

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

WP(C).No. 18545 of 2015 (P)

PETITIONER :

**A.A.ABDUL LATHEEF, AGED 57 YEARS
S/O.A.K.ABDULLA, RESIDING AT ATTUPARAMBATH HOUSE,
ETTU MANA, KARUVANNUR P.O., THRISSUR - 680 711.**

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

RESPONDENTS/RESPONDENTS:-:

- 1. THRISSUR CORPORATION
REPRESENTED BY ITS SECRETARY,
CORPORATION OFFICE, THRISSUR - 680 001.**
- 2. THE EXECUTIVE ENGINEER
THRISSUR CORPORATION, MUNICIPAL CORPORATION OFFICE,
THRISSUR - 680 001.**

**R1 & R2 BY ADV. SRI.K.P.VIJAYAN
R1 & R2 BY ADV. SRI.V.N.HARIDAS
BY SRI.K.P.VIJAYAN,SC,**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 30-06-2015, 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,
CHEMBUKKAVU TO THE PETITIONER DATED 03.03.2015.
- EXHIBIT P2: TRUE COPY OF THE ORDER PASSED BY THE 2ND RESPONDENT TO
THE PETITIONER DATED 11.06.2015.
- EXHIBIT P3: TRUE COPY OF THE POSSESSION CERTIFICATE ISSUED BY THE
VILLAGE OFFICE, CHEMBUKKAVU TO THE PETITIONER
DATED 04.03.2015.
- EXHIBIT P4: TRUE COPY OF THE JUDGMENT IN W.A.NO.1731/2008 ON THE FILE OF
THIS HONOURABLE COURT DATED 14.06.2011.
- EXHIBIT P5: TRUE COPY OF THE JUDGMENT IN W.P.(C)NO.13442/2014 ON THE FILE
OF THIS HONOURABLE COURT DATED 05.08.2014.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A.TO JUDGE

bp

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No.18545 of 2015

Dated this the 30th day of June, 2015.

JUDGMENT

Ext.P2 order rejecting the petitioner's application for building permit is under challenge in this writ petition.

2. The petitioner is the owner of a parcel of land comprising of 0.1582 hectares in Sy.No.687/1 and 687/2 of Chembukkavu Village in Thrissur Taluk within the first respondent Corporation limits. The petitioner alleges that he had applied for a building permit to construct a residential apartment complex in the property mentioned above. The petitioner was shocked to be informed by the second respondent that the application for building permit cannot be considered, since the area in question does not fall in the residential zone according to the master plan and that in the possession certificate, a portion of the same has been entered as 'Nilam'. It is with this background, the petitioner has come up before this Court.

3. Arguments have been heard.

4. 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.

5. 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.

6. 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.P42 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 appropriate orders, 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.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.