

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 11TH DAY OF DECEMBER 2015/20TH AGRAHAYANA, 1937

WP(C).No. 23011 of 2015 (B)

PETITIONER(S):

**K.MANOJ, AGED 42 YEARS,
S/O.UMMAR, KUZHIKKADAN HOUSE,
NILAMBUR R S P.O. - 679 390.**

**BY ADVS.SRI.K.SHIBILI NAHA
SRI.SAJU RAGHAVAN**

RESPONDENT(S):

- 1. NILAMBUR MUNICIPALITY,
REPRESENTED BY ITS SECRETARY, NILAMBUR,
MALAPPURAM DISTRICT - 679 390.**
- 2. SECRETARY,
NILAMBUR MUNICIPALITY, NILAMBUR - 679 390.**

**BY ADVS. SRI.BABU CHERUKARA
SRI.PRAMOD KUMAR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
11-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 23011 of 2015 (B)

APPENDIX

PETITIONER(S)' EXHIBITS

P1- TRUE COPY OF THE TAX RECEIPT ISSUED BY VILLAGE OFFICER DATED 6.5.2014.

P2- A TRUE COPY OF THE LOCATION MAP.

**P3- TRUE COPY OF PHOTOGRAPHS DEPICTING THE LIE AND NATURE OF THE
PROPERTY.**

P4- NOTICE ISSUED BY THE 2ND RESPONDENT DATED 5.2.2015.

P5- EXTRACT OF THE FARE VALUE CERTIFICATE.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

MsV/

K. HARILAL, J.

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W.P. (C) No.23011 of 2015

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Dated this the 11th day of December, 2015

J U D G M E N T

The petitioner is the absolute owner in possession of 6½ cents of property comprised in Re-survey No. 32/1 32/1 pt in Block No. 93 of Nilambur village, by virtue of assignment deed Nos. 976/2010 and 977/2010 respectively of S.R.O. Nilambur. According to the petitioner, the said property is a garden land, having commercial importance, as the same is situated on the side of the Ootty -Nilambur main road. In short, the said land is a fully developed commercial land and there are several commercial building, on either side of the said property and the public road, which is demonstrated by Ext.P3 photographs and Ext.P2 sketch. Hence, the petitioner submitted an application before the 2nd

-: 2 :-

respondent, seeking permission to construct a commercial building in the said property. The said application was rejected by Ext.P4, stating that the nature of the property is described, as 'nilam' in the revenue records. The denial of building permit on the basis of the entries in the revenue records is under challenge in this Writ Petition.

2. Heard the learned counsel for the petitioner and learned standing counsel appearing for the respondent Municipality.

3. As rightly submitted by the learned counsel for the petitioner, going by Ext.P4, it is seen that the sole reason for rejecting the application for building permit is that, in the revenue records, the said property is shown, as 'nilam'. The question, whether building permit can be denied on the ground that the entries in the revenue records shows that the property is a paddy land, was considered by this Court in ***Praveen v. Land Revenue***

-: 3 :-

Commissioner[2010(2)KLT 617] and held that mere description of the property in the revenue records by itself may not be conclusive in deciding the actual lie of the property and the denial of building permit for the sole reason that the property has been entered, as 'nilam' in the revenue records is vitiated by arbitrariness and the same is violative of Art. 14 of the Constitution of India, especially, when building permits have been granted to adjacent property owners. In **Shahnaz Shukkoor v. Chelannur Grama Panchayat** [2009 (3) KLT 899] this Court held as follows:

"The Kerala Conservation of Paddy Land & Wet Land Act, 2008, deals with the conservation 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 term '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 the ground realities and not on any quality or type of land, depending on its description in the title document."

-: 4 :-

4. The genuineness of Ext.P3 photographs has not been challenged and the same obviously, demonstrate that now the property is lying, as a garden land and surrounded by garden lands, having huge buildings. So also, in Ext.P5, the value of the property is shown, as Rs.1,87,000/- per Are. It gives an indication that the property is a commercial block.

5. Going by Ext.P4 order, it is seen that the building permit was denied mechanically, without inspecting the property, relying on mere entries in the revenue records only. Consequently, Ext.P4 will stand set aside and the respondent is directed to conduct site inspection of the property. During the course of site inspection, if the respondent is convinced of the facts that the said property is not one converted or reclaimed, after the commencement of the Conservation of Paddy Land and Wet Land Act, 2008(*hereinafter referred to as 'the Act'*).Certainly, the prohibition under the said Act

-: 5 :-

will not come into play and the building permit cannot be refused under Section 14 of the said Act. The respondent shall conduct the site inspection, within the period of one month from the date of receipt of a copy of this judgment and also to pass order, within 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