENT PLEADER SRI.K.A. SANJEETHA**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 19-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: TRUE COPY OF THE RELEVANT EXTRACT OF THE PARTITION DEED
DATED 25/03/1997 ALONG WITH ITS TRUE TRANSLATION IN ENGLISH.
- EXT.P2: TRUE COPY OF THE RELEVANT EXTRACT OF THE SALE DEED
DATED 29/09/2003 ALONG WITH ITS TRUE TRANSLATION IN ENGLISH.
- EXT.P3: TRUE COPY OF THE APPLICATION ALONG WITH THE SITE PLAN,
BUILDING PLAN AND SERVICE PLAN SUBMITTED BY THE PETITIONER.
- EXT.P4: TRUE COPY OF TH ORDER PASSED BY THE 2ND RESPONDENT
DATED 13/12/2014 ALONG WITH ITS TRUE TRANSLATION IN ENGLISH.
- EXT.P5: TRUE COPY OF THE PERMISSION GRANTED BY THE 1ST
RESPONDENT DATED 17/01/1983 ALONG WITH ITS TRUE
TRANSLATION IN ENGLISH.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 955 of 2015

Dated this the 19th day of June, 2015

J U D G M E N T

Ext.P4 order rejecting the petitioner's application for building permit is under challenge in this writ petition.

2. The petitioner is the owner in possession of 7 cents of land comprised in Re.Sy.No.54/1 of Vengeri Village, Kozhikode Taluk within the local limits of the respondent corporation. The petitioner submitted Ext.P3 application for building permit, which was rejected by the 2nd respondent vide Ext.P4 on the ground that as per the possession certificate produced by the petitioner, the property was shown as 'nilam'; and therefore, only a residential building up to 300 m² area alone could be permitted and also there is proposal for road widening and the same would go through the property of the petitioner. According to the petitioner, the 2nd respondent has no right or authority to reject the application of the

petitioner.

3. Arguments have been heard.

4. The learned counsel for the petitioner, inviting my attention to Exts.P1 & P2 documents, submitted that though in the possession certificate, the nature of land is shown as 'nilam', the property was converted into garden land more than 30 years ago. It is further submitted that there is no proposal in existence and the corporation has never initiated any proceedings for acquisition of land for the purpose of widening the road.

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. The learned counsel invited my attention to a Division Bench decision of this Court in **Padmini v. State of Kerala** [1999 (3) KLT 465], wherein it was held that

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no building permit can be refused to any person because there is a proposal to acquire the land in future. Reliance was also placed to the decision of the apex court in **Raju S. Jethmalani v. State of Maharashtra** [(2005) 11 SCC 222], wherein it was held that refusing to grant permits relying on obsolete DTP schemes is a clear violation of the provisions of the Constitution.

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 position settled by this Court escaped the attention of the authorities while rejecting the petitioner's application.

Therefore, this writ petition is allowed. Ext.P4 is quashed.

The respondent corporation 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

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and surrounding properties. The respondents are also directed to consider 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/-