

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

WP(C) .No. 16936 of 2015 (N)

PETITIONER(S) :

SREELATHA,
AGED 41 YEARS, WIDOW OF HARIDASAN,
RESIDING AT SREELATHA NIVAS,
AYYANTHOLE P.O., THRISSUR - 680 003.

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

RESPONDENT(S) :

1. THRISSUR CORPORATION
REPRESENTED BY ITS SECRETARY,
CORPORATION OFFICE,
THRISSUR-1
2. THE EXECUTIVE ENGINEER,
LSGD THRISSUR CORPORATION,
CORPORATION OFFICE, THRISSUR-1

R1&2 BY ADV. SRI.K.P.VIJAYAN
R1&2 BY ADV. SRI.V.N.HARIDAS
BY SRI.K.P.VIJAYAN, SC, THRISSUR CORPORATION.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
30-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

EXHIBIT P1: TRUE COPY OF THE POSSESSION CERTIFICATE ISSUED BY THE VILLAGE OFFICE, AYYANTHOLE TO THE PETITIONER DATED 3.12.2014.

EXHIBIT P2: TRUE COPY OF THE ORDER PASSED BY THE 2ND RESPONDENT TO THE PETITIONER DATED 18.3.2015.

EXHIBIT P3: TRUE COPY OF FEW PHOTOGRAPHS DEPICTING THE LIE OF THE PROPERTY DATED NIL.

EXHIBIT P5: TRUE COPY OF THE JUDGMENT IN WPC NO.13442/14 ON THE FILE OF THIS HONOURABLE COURT DATED 5.8.2014.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V.RAMAKRISHNA PILLAI, J

WPC No.16936 of 2015

Dated this the 30th day of July, 2015

JUDGMENT

The petitioner is aggrieved by the denial of building permit by the respondent Corporation for the reason that a portion of the land owned by the petitioner has been described as Nilam in the possession certificate disregarding the factual situation prevailing.

2. The petitioner is the owner in possession of 0.0620 hectares of land comprised in Sy.Nos.629/P and 632/P of Ayyanthole Village in Thrissur Taluk. The petitioner had applied for a building permit to construct a residential house in the property of the petitioner. The respondent Corporation rejected the application for the reason that a portion of the land owned by the petitioner has been described as Nilam in the possession certificate, though the rest of the land has been described as purayidam. The other reasons stated are non-compliance of some of the provisions of the Kerala Municipality Building Rules.

The petitioner alleges that they are rectifiable and the petitioner is eager to do so. The property in fact is surrounded by residential buildings and it is impossible to cultivate paddy therein; so alleges the petitioner. It is also alleged that the Corporation has issued building permits to other applicants and at the same time the Corporation has denied a similar treatment to the petitioner.

3. According to the petitioner, the stand now adopted by the Corporation is in gross violation of the dictum laid down by this Court in ***Praveen v Land Revenue Commissioner*** (2010(2) KLT 617), ***Jafarkhan v K.A.Kochumakkar and others*** (2012(1) KHC 523(DB) and ***Shahanaz Shukkoor v Chelannur Grama Panchayat*** (2009(3) KLT 899) that mere description of a portion of the property in the possession certificate is not proof enough to hold that a particular property is a paddy field. It is with this background, the petitioner has come up before this Court.

4. I have heard the learned counsel for the petitioner

and the learned standing counsel for the respondent Corporation.

5. The writ petition is opposed by the learned standing counsel for the respondent Corporation mainly for two reasons. Firstly, it was pointed out that the petitioner's property is nilam as per the description in the revenue records. The second ground is that there are non-compliance of the provisions of the Kerala Municipality Building Rules.

6. In answer to the said submission, the learned counsel for the petitioner invited my attention to Ext.P3 photographs which show that there are growing trees in the property of the petitioner. Residential buildings are there in the close vicinity as evident from Ext.P3.

7. The learned counsel for the petitioner invited my attention to paragraph-2 of Ext.P2 and submitted that the said paragraph is objectionable. In paragraph-2 of Ext.P2 in which is stated that as per the possession certificate issued by the Village Officer, a portion of the property is paddy field and the remaining portion is a garden land. It

is further stated that the property lying as garden land is covered by a master plan and the property lying as paddy field is not covered by the master plan. It is also stated that as per G.O.59655/R41/08/LSGD/dtd. 23.9.2008, single family residential building having an area of 300 metre sq. can be constructed only after clearance from the local level monitoring committee. It was also pointed out that the application is for the construction of a residential apartment and the construction is against the aforesaid provision.

8. 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.

9. It is settled position that the applicant can choose the best land suited for construction of his house (***Sunil v Killimangalam-Panjai 5th Ward Nellulpadaka Samootham*** 2012(4) KLT 511). Only if there is cultivation

presently then it will be considered as cultivating paddy land so as to attract the provisions of the Kerala Conservation of Paddy Land and Wetland Act and Rules.

10. 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.

11. The learned counsel for the petitioner 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.

12. The contention raised by the respondent Corporation that the portion of the property is covered by a master plan and therefore, permission cannot be granted is also unsustainable.

13. 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.

14. Of course, in paragraph-1 of Ext.P2, certain defects are pointed out which are curable by the petitioner.

Therefore, on a consideration of the entire materials now placed on record, this writ petition is disposed of

quashing the second paragraph of Ext.P2 and permitting the petitioner to cure the defects made mention of in the first paragraph of Ext.P2 within a period of two weeks from the date of receipt of a copy of this judgment.

In the event of curing the defects as above, 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 re-consider the application and pass orders granting permit, if they are satisfied that the land in the present form is unfit for paddy cultivation. The petitioner shall be given 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**

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true copy

P.S.TO JUDGE