

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

WP(C).No. 2193 of 2015 (Y)

PETITIONER(S) :

SEBASTIAN A.J.,
S/O.A.J.JOSHUA,
ATTEPADATH HOUSE, VELAPPAYA P.O.,
THRISSUR DISTRICT.

BY ADVS.SRI.P.SANTHOSH (PODUVAL)
SMT.R.RAJITHA
SRI.K.D.SREEVISAKH.

RESPONDENT(S) :

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1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
LOCAL SELF GOVERNMENT DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
 2. KAIPARAMBA GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY, MUNDOOR P.O.,
THRISSUR DISTRICT-680 541.
 3. THE SECRETARY,
KAIPARAMBA GRAMA PANCHAYATH, MUNDOOR P.O.,
THRISSUR DISTRICT-680 541.

R2&3 BY ADV. SRI.T.M.CHANDRAN
BY GOVERNMENT PLEADER SMT.ANITHA RAVEENDRAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
15/07/2015, THE COURT ON 29-07-2015 DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXT.P1. TRUE COPY OF APPLICATION NO.3639/14 DATED 7/5/2014 AND ITS RECEIPT FROM THE 2ND RESPONDENT.
- EXT.P1 (A) . TRUE COPY OF THE TRANSLATION OF EXT.P1.
- EXT.P2. TRUE COPY OF THE SITE PLAN OF THE PETITIONER.
- EXT.P3. TRUE COPY OF THE LETTER DATED 14/5/2014 ISSUED BY THE 3RD RESPONDENT.
- EXT.P3 (A) . TRUE COPY OF THE TRANSLATION OF EXT.P1.
- EXT.P4. TRUE COPY OF THE REVISED SITE PLAN.
- EXT.P5. PHOTOGRAPHS OF LOCALITY OF PROPERTY OF THE PETITIONER.
- EXT.P6. TRUE COPY OF THE JUDGMENT IN WPC NO.4720/2013 DATED 21/3/2013.
- EXT.P7. TRUE COPY OF THE JUDGMENT IN WPC NO.23281/2011 DATED 20/10/2011.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 2193 of 2015

Dated this the 29th day of July, 2015

J U D G M E N T

The petitioner is aggrieved by the rejection of his application for building permit on the ground that the petitioner has not obtained the development permit as required under law.

2. The petitioner is in ownership, possession and enjoyment of a property measuring 0.82 Ares in R.S. No. 212/6 and 1.20 Ares in R.S. No. 212/1 of Anjoor Village, Thrissur. He purchased the said property for constructing a residential building and submitted an application for building permit before the respondent panchayath. The 3rd respondent, vide letter dated 14.05.2015, informed the petitioner that, in the application, certain defects have been noted by the engineering department and directed to take appropriate steps. In the letter, it was noted that in the proposed plan, 2m width was not left at the rear

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side and that the development permit was not produced along with the application. Though the petitioner submitted a revised plan after curing the defect noted in the previous site plan, the 3rd respondent is insisting on development permit for considering the application of the petitioner. According to the petitioner, the 3rd respondent should not have insisted on the development permit from the petitioner as he was not the developer. Hence, this writ petition.

3. A counter affidavit has been filed by respondents 2 & 3. According to them, the petitioner ought to have insisted on the development certificate from the assignor before purchasing the property. Their definite case is that the owner seeking permission for constructing a house in the developed property, is bound to produce necessary certificates/documents mentioned in Rules 4, 5, 6, 11, 22, 25, 26 etc. of the Kerala Panchayath Building Rules, 2011. Though the petitioner has cured defect No.2 pointed out in Ext.P3, he has not

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cured the first defect. According to them, they are ready to issue permit for construction of the house if the first defect also is cured by producing the development certificate. Therefore, they justify their stand in not granting building permit as requested by the petitioner.

4. Arguments have been heard.

5. According to the learned counsel for the petitioner, the 3rd respondent is not justified in insisting on production of development certificate as the petitioner is only a purchaser of the property and not the developer; and the property was already developed when the property was purchased. It was also pointed out that it is evident from Ext.P5 photographs that already constructions have been done in the nearby plots and only the petitioner is singled out. The definite case of the petitioner is that the property is purchased by him in order to construct a residential house. Therefore, it is quite unreasonable for insisting on development certificate as the permit is sought for construction of

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residential building; it was argued. The learned counsel for the petitioner relied on Exts.P6 and P7 judgments rendered by this Court in support of the petitioner's claim.

6. The learned counsel for the respondent panchayath, per contra, would submit that Exts.P6 & P7 judgments were rendered without considering and entering a finding on the relevant provisions in the Kerala Panchayath Building Rules, 2011 referred thereto. It was pointed out that in Ext.P6 judgment, the learned single Judge has simply relied on Ext.P7 judgment. It was argued that if Ext.P7 is followed, the various provisions such as Rules 2 (ac), 4, 5, 6, 11, 22, 25, 26 etc. in the Kerala Panchayath Building Rules, 2011 should become redundant. According to the learned counsel for the respondent panchayath, if a person purchases a developed property, he is bound to demand the certificate of development issued by the concerned authority.

7. In answer to the said submission, it was argued

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by the learned counsel for the petitioner that the condition of the property as on the date of purchase continues to be same. The learned counsel for the respondent panchayath, per contra, would submit that there is a clear admission in the writ petition in ground A that the property of the petitioner has already been developed and now, the petitioner cannot turn round and say that it is not a developed property.

8. What could be discerned from the averments in the writ petition is that the existing state of affairs as on the date of purchase is still continuing. The respondents have no case that the property of the petitioner was a paddy field and the same was converted without any permission. Moreover, they have no case that they have verified the data bank to ascertain whether the petitioner's property is included in the data bank. It is evident from the photographs that already constructions have been permitted in the nearby plots. This is not at all denied by the respondent panchayath. The respondents

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have no case that those permits were granted after verifying the development certificates produced by the owners of the said properties. A copy of the sale deed in the name of the petitioner was made available for my perusal at the time of hearing. It would indicate that the property was a garden land at the time of purchase.

9. 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.

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

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

12. The learned counsel for the petitioner invited my attention also to the decision of this Court in **Adani Infrastructure & Developers Pvt. Ltd., Mumbai v. State of Kerala and Others** [2014 (1) KLT 774], wherein it was held that an authority, which has been conferred with the functions of preparing a data bank with the details of the cultivable paddy land and wetland within its area of jurisdiction with the aid of modern technology and institutions of science and technology under sub-clause (1) of sub-section (4) of Section 5 could at any time, look into the ground realities and decide

upon the suitability for prospective cultivation of such lands.

Therefore, on a consideration of the entire materials now placed on record, this Court is of the view that the petitioner is entitled to get the relief as prayed for.

In the result, the writ petition is allowed. Respondents 2 & 3 are directed to reconsider the application of the petitioner for building permit without insisting on development certificate and to grant permit if the same is otherwise in order within a period of two weeks from the date of receipt of a copy of this judgment.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-