

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

WP(C) .No. 24111 of 2015 (L)

PETITIONER:

HAKAMS BUILDERS & DEVELOPERS PVT. LTD
VALAMARUTHUR, MALAPPURAM DISTRICT, PIN-676 561
REP. BY ITS DIRECTOR, MANKADAVATH MOHAMMED KABEER
S/O.KUNHARAMU PUTHANVEETIL, MANKADAVATH, PULIKKAL
VALAMARUTHUR, MALAPPURAM, PIN-676 561.

BY ADVS.SRI.T.A.SHAJI (SR.)
SRI.MANUEL VIVERA
SMT.NAMITHA JYOTHISH
SRI.V.VINCENT DIDACOSE
SRI.DARSAN SOMANATH

RESPONDENT:

TIRUR MUNICIPALITY
REP. BY ITS SECRETARY, TIRUR, MALAPPURAM DISTRICT
PIN-676 101.

R1 BY ADV. SRI.K.J.MOHAMMED ANZAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
13-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) 'S EXHIBITS:

EXHIBIT P1: TRUE COPY OF THE RELEVANT PAGES OF THE MEMORANDUM OF ASSOCIATION OF THE PETITIONER COMPANY.

EXHIBIT P2: TRUE COPY OF THE LOCATION MAP PREPARED BY THE VILLAGE OFFICER IN SURVEY NOS.180/5, 180, 13, 180/11, 181/2, 180/8 OF TIRUR VILLAGE IN MALAPPURAM DISTRICT.

EXHIBIT P3: ORIGINAL PHOTOGRAPHS OF THE PLACE WHERE THE LANDS IN SURVEY NOS. 180/8 AND 181/2 OF TIRUR VILLAGE SITUATED.

EXHIBIT P4: TRUE PHOTOCOPIES OF THE PROPERTY TAX RECEIPTS ISSUED BY THE TIRUR MUNICIPALITY ON REMITTANCE OF PROPERTY TAX FOR THHE SHOP ROOMS IN THE OLD BUILDING SITUATED IN SURVEY NOS.180/8 AND 181/2 OF TIRUR VILLAGE.

EXHIBIT P5: TRUE COPY OF THE BUILDING PERMIT NO.BA-90/05-06 DATED 22.6.2015 ISSUED ON 1.7.2015 BY THE RESPONDENT.

EXHIBIT P6: TRUE COPY OF THE ONE OF THE AGREEMENTS EXECUTED WITH ONE OF THE OCCUPANTS IN THE OLD BUILDING.

EXHIBIT P7: TRUE COPY OF THE COMMUNICATION DATED 21.7.2015 IN B.A.NO.267/2015 BY THE TIRUR MUNICIPALITY REJECTING BUILDING PERMIT.

EXHIBIT P8: TRUE COPY OF THE DATA BANK ISSUED BY THE VILLAGE OFFICER, TIRUR TO THE PETITIONER UNDER THE RIGHT TO INFORMATION ACT, 2005.

RESPONDENT'S EXHIBITS: NIL

TRUE COPY

PA TO JUDGE

Scl.

WP(C) .No. 24111 of 2015 (L)

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RESPONDENT(S) ' EXHIBITS

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 24111 of 2015

Dated this the 13th day of August, 2015.

JUDGMENT

The petitioner is aggrieved by the rejection of the application for the building permit for the reason that the proposed site is shown as wet land as per the revenue records.

2. The petitioner company, incorporated under the Indian Companies Act, having 4 directors, submitted an application for building permit for construction of a commercial cum hotel building in the property comprised in Survey Nos. 180/8 and 181/2 of Tirur Village, which lies in the heart of the Tirur Town, surrounded by several commercial buildings and major roads. Ext.P3 are the photographs showing the lie and nature of the properties Ext.P4 is the relevant pages property tax register being maintained by the Municipality which shows that property tax has been remitted for the shop rooms which existed in the property. The petitioner alleges that by Ext.P6

agreement it was agreed to provide space to those who are occupying the shop rooms which needed to be demolished for the construction of new building. In earlier occasion Ext.P5 building permit was granted by the same respondent to construct a shopping complex in the same property, but the construction could not be carried out due to some reasons, including financial problems and expiry of permit. Facts being so, the rejection of building permit now issued by Ext.P7 is illegal and unsustainable as the applicability of the provisions of the Conservation of Paddy Land and Wet Land Act, 2008 would not apply to the subject matter as the conservation of the land was made 15-20 years back prior to the commencement of the Act, as evident by Ext.P8 Data Bank; it is alleged. It is further alleged that the petitioner is prejudiced and aggrieved by Ext.P7 order which is liable to be quashed and directions are to be issued for issuing building permit to the petitioner company on the application it is submitted. It is with this background, the petitioner has come up before this

court.

3. Arguments have been heard.

4. The learned standing counsel for the respondent municipality opposed the application for the reason that the property is shown as wet land as per the revenue records. In answer to the said submission, the learned Senior Counsel for the petitioner invited my attention to Ext.P3 photographs which reveals the present nature of the property. The learned Senior Counsel would also submit that in respect of very same property, Ext.P5 building permit was given on 22.6.2015.

5. 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.

6. It is settled position that the applicant can choose the best land suited for construction of his house (**Sunil v Killimangalam-Panjal 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.

7. 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 positions settled by this Court escaped the attention of the authorities while rejecting the petitioner's application.

8. 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.

Therefore, this writ petition is allowed. Ext.P7 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 petitioner and surrounding properties. The respondents are also directed to consider the application and pass positive orders granting building permit after affording the petitioner an opportunity of being heard if the respondents are satisfied that the land in its present form is not suitable for paddy cultivation. 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.