

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

WP(C).No. 15449 of 2015 (E)

PETITIONER :

**SUNIL.K.K., AGED 51 YEARS,
S/O. LATE K.K. KRISHNANKUTTY,
RESIDING AT KUNDOLY HOUSE, 53/87, UDAYA NAGAR,
11TH A CROSS ROAD, AYYANTHOLE, THRISSUR- 680 003.**

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

RESPONDENTS :

- 1. THRISSUR CORPORATION,
REPRESENTED BY ITS SECRETARY,
CORPORATION OFFICE, THRISSUR - 680 001.**
- 2. THE EXEECUTIVE ENGINEER,
LOCAL SELF GOVERNMENT DEPARTMENT
THRISSUR CORPORATION, PIN - 680001.**

**R1 & R2 BY ADVS. SRI.K.P.VIJAYAN
SRI.V.N.HARIDAS**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 13-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1: TRUE COPY OF THE TAX RECEIPT ISSUED BY THE VILLAGE OFFICE,
AYYANTHOLE DATED 17/07/2014.

EXHIBIT-P2: TRUE COPY OF THE ORDER PASSED BY THE 2ND RESPONDENT
DATED 16/02/2015.

EXHIBIT-P3: TRUE COPY OF THE EXTRACT OBTAINED FROM THE DEPARTMENT
OF REGISTRATION, GOVERNMENT OF KERALA. DT NIL.

EXHIBIT-P4: TRUE COPY OF THE EXTRACT OBTAINED FROM THE DEPARTMENT
OF REGISTRATION, GOVERNMENT OF KERALA.DT. NIL.

EXHIBIT-P5: TRUE COPY OF THE ORDER PASSED BY THE DISTRICT COLLECTOR,
THRISSUR DATED 14/03/2012.

EXHIBIT-P6: TRUE COPY OF THE FEW PHOTOGRAPHS DEPICTING THE LIE OF THE
PETITIONER'S PROPERTY. DT. NIL.

EXHIBIT-P7: TRUE COPY OF THE ORDER GRANTING BUILDING PERMIT TO THE
LIONS CLUB, THRISSUR DATED 24/04/2009.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No.15449 of 2015

Dated this the 13th day of July, 2015.

JUDGMENT

Aggrieved by the rejection of the petitioner's application for building permit on account of the fact that the area is covered under DTP scheme and also on account of the fact that the property is exists the paddy field as per the revenue records.

2. The petitioner along with his wife owns 2602 M of land in Sy.Nos. 341/P and 331/1 of Ayyanthole village in Thrissur Taluk under the first respondent corporation limits. The petitioner wanted to construct a commercial building therein and accordingly applied for a building permit. He was shocked to know that the application was rejected by the corporation stating that the land owned by the petitioner has been included in the *puzhakkal padam* DTP scheme and they wanted to construct a transport terminal therein. The petitioner alleges that no acquisition proceedings were initiated

in respect to this property and in the adjacent properties, the Corporation has already given building permits to construct commercial and residential buildings. Yet another reason stated for rejection of the application for building permit was that according to revenue records the land has been classified as 'paddy field'. The Registration Department of the Government however has declared that this land is one of commercial value and fair value has been fixed accordingly. It is alleged that the District Collector has issued permits for extraction of clay from this land after obtaining reports from the Agricultural Officer and the Village Officer who have certified that it is impossible to cultivate paddy in this land.

3. I have heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent Corporation in the matter.

4. Opposing the application, the learned standing counsel for the respondent corporation would submit that as per the DTP scheme, the area is intended for construction of

transport terminal. In answer to the said submission, the learned counsel for the petitioner, invited my attention to Ext.P3 fair value fixation order, which shows that the petitioner's property is commercially important plots. He also invited my attention to Ext.P5 order issued by the District Collector by which the District Collector has permitted extraction of clay from the said land as to whether the same is fit for paddy cultivation or not.

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 to construct a house.

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.

8. The learned counsel for the petitioner also invited my attention also to the decision of this Court in **Adani Infrastructure & Developers Pvt. Ltd., Mumbai v. State of Kerala and Others** [2014 (1) KLT 774] wherein it was held that an authority which has been conferred with the functions of preparing a data bank with the details of the cultivable paddy land and wetland within its area of

jurisdiction with the aid of modern technology and institutions of science and technology under sub-clause (1) of sub-section (4) of Section 5 could at any time, look into the ground realities and decide upon the suitability for prospective cultivation of such lands.

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 respondents are also directed to consider the application and pass positive orders, granting permit if they are satisfied that the land is unfit for paddy cultivation at present after affording the petitioner 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.

A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.