

WP(C) 23226 of 2015

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 3RD DAY OF DECEMBER 2015/12TH AGRAHAYANA, 1937

WP(C).No. 23226 of 2015 (C)

PETITIONER(S):

P.S.SAINUDHEEN BAVA, AGED 72 YEARS
PUTHIKKAVU HOUSE, PATTIKKAD P.O., THRISSUR DISTRICT.

BY ADVS.SRI.M.P.ASHOK KUMAR
SMT.BINDU SREEDHAR
SMT.R.S.MANJULA

RESPONDENT(S):

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1. PANACHERRI GRAMA PANCHAYATH , REP.BY ITS SECRETARY
PANACHERRY, THRISSUR DISTRICT 680 652 .
 2. THE VILLAGE OFFICER,
PANACHERRY, THRISSUR DISTRICT, 680 652.

R1 BY ADV. SRI.A.C.DEVY

R2 BY ADV.ANITHA RAVINDRAN, SENIOR GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
03- 12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. HARILAL, J.

W.P(C)No.23226 of 2015

Dated this the 3rd day of December, 2015

JUDGMENT

The petitioner is the owner in possession of 14.250 cents of property comprised in Re.Sy.No.128/3 and 3.750 cents of property comprised in Re.Sy.No.118/10 of Panacherri Village by virtue of sale deed No.558 of 1997 in Ollukkara S.R.O.

2. According to the petitioner, there was no paddy cultivation or any other cultivation for the past 50 years in the above said property and some portion of the said property was acquired by the National Highway Authorities for widening of the road. The property is completely surrounded by commercial buildings except the northern side wherein NH 47 is passing through. In Ext.P4, the relevant extract of the data bank also shows that the said property is a dry land so as to construct residential-cum-commercial buildings. Ext.P6, issued by the Panchayat also shows that the said property is a dry land.

3. The petitioner filed Ext.P5, an application for building permit before the first respondent Panchayat. After considering Ext.P5, the first respondent rejected the building permit, by Ext.P8 order, on the sole reason that Ext.P7 possession certificate issued by the Village Officer shows that the property is a

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wet land. Hence, the petitioner filed this writ petition challenging Ext.P8 order and sought for a direction to the first respondent to issue building permit to the petitioner.

4. Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent Panchayat.

5. Going by Ext.P8, it is seen that the application seeking building permit has been rejected on the sole ground that the permission was sought for construction of a commercial building and the total plinth area of the proposed building is more than 300 square metre. The point to be considered is whether the respondent Panchayat is justified in rejecting the building permit for the reason stated above. It is pertinent to note that, in Ext.P8, there is no finding that the disputed land is lying as wet land or a paddy land suitable for cultivation as contemplated under the Conservation of Paddy Land and Wet Land Act, 2008. So also the respondent Panchayath has no case that the disputed land was a paddy land, which was reclaimed or converted after the commencement of the Conservation of Paddy Land and Wet Land Act, 2008. In the absence of such a finding, the question whether the grant of building permit is barred by Sec.14 of the Conservation of Paddy Land and Wet Land Act, 2008 will not come into application, in the instant case. Moreover, Ext.P4 data bank shows that coconut trees are standing in the said property. More particularly, the property is not as paddy land in Ext.P4. Further, in Ext.P6 Mahazar, which is prepared by the

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Panchayat itself shows that the property is lying as dry land for the last more than 10 years and it is also stated that the property is not suitable for paddy cultivation. Needless to say, if the land is not suitable for paddy cultivation it will not come under the definition of paddy land as provided under Sec.2(XII) of the Conservation of Paddy Land and Wet Land Act, 2008. If that be so, again it follows that the bar under Sec.14 of the said Act also will not come into application.

6. In the above analysis, I find that there is no justification, in declining the building permit, in view of the admitted facts discernible from the records maintained by the Panchayat itself. The denial of the building permit is arbitrary and unreasonable. In this analysis, Ext.P8 order will stand quashed and the first respondent Panchayat is directed to issue building permit to the petitioner, if the application is in order otherwise, within a period of one month from the date of receipt of a copy of this judgment.

This writ petition is disposed of accordingly .

(K. HARILAL, JUDGE)

sks/

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The Re.Sy No. of the property shown as '128/3' in the 2nd line of the 1st paragraph of the judgment dated 3.12.2015 in WP(C) No.23226/2015 is corrected and substituted as '118/3' as per the order dated 28.2.2020 in I.A No.19207/2017 in WP(C) No.23226/2015.

Sd/-
Vacation Officer

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1. THE PHOTOGRAPHS SHOWING THE PROPERTY OF THE PETITIONER.

EXT.P2. PHOTOCOPY OF THE AWARD NO.457/2013 IN LAC 1177/2009 DATED 20.05.2013 OF THE ARBITRATOR (NH ACT) AND DISTRICT COLLECTOR THRISSUR.

EXT.P3. PHOTOCOPY OF THE AWARD NO.230/2013 IN LAC 791/2009 DATED 06-04- 2013 IN FAVOUR OF SRI KRISHNAN.

EXT.P4. PHOTOCOPY OF THE RELEVANT PAGE DATED NIL OF THE DATA BANK REPORT OF KRISHI BHAVAN, PANANCHERY.

EXT.P5 PHOTOCOPY OF THE APPLICATION FOR BUILDING PERMIT DATED 20.03.2015.

EXT.P6. PHOTOCOPY OF THE BUILDING PERMIT MAHAZAR ISSUED BY THE PANANCHERRI GRAMA PANCHAYATH DATED 16.04.2015.

EXT.P7. PHOTOCOPY OF THE POSSESSION CERTIFICATE DATED 13.08.2014 ISSUED BY THE PANANCHERI VILLAGE OFFICE.

EXT.P8. PHOTOCOPY OF THE ORDER DATED 23.05.2015 ISSUED BY 1ST RESPONDENT PANCHAYATH.

RESPONDENT(S)' EXHIBITS

NIL

TRUE COPY

SKS

P.A TO JUDGE