

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. 19536 OF 2012 (N)

PETITIONERS:

1. GREGORY STELLUS, AGED 75 YEARS,
S/O.GREGORY, NOW RESIDING ATG THOTTATHIL HOUSE,
VENPALAVATTOM POST, THIRUVANANTHAPURAM-695029.
2. CHINNAMMA STELLUS, AGED 75 YEARS,
W/O.GEORGE STELLUS, THOTTATHIL HOUSE,
VENPALAVATTOM POST, THIRUVANANTHAPURAM-695029.

BY ADV. SRI.DENIZEN KOMATH

RESPONDENT(S) :

1. CORPORATION OF THIRUVANANTHAPURAM,
REPRESENTED BY ITS SECRETARY, THIRUVANANTHAPURAM-1.
2. REGIONAL TOWN PLANNING OFFICER,
REGIONAL TOWN PLANNING OFFICE,
CORPORATION OF THIRUVANANTHAPURAM,
THIRUVANANTHAPURAM-1.
3. TAHZILDAR
TALUK OFFICE, THIRUVANANTHAPURAM,
THIRUVANANTHAPURAM-1.

R1,R2 BY ADV. SRI.N.NANDAKUMARA MENON (SR.)

R1,R2 BY ADV. SRI.P.K.MANOJKUMAR

BY GOVERNMENT PLEADER, SRI. R.K. RAFEEK

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

WP(C).NO. 19536 OF 2012 (N)

APPENDIX

PETITIONER(S) EXHIBITS

EXHIBIT P1: TRUE PHOTOCOPIES OF THE TITLE DEED PERTAINING TO THE
LANDED PROPERTIES OWNED BY THE PETITIONERS.

EXHIBIT P2: TRUE PHOTOCOPY OF THE FINDINGS OF THE 1ST RESPONDENT VIDE
REFERENCE NUMBER ZK2/BA/14-2011 DATED 31-3-2011.

EXHIBIT P3: TRUE PHOTOCOPY OF THE REQUEST PREFERRED BY THE
PETITIONERS BEFORE THE 2ND RESPONDENT.

RESPONDENTS' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

DST

K. HARILAL, J.

= = = = =

W.P. (C) No.19536 of 2012

- - - - -

Dated this the 16th day of November, 2015

J U D G M E N T

The petitioners are co-owners of landed properties,, having an extent of 48.8 Ares and 56.7 Ares, respectively of Kadakampally, Trivandrum Taluk in Trivandrum District by virtue of Extr.P1. The 1st petitioner applied for building permit to construct apartments and requisite application was submitted before the 1st respondent. The 1st respondent rejected the said application by Ext.P2 on a finding that the concerned land, for which permission was sought for, is existing in the paddy land list and therefore the application cannot be entertained. According to the

-: 2 :-

petitioners, rejection of the application on the sole ground that in the relevant records the said land is described as paddy land is unjust and arbitrary. Aggrieved by the rejection of the application, the petitioners filed Ext.P3 representation to the 3rd respondent. The 3rd respondent has not taken any action on Ext.P3. According to the petitioners, as a matter of fact, the said property had been reclaimed so many years back and merely on the reason that a wrong description of the property was got entered in the register kept by the 2nd respondent, permission cannot be declined to the petitioners on the basis of that wrong entry. Thus, the petitioners prayed for issuing a writ of certiorari or order calling for the records pertaining to the issuance of Ext.P2 and quash the same and also for issuing a writ of mandamus or direction directing the

-: 3 :-

respondents herein to issue appropriate orders granting building permit for the proposed construction.

2. The 1st respondent filed a counter affidavit stating that the land in question in the Writ Petition is still included in the list of paddy lands under the Zoning Regulations in the light of the records available with the 2nd respondent, and the 2nd respondent is liable to reject the permission on the reason that the land is an illegally converted one, for which no building permit can be issued. Application submitted by the 1st petitioner is for construction of multi-storied apartments and the same cannot be allowed in an illegally reclaimed land.

3. Heard the learned counsel for the petitioner and learned Senior counsel appearing for the 1st respondent.

4. Going by the impugned order, it is seen that

-: 4 :-

the application for building permit has been rejected on the sole ground that the land in question is included in the list of paddy lands under the Zoning Regulations in the light of the records available with the 2nd respondent. But, according to the petitioners, even though the said land was a paddy land much earlier, the same has been reclaimed before the commencement of the Kerala Conservation of Paddy land and Wet land Act, 2008 (*hereinafter referred to as 'the Act'*). So, merely on the reason that a wrong entry crept in the description of the land, in the records, on the basis of the prior documents, the 1st respondent could not have rejected the application for building permit, without verifying the actual lie of the land.

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

-: 5 :-

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."

6. 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.

7. In the light of the proposition laid down by this Court in the above decisions, Ext.P2 order will stand set aside. Further, the 1st respondent is directed to conduct a site inspection and pass orders, after issuing notice to

-: 6 :-

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 zone of 'paddy field'.

8. On local inspection, if the property is found converted, after the commencement of the Act, certainly, the prohibition under the said Act will come into play and building permit cannot be issued, in view of the bar under Section 14 of the Act. On the other hand, the 1st respondent is satisfied that the conversion of the said property was not effected after the commencement of the Act, certainly, he is at liberty to grant building permit, if the application is in order or otherwise.

9. In the above view of the matter, Ext.P2 will stand set aside and the matter is remitted back to the 1st respondent for fresh consideration, in view of the report to be submitted, after local inspection. The 1st

-: 7 :-

respondent shall conduct site inspection, within a period of one month from the date of receipt of a copy of this judgment and thereafter, pass orders accordingly, within next one month from the date of inspection.

This Writ Petition is disposed of accordingly.

Sd/-

**K. HARILAL,
JUDGE**

DST

//True copy//

P.A. To Judge