

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

WP(C).No. 12083 of 2015 (I)

PETITIONER(S) :

BIJU VARGHESE,
S/O. VARGHESE, AGED 38 YEARS,
RESIDING AT CHEERAMBAN HOUSE,
8/412, MISSION QUARTERS,
EAST FORT, THRISSUR.

BY ADVS.SRI.T.C.SURESH MENON &
SRI.P.S.APPU.

RESPONDENT(S) :

1. THRISSUR CORPORATION,
REPRESENTED BY ITS SECRETARY,
CORPORATION OFFICE,
THRISSUR- 680 001.
2. THE ASSISTANT ENGINEER,
THRISSUR CORPORATION, ZONAL OFFICE, OLLUR,
THRISSUR- 680 306.

BY SRI.K.P.VIJAYAN,SC,THRISSUR CORPORATION &
BY ADV. SRI.V.N.HARIDAS.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 08-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

EXHIBIT-P1- TRUE COPY OF THE TAX RECEIPT ISSUED BY THE VILLAGE
OFFICE, OLLUR 18.12.2014.

EXHIBIT-P1 (A) - TRUE COPY OF THE ENGLISH TRANSLATION OF EXT.P1.

EXHIBIT-P2- TRUE COPY OF THE ORDER PASSED BY THE DISTRICT
COLLECTOR, THRISSUR DATED 22.5.2006.

EXHIBIT-P2 (A) - TRUE COPY OF THE ENGLISH TRANSLATION OF EXT.P2.

EXHIBIT-P3- TRUE COPY OF THE ORDER PASSED BY THE 2ND RESPONDENT
TO THE PETITIONER DATED 28.02.2015.

EXHIBIT-P3 (A) - TRUE COPY OF THE ENGLISH TRANSLATION OF EXT.P3.

EXHIBIT-P4- TRUE COPY OF THE PHOTOGRAPHS DEPICTING THE LIE OF
THE PETITIONER'S PROPERTY DATED-NIL.

EXHIBIT-P5- TRUE COPY OF THE JUDGMENT IN WPC.NO.18776/2014 ON
THE FILE OF THIS HONOURABLE COURT DATED 22.7.2014.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V.RAMAKRISHNA PILLAI, J

WPC No.12083 of 2015

Dated this the 8th day of June, 2015

JUDGMENT

Ext.P3 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 0.0378 hectares of land in Sy.No.344/1 (R.S.No.9/2) of Ollur Village, Thrissur Taluk. The petitioner submitted an application for building permit before the respondents which was rejected on the ground that the land is zoned as paddy field in the Master Plan for Thrissur Corporation.

3. Arguments have been heard.

4. The learned counsel for the petitioner, invited my attention to Ext.P4 photograph, which shows the present nature of the land of the petitioner.

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 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.P3 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 respondents are also directed to consider the application and pass orders granting permit after affording the petitioner an opportunity of being heard; if they are satisfied that the land is unfit for paddy cultivation. This shall be done within a period of one month from the date of receipt of a copy of this judgment.

**sd/- A.V.RAMAKRISHNA PILLAI
JUDGE**

CSS/

true copy

P.S.TO JUDGE