

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

WP(C).No. 12835 of 2015 (D)

PETITIONER :

**LATHEEF ABUBAKER, AGED 41 YEARS,
S/O.ABUBAKER, 15/267, MAMBRATH HOUSE,
P.O.THUYAKKAVU THRISSUR-680 513.**

BY ADV. SRI.K.M.NASARUDHEEN

RESPONDENTS :

- 1. THRISSUR CORPORATION
REP.BY ITS SECRETARY, CORPORATION OFFICE,
THRISSUR - PIN.680 001.**
- 2. EXECUTIVE ENGINEER, LSGD
CORPORATION OFFICE, THRISSUR, PIN.680001.**
- 3. DISTRICT COLLECTOR, THRISSUR DISTRICT,
COLLECTORATE, THRISSUR - PIN.680001.**

**R1 & R2 BY SRI.BABU JOSEPH KURUVATHAZHA,SC,
R3 BY GOVERNMENT PLEADER SRI.G. GOPAKUMAR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 01-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: A TRUE COPY OF THE DOCUMENT NO.4994/2014 OF SRO,
AYYANTHOLE IN RESPECT OF .1842 HECTORS OF LAND IN
SY.NO.736/P OF AYYANTHOLE VILLAGE.
- EXT.P2: A TRUE COPY OF THE POSSESSION CERTIFICATE ISSUED BY THE
VILLAGE OFFICER AYYANTHOLE VILLAGE TO THE PETITIONER
DT.20-01-2015
- EXT.P3: A TRUE COPY OF THE LAND TAX RECEIPT DT.20-01-2015 ISSUED BY
THE VILLAGE OFFICER, AYYANTHOLE VILLAGE TO THE PETITIONER.
- EXT.P4 : A TRUE COPY OF THE PHOTOGRAPHIN RESPECT OF EXT.P1
PROPERTY.
- EXT.P4(A): A TRUE COPY OF THE PHOTOGRAPHIN RESPECT OF EXT.P1
PROPERTY.
- EXT.P5: A TRUE COPY OF THE ORDER NO.D.DIS 57022/03/B1 DT.19-12-2003
ISSUED BY THE 3RD RESPONDENT.
- EXT.P6: A TRUE COPY OF THE RECEIPT ISSUED BY THE 1ST RESPONDENT
DT.14-01-2015.
- EXT.P7: A TRUE COPY OF THE INTIMATION AS PER COMMUNICATION
NO.DW5/BA/512/14-15 DT.25.03.2015 ISSUED BY THE 2ND
RESPONDENT.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.S. TO JUDGE

bp

A.V.RAMAKRISHNA PILLAI, J

WPC No.12835 of 2015

Dated this the 1st day of July, 2015

JUDGMENT

Ext.P7 order rejecting the petitioner's application for building permit is under challenge in this writ petition.

2. The petitioner is one of the owners in possession of .1842 hectares of land in Sy.No.736/P of Ayyanthole Village as per Document No.4994/2014 of SRO, Ayyanthole. The petitioner and other co-owners submitted an application for building permit to construct a commercial building having a plinth area of more than 7500 sq.m. before the respondents which was rejected by the second respondent as per communication dated 25.3.2015 stating that in respect of paddy land, permission can be granted only for the construction of residential houses having floor area of 300 sq.m. and since the application of the petitioner is for

multi-storied commercial building, it cannot be considered.

3. Arguments have been heard.

4. The learned counsel for the petitioner invited my attention to Ext.P5 Order No.57022/03/B1 dated 19.12.2003 passed by the District Collector, Thrissur granting permission to reclaim the land subject to three conditions. The learned counsel for the petitioner would submit that the petitioner is ready to comply with the directions contained in Ext.P5 order passed by the District Collector.

5. The learned counsel also invited my attention to Ext.P4 series of photographs which would show that the property has already reclaimed.

6. 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 to construct a house.

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 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.

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 petitioner's

application. Therefore, this writ petition is allowed.
Ext.P7 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 1 and 2 are also directed to consider the application and pass positive orders granting permission, if they are satisfied that the property of the petitioner is not fit for paddy cultivation at present, after ensuring whether the petitioner has complied with the conditions imposed as per Ext.P5. The petitioner shall be afforded 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**

CSS/

true copy

P.S.TO JUDGE