

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 17TH DAY OF JUNE 2015/27TH JYAISHTA, 1937

WP(C).No. 5429 of 2015 (C)

PETITIONER:

**GLASHAN ANN GEORGE,
FLAT NO.3 C, FAVOURITE,
DEW DROPS, THEKEMOODU PATTOM,
THIRUVANANTHAPURAM-695 004.**

**BY ADVS.SRI.PIRAPPANCODE V.S.SUDHIR
SRI.JELSON J.EDAMPADAM**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
LOCAL SELF GOVERNMENT DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. CORPORATION OF THIRUVANANTHAPURAM,
REPRESENTED BY ITS SECRETARY,
CORPORATION OFFICE, THIRUVANANTHAPURAM.**
- 3. CHIEF TOWN PLANNER,
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.**

**R1 & R3 BY GOVERNMENT PLEADER
R2 BY SRI.N.NANDAKUMARA MENON (SENIOR ADVOCATE)
ADV. SRI.P.K.MANOJKUMAR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 17-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS:

- EXT.P1 - TRUE COPY OF THE RELEVANT EXTRACT OF THE BASIC TAX REGISTER ISSUED BY THE VILLAGE OFFICER, CHERUVAICKAL.
- EXT.P1(A)- TRUE ENGLISH TRANSLATION OF EXT.P1.
- EXT.P2 - TRUE COPY OF THE FAIR VALUE OF LAND, PERTAINING TO SY.NO.367 OF CHERUVAICKAL VILLAGE.
- EXT.P3 - TRUE COPY OF THE POSSESSION CERTIFICATE DATED 21-1-2014.
- EXT.P3(A) - TRUE ENGLISH TRANSLATION OF EXT.P3.
- EXT.P4 - TRUE COPY OF THE TAX RECEIPT DATED 27-8-2014 ISSUED BY THE VILLAGE OFFICER, CHERUVAICKAL, EVIDENCING THE PAYMENT OF TAX.
- EXT.P4(A) - TRUE ENGLISH TRANSLATION OF EXT.P4.
- EXT.P5 - TRUE COPY OF THE LOCATION SKEETCH AND ALSO THE ENGLISH TRANSLATION OF ITS RELEVANT PORTION.
- EXT.P6 - TRUE COPY OF THE PHOTOGRAPH OF THE PROPERTY.
- EXT.P7 - TRUE COPY OF THE PHOTOGRAPH OF THE PROPERTY.
- EXT.P8 - TRUE COPY OF THE PHOTOGRAPH OF THE PROPERTY.
- EXT.P9 - TRUE COPY OF THE PHOTOGRAPH OF THE PROPERTY.
- EXT.P10- TRUE COPY OF THE PHOTOGRAPH OF THE PROPERTY.
- EXT.P11 - TRUE COPY OF THE ROUGH SKETCH OF PROPERTY COMPRISED IN SY.NO.367/9 AND 367/22-1 OF CHERUVAICKAL VILLAGE.
- EXT.P12 - TRUE COPY OF THE LETTER NO.D3-12179/2014 DATED 10-2-2015 OF THE 3RD RESPONDENT.
- EXT.P12(A) - TRUE ENGLISH TRANSLATION OF EXT.P12.
- EXT.P13 - TRUE COPY OF THE BUILDING PERMIT NO.VE1/BA-310/11 DATED 21-4-2012 ISSUED TO ONE SAJAN SHIHABUDEEN RAWTHER.
- EXT.P14 - TRUE COPY OF THE JUDGMENT DATED 14-7-2014 OF THIS HON'BLE COURT IN WPC.NO.9655/2014.
- EXT.P15 - TRUE COPY OF THE JUDGMENT DATED 12-6-2012 OF THIS HON'BLE COURT IN WPC.NO.12080/2012.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

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A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.5429 of 2015

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Dated this the 17th day of June, 2015

JUDGMENT

Ext.P12 letter by which the petitioner's application for building permit was rejected is under challenge.

2. The petitioner had submitted an application seeking building permit for construction in a property having an extent of 9.134 cents comprised in Re-Sy. No.367/9 and 367/22-1 of Cheruvaickal village in Thiruvananthapuram taluk. Her grievance is that the 3rd respondent alleging that the aforementioned property is surrounded by vacant land or under paddy cultivation, is refusing to give concurrence to the 2nd respondent for issuance of permit.

3. The petitioner further alleges that the reason stated in Ext.P12 cannot be taken as a ground to reject the application submitted by her. On the other hand, her property would not come under any Zoning Regulation; it is alleged.

4. I have heard the learned counsel for the petitioner, the learned Government Pleader and the learned counsel for the respondent corporation.

5. The learned counsel for the petitioner, inviting my attention to Exts.P6 to P10 photographs, submitted that the property of the petitioner and the surrounding properties are lying as a garden land and there is no trace of any paddy field in the vicinity. Exts.P6 to P10 photos show the present nature of the land. 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. It can be seen from Exts.P6 to P10 that the property is not a paddy land and it is having aged trees. That itself would show that the property in question is not a cultivating paddy field. It is settled position that the applicant can choose the best land suited for construction of his house (**Sunil v. Killimangalam-Panjai 5th Ward Nellulpadaka 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.

7. 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 no building permit can be refused to any person because there is a proposal to acquire the land in future. Reliance was also placed on 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.

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 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 petitioners' 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 and surrounding properties. The respondent is also directed to re-consider Ext.P8

application submitted by the petitioner and to grant permission if the respondent is satisfied that the property is not cultivable at present. The petitioner shall be given an opportunity of being heard. 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

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