IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA, 1937

WP(C).No. 9594 of 2015 (Y)

PETITIONER(S):

AL-IRSHAD ISLAMIC TRUST,
AYROOR, MALAPPURAM DISTRICT,
REPRESENTED BY ITS CHARIMAN K.MOHAMMED,
S/O.KUNJAHAMMED, AGED 59 YEARS, RESIDING AT
MAKKALIKKAL HOUSE, AYROOR,
MALAPPURAM DISTRICT.

BY ADV. SRI.P.SANJAY

RESPONDENT(S):
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1. THE STATE OF KERALA,
REP. BY ITS SECRETRAY TO GOVERNMENT,
LOCAL SELF GOVERNMENT DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.

2. THE PERUMPADAPPU GRAMA PANCHAYATH,
REP. BY ITS SECRETARY, PERUMPADAPPU P.O.,
MALAPPURAM DISTRICT, PIN - 679 580.

R1 BY GOVERNMENT PLEADER SMT.ANITHA RAVINDRAN
R2 BY ADV. SRI.C.M.MOHAMMED IQUABAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

WP(C).No. 9594 of 2015 (Y)

APPENDIX

PETITIONER(S)' EXHIBITS

P1- **TRUE COPY OF THE SALE DEED NO.779 DATED 5.7.1989**

P2- **TRUE COPY OF THE CERTIFICATE DATED 12.10.2009 ISSUED BY THE VILLAGE OFFICER, PERUMBADAPPA**

P2- **TRUE ENGLISH TRANSLATION**

P3- **ORIGINAL PHOTOGRAPHS OF THE EXHIBIT P1**

P4- **TRUE OCPY OF THE LATEST BUILDING TAX RECEIPT FOR THE PERIOD OF 2014-15**

P5- **TRUE COPY OF THE APPLICATION FORM DATED 2.9.2014 SUBMITTED BY THE PETITIONER BEFORE TEH 2ND RESPONDENT**

P6- **TRUE COPY OF THE REJECTION ORDER NO.A4/3312-14 DATED 10.9.2014**

P6- **TRUE ENGLISH TRANSLATION**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

K.HARILAL, J.

W.P.(C) No.9594 of 2015

Dated this the 1st day of December, 2015.

JUDGMENT

The petitioner is a Charitable Trust by name Al-Irshad Islamic Trust, Ayiroor, represented by its Chairman K. Mohammed. The petitioner is the owner in possession of 20 cents of property comprised in Sy.No.202/9 of Ayiroor Amsom in Perumpadappu Village by virtue of Ext.P1. The petitioner submitted Ext.P5 application before the 2nd respondent for building permit, which was rejected by the 2nd respondent by Ext.P6 stating that the land comes under the category of "Nanja" land and also the permission is sought for construction of a commercial building. According to the petitioner, at the time of purchase of the said land, the same was neither a paddy land nor a wetland as prescribed under the Kerala Conservation of Paddy Land and Wetland Act, 2008. Ext.P2 certificate issued by the Village Officer also shows that the said property is planted with coconut trees aged more than 20 years. Ext.P3 Photograph also shows that there is no paddy land adjacent to the petitioner's property and the said land is surrounded by dry land with huge commercial buildings. Therefore, the denial of building permit on the basis of the entries in the Revenue Records is arbitrary and Ext.P6 order is liable to be set aside in view of the decisions laid down by this Court in Shahanaz Shukkoor v. Chelannur Grama Panchayat [2009 (3) KLT 899] and Mohammed Abdul Basheer C.P. v. State of Kerala and Another [2012 (3) KHC 489]. Hence the petitioner prayed for calling for records leading to Ext.P6 and quash the same and also directing the respondents to grant building permit for the proposed construction.

2. Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent Panchayat.

3. It was held in Shahanaz Shukkoor v. Chelannur Grama Panchayat [2009 (3) KLT 899] as follows:

> "The Kerala Conservation of Paddy

> Land and Wetland Act, 2008, deals with the conversion of lands which are wetland or paddy fields, on the basis of actual factual situation and not depending on the description of the property in the revenue records. The definition of the terms 'paddy field' and 'wetland' in the said Act is sufficient material to hold that the said statute operates on the basis of the facts as they exist on ground realities and not on any quality or type of land, depending on its description in the title document."

4. In Praveen v. Land Revenue Commissioner [2010 (2) KLT 617 (DB)], this Court held that mere description of the property in the revenue records by itself may not be conclusive and may not estop a party from producing materials to show otherwise.

5. In the light of the proposition laid down by this Court in the above decisions, Ext.P6 order will stand set aside. Further, the 1st respondent is directed to conduct a site inspection and pass orders, after issuing notice to the petitioner, based on the actual

lie of the land to be found in the site inspection, notwithstanding the inclusion of the property in the revenue records as 'paddy field'. Certainly, if the land is one converted before the commencement of the above Act, the issuance of building permit would not be barred under Section 14 of the said Act. Needless to say, on the other hand, no building permit can be issued for the same. However, the 1st respondent is directed to pass orders on the basis of the actual lie of the land to be found in the site inspection, within a period of two months from the date of receipt of a copy of this judgment.

This writ petition is disposed of accordingly.

K. HARILAL, JUDGE

okb.