

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

WP(C).No. 22069 of 2015 (G)

PETITIONER(S):

- 1. ZACHARIAS POOMKUDY,
POOMKUDY VILLA, KUNNUPURAM,
KAKKANAD, COCHIN - 682 030.**
- 2. ANITHA ZACHARIAS POOMKUDY,
POOMKUDY VILLA, KUNNUPURAM,
KAKKANAD, COCHIN- 682 030.**

**BY ADVS.SRI.MATHEW JOHN,
SRI.DOMSON J.VATTAKUZH.**

RESPONDENT(S):

- 1. THE THRIKKAKARA MUNICIPALITY,
REPRESENTED BY ITS SECRETARY,
THRIKKAKARA.**
- 2. THE SECRETARY,
THRIKKAKARA MUNICIPALITY,
THRIKKAKARA.**
- 3. THE SENIOR TOWN PLANNER,
CIVIL STATION, KAKKANAD,
ERNAKULAM.**

**R1 & R2 BY ADV. SRI.S.SHANAVAS KHAN.
R3 BY GOVT. PLEADER SRI.JOSE KALIATH.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 05-08-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- P1: A TRUE COPY OF THE CERTIFICATE DATED 01/03/2013 ISSUED BY THE ADDITIONAL TAHSILDAR, KANAYANNOOR TALUK.
- P2: PHOTOGRAPH SHOWING THE PROPERTY AS DRY LAND.
- P2(A): PHOTOGRAPH SHOWING THE PROPERTY AS DRY LAND.
- P2(B): PHOTOGRAPH SHOWING THE PROPERTY AS DRY LAND.
- P2(C): PHOTOGRAPH SHOWING THE PROPERTY AS DRY LAND.
- P3: A TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER DATED 31/10/2013.
- P4: A TRUE COPY OF THE ACKNOWLEDGEMENT OF THE APPLICATION OF THE PETITIONER DATED 11/11/2013.
- P5: A TRUE COPY OF THE ORDER ISSUED BY THE 3RD RESPONDENT DATED 25/01/2014.
- P6: A TRUE COPY OF THE JUDGMENT DATED 09/04/2014 IN WP(C).NO.2980/2014.
- P7: A TRUE COPY OF THE LETTER BY THE 2ND PETITIONER DATED 18/11/2014 TO THE CHIEF TOWN PLANNER.
- P8: A TRUE COPY OF THE LETTER BY THE 2ND PETITIONER DATED 19/11/2014 TO THE 3RD RESPONDENT.
- P9: A TRUE COPY OF THE ORDER OF THE 3RD RESPONDENT DATED 03/06/2015 SERVED ON THE 2ND PETITIONER.
- P10: A TRUE COPY OF THE JUDGMENT IN WP(C).NO.12868/2014 DATED 20/10/2014.
- P11: PHOTOGRAPH SHOWING THE PROPERTY.
- P12: A TRUE COPY OF THE JUDGMENT DATED 25/06/2015 IN WP(C).NO.19054/2015.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

PA. TO JUDGE

rs.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 22069 of 2015

Dated this the 5th day of August, 2015

J U D G M E N T

Ext.P9 order rejecting the petitioners' application for building permit is under challenge in this writ petition.

2. The 1st petitioner is the owner in possession of 42.90 ares of dry land within the local limits of the 1st respondent municipality. The 2nd petitioner, who is the wife of the 1st petitioner, is the owner in possession of an extent of 86.15 ares of dry land within the local limits of the respondent municipality. Their application dated 31.10.2013 for building permit, Ext.P3, in respect of 55.80 ares out of the aforementioned properties, has been rejected by the 3rd respondent as per Ext.P5 order for two reasons, (1) the plans submitted along with Ext.P3 application are not in conformity with the provisions of the Kerala Municipality Building Rules, 1999 and (2) the property is not in accordance with the provisions of the Kerala Conservation of Paddy Land and Wet Land Act,

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2008. This Court, as per Ext.P6 judgment, set aside Ext.P5 and directed the 2nd respondent to issue building permit provided the petitioners submit a plan strictly in conformity with the provisions of KMBR. The petitioners alleges that though they submitted such a plan, the 3rd respondent proceeded to reject the same referring to the provisions of the structural plan for Kochi as per Ext.P9. According to the petitioner, it is wholly inapplicable to the respondent municipality and apart from this, even under the provisions of the structural plan as per 4.13 thereof, construction of residential or commercial buildings are permissible. Therefore, according to the petitioners, Ext.P9 is illegal and liable to be set aside.

3. Arguments have been heard.

4. The learned senior Government Pleader as well as the learned Standing Counsel for the respondent municipality opposed the application on the ground that the petitioners' property is included in the area earmarked as agricultural zone in the structural plan in the city of Kochi.

5. In answer to the said submission, the learned

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counsel for the petitioner, inviting my attention to Ext.P12 judgment of this Court, submitted that the same has been repelled by this Court in a similar case. The learned counsel also invited my attention to Ext.P11 photograph, which shows that the property is on the side of the Seaport-Airport Road and numerous residential as well as commercial buildings have come up in the locality.

6. 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 for construction.

7. 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],

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wherein it was held that refusing to grant permits relying on obsolete DTP schemes is a clear violation of the provisions of the Constitution.

8. 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 petitioners' application.

9. The learned counsel for the petitioners 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.P9 is quashed.

The respondent municipality is directed to conduct a local inspection of the property regarding the present lie as well as the condition of the property of the petitioners and surrounding properties. The respondents are also directed to consider the application and pass positive orders granting building permit after affording the petitioners an opportunity of being heard if the respondents are satisfied that the land in its present form is not suitable for paddy cultivation, subject to further restrictions that may be imposed in accordance with law by the municipality. 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

bka/-