

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 16TH DAY OF NOVEMBER 2015/25TH KARTHIKA, 1937

WP(C).NO. 17527 OF 2012 (M)

PETITIONER(S):

PRASAD, AGED 53 YEARS,
S/O. AREEKARA SUBRAMANIAN, IRINGAPRA DESOM,
GURUVAYOOR AMSOM, CHAVAKKAD TALUK.

BY ADVS.SRI.G.SREEKUMAR (CHELUR)
SMT.PREETHY KARUNAKARAN

RESPONDENT(S):

1. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
LOCAL SELF GOVERNMENT DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.

2. THE GURUVAYOOR MUNICIPALITY,
REP. BY ITS SECRETARY, P.O. KOTTAPADI,
THRISSUR DISTRICT - 680 505.

R2 BY ADV. SRI.P.A.AHAMMED
R2 BY ADV. SRI.M.SREEKUMAR
R1 BY GOVERNMENT PLEADER SRI.T.J.MICHAEL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).NO. 17527 OF 2012 (M)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1- TRUE COPY OF THE DOCUMENT BEARING NO.1059/94 OF THE KOTTAPADY SRO , DT.3.6.94

EXT.P2- TRUE COPY OF THE DOCUMENT BEARING NO.1078/94 DT.9.6.94 OF THE KOTTAPADY SRO.

EXT.P3- TRUE COPY OF THE COMMUNICATION OF THE COUNCILOR OF THE GURUVAYOOR MUNICIPALITY DATED NIL.

EXT.P4- TRUE COPY OF THE CERTIFICATE ISSUED BY THE POOKODE GRAMA PANCHAYATH DT. 15.7.09

EXT.P5- TRUE COPY OF THE COMMUNICATION OF THE SECOND RESPONDENT DT.30.12.11

RESPONDENTS' EXHIBITS:

OKB.

//TRUE COPY//

P.A. TO JUDGE.

K.HARILAL, J.

W.P.(C) No.17527 of 2012

Dated this the 16th day of November, 2015.

JUDGMENT

According to the petitioner, he purchased 72 cents of property comprised in Sy.No.194/6 in Iringipram Amsom by virtue of Exts.P1 & P2. Thereafter, he made an application for grant of building permit. According to the petitioner, at the time of purchasing the property in the year 1994, the said property was a reclaimed land having aged trees and a cinema theatre was also functioning there. Therefore, the prohibition under the Kerala Conservation of Paddy Land and Wet Land Act, 2008, will not come into application for granting permit for the construction of the building. But, the 2nd respondent has misunderstood the same as an application filed for construction of the building under the Kerala Conservation of Paddy Land and Wet Land Act, 2008 and rejected the request on a finding

that the petitioner has already constructed a building having 275.21 Sq.Mtrs. and also the application can be considered only in cases where the applicant is having no other residential house as per the Government Circular dated 31.7.2008. Hence this writ petition has been filed praying for issuing a writ of mandamus or any other appropriate writ, order or direction commanding the 1st respondent to reconsider the application treating it as not an application coming under the Kerala Conservation of Paddy Land and Wet Land Act, 2008.

2. Heard the learned counsel for the petitioner and the learned Government Pleader.

3. Going by Ext.P5 order rejecting the application for building permit filed by the petitioner, it is seen that the 2nd respondent has considered the said application as one filed seeking permission to construct a residential building, under the provisions of the Kerala Conservation of Paddy Land and Wet Land Act, 2008. But, going by the inspection report filed by the 2nd respondent,

obviously, it is seen that the said land is not a land which was filled up or reclaimed after the commencement of the Kerala Conservation of Paddy Land and Wet Land Act, 2008. P.W.1 inspected the property and specifically reported that trees having more than 30 years old are standing in the said property and a residential building having an area of 275.21 Sq. Mtrs. has been built up in the said property. The Panchayat has no case that the property has been reclaimed after the commencement of the Kerala Conservation of Paddy Land and Wet Land Act, 2008. But, going by Exts.P1 & P2 sale deeds it is seen that once the land in question was a paddy land and the same was filled up before the commencement of the Kerala Conservation of Paddy Land and Wet Land Act, 2008. If that be so, the prohibition under the Kerala Conservation of Paddy Land and Wet Land Act will not come into application. Needless to say, the building permit cannot be refused under Section 14 of the said Act.

4. 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 fact 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.”

5. 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.

6. In the light of the proposition laid down by this Court in the above decisions, Ext.P5 order will stand set aside. Further, the 11nd 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 entries in the Revenue records.

This writ petition is disposed of accordingly.

Sd/-
K. HARILAL, JUDGE

okb.