

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

WEDNESDAY, THE 14TH DAY OF JANUARY 2015/24TH POUSHA, 1936

WP(C).No. 1275 of 2015 (H)

PETITIONER(S):

**BHARATHAN, AGED 54 YEARS,
S/O. RAMAKRISHNAN, ETTUMURIPARAMBIL HOUSE,
SOLVENT ROAD, IRINJALAKUDA, THRISSUR DISTRICT.**

**BY SRI.RENJITH THAMPAN, SENIOR ADVOCATE.
ADV. SMT.P.R.REENA.**

RESPONDENT(S):

- 1. IRINJALAKUDA MUNICIPALITY,
REPRESENTED BY ITS SECRETARY,
MUNICIPAL OFFICE, IRINJALAKUDA,
THRISSUR DISTRICT - 680 121.**
- 2. SECRETARY,
IRINJALAKUDA MUNICIPALITY, MUNICIPAL OFFICE,
IRINJALAKUDA, THRISSUR DISTRICT - 680 121.**

BY ADV. SRI.ARUN ANTONY.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 14-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- P1 - TRUE COPY OF THE BASIC TAX RECEIPT DATED 16.06.2014 ISSUED TO THE PETITIONER WITH ENGLISH TRANSLATION.
- P2 - PHOTOGRAPHS SHOWING THE PROPERTY OF THE PETITIONER.
- P3 - TRUE COPY OF THE BUILDING PERMIT ISSUED BY THE MUNICIPALITY DATED 02.06.2009 WITH ENGLISH TRANSLATION.
- P4 - TRUE COPY OF THE LETTER DATED 24.12.2014 OF THE SECRETARY OF THE MUNICIPALITY WITH ENGLISH TRANSLATION.
- P5 - TRUE COPY OF THE DECISION REPORTED IN 2012(1) KHC 523.
- P6 - TRUE COPY OF THE DECISION REPORTED IN 2012(3) KHC 489.
- P7 - TRUE COPY OF THE DECISION REPORTED IN 2010(3) KLT PAGE 16.
- P8 - TRUE COPY OF REPRESENTATION FILED BY THE PETITIONER BEFORE 2ND RESPONDENT DATED 01.01.2015.

RESPONDENT'S EXHIBITS:-

NIL.

//TRUE COPY//

P.A TO JUDGE

rs.

C.K. ABDUL REHIM, J.

W.P.(c) No. 1275 OF 2015-H

DATED THIS THE 14th DAY OF JANUARY, 2015.

J U D G M E N T

Application for building permit for construction of a commercial building, submitted by the petitioner before the respondents, is rejected through Ext.P4 stating the reason that under G.O No.59655/R.A-1/09/LSGD dated 23-09-2008, permit can be granted only with respect to lands converted 10 years prior to the date of the said order, that too for buildings upto a plinth area of 300 M² area. It is found that the application submitted by the petitioner will not fall within the said category.

2. It is specifically contended that in the property in which the petitioner had sought for permission for construction of the commercial building, there existed two shop building with numbers IX/1 and IX/2 and it was demolished by the previous owner. It is contended that the rejection of the building permit application was made

without conducting any physical verification with respect to nature and lie of the property. According to the petitioner the land in question remains converted much prior to enactment of the Conservation of Paddy Land and Wet Land Act, 2008 and therefore the rejection is not sustainable.

3. Heard; Standing counsel appearing for respondents.

4. The issue now remains settled through a Division Bench decision of this court in **Aishabeevi and another V. Superintendent of police, Ernakulam (2014 (3) KHC 678 (DB)**. It is held that, if the land was converted prior to enactment of the Conservation Act, the bar contained under Section 14 to grant permit will not be applicable, even if such conversion is made in violation of the provisions of the Kerala Land Utilization order. It is held that the Conservation Act has no retrospective operation and conversion made prior to coming into force of the Act, i.e: before 12-08-2008 cannot be said as violative of the Act. It is found that there is no provision contained in the Land

Utilization Order or in the Conservation Act rendering such land as illegally converted land and hence there is no bar to grant permit for building construction on such land or to use it for any purpose other than agricultural operations. This court held that there is no legal presumption either in the Kerala Land Utilization Order or in the Conservation Act that the land stood converted after commencement of the KLU order without specific permission, is an illegally converted land for which no permit can be granted.

5. In view of the legal position remaining settled as mentioned above, this court is of the opinion that the building permit application need to be reconsidered based on verification of the physical position of the land in question. The denial of permit based on the description of the nature of the land in the revenue records cannot be sustained.

6. Hence this writ petition is allowed and Ext.P4 is hereby quashed. The 2nd respondent is directed to reconsider the application for building permit and to take an

appropriate decision in the light of the observations contained herein above. A decision in this regard shall be taken, at the earliest possible, at any rate within a period of one month from the date of receipt of a copy of this judgment.

Sd/-
C.K. ABDUL REHIM
JUDGE

AMG

True copy

P.A. to Judge