

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 19TH DAY OF AUGUST 2015/28TH SRAVANA, 1937

WP(C).No. 25452 of 2015 (F)

PETITIONER(S) :

**MICHAEL ANGELO, AGED 48 YEARS,
S/O.DEVASSY, MANJAPRAKKARAN HOUSE, DON BOSCO ROAD,
KURIYACIRA, THRISSUR.**

**BY ADVS.SRI.ROBSON PAUL
SRI.K.A.SREEJITH**

RESPONDENT(S) :

- 1. THRISSUR MUNICIPAL CORPORATION,
CORPORATION OFFICE, THRISSUR,
REPRESENTED BY ITS SECRETARY-680 003.**
- 2. SECRETARY THRISSUR MUNICIPAL CORPORATION,
CORPORATION OFFICE, THRISSUR-680 003.**
- 3. ASSISTANT ENGINEER,
OLLUR REGIONAL OFFICE,
THRISSUR MUNICIPAL CORPORATION, THRISSUR-680 121.**

BY ADV. SRI.KODOTH SREEDHARAN, S.C

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 19-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

**EXHIBIT-P1: TRUE COPY OF REJECTION ORDER ISSUED
BY 3RD RESPONDENT.**

EXHIBIT-P2: TRUE COPY OF ASSIGNMENT DEED NO.4352/2013.

EXHIBIT-P3: TRUE COPY OF ASSIGNMENT DEED NO.4353/2013.

**EXHIBIT-P4: TRUE COPY OF SANCTION ORDER ISSUED TO PREDECESSOR-
IN-INTEREST BY R.D.O., THRISSUR.**

**EXHIBIT-P5: TRUE COPY OF PHOTOGRAPH OF BUILDING CONSTRUCTED IN
THE IMMEDIATE VICINITY OF PETITIONER'S PLOT WHICH ALSO
SHOWS PETITIONER'S PLOT.**

**EXHIBIT-P6: TRUE COPY OF PHOTOGRAPH OF BUILDING CONSTRUCTED IN
THE IMMEDIATE VICINITY OF PETITIONER'S PLOT WHICH ALSO
SHOWS PETITIONER' PLOT.**

EXHIBIT-P7: TRUE COPY OF THE JUDGMENT IN W.P(C).NO.25287/2010.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

A.V.RAMAKRISHNA PILLAI, J

WPC No.25452 of 2015

Dated this the 19th day of August, 2015

JUDGMENT

Ext.P1 order rejecting the petitioners' application for building permit is under challenge in this writ petition.

2. The petitioner is a resident of Kuriyachira which lies within the jurisdiction of Thrissur Corporation before whom the petitioner submitted an application for building permit to construct a residential building through its Ollur Regional Office. According to the petitioner, the respondents rejected the petitioner's application for building permit on the ground that the petitioner's plot falls in paddy zone and it cannot be granted building permit as per the General Guidelines (VII) of General Town Planning scheme of Thrissur Town. Ext.P1 rejection order is not a considered one and it is passed without understanding or going into the case of the

petitioner; it is alleged.

3. The petitioner and his wife purchased two properties, which were lying together, by virtue of Assignment Deed No.4352/2013 dated 27.12.2013 and Assignment Deed No.4353/2013 dated 27.12.2013 of Kuttaneloore Sub Registrar Office, from one Mercy who is presently residing at Chembur, Mumbai. According to the petitioner, in Exts.P2 and P3 Assignment Deeds, it is specifically explained that predecessor-in-interest of the petitioner obtained due sanction from the revenue authorities to reclaim the land in which the petitioner sought to grant building permit as per L.Dis 25993/84/C3 dated 26.4.1985 issued by the Tahsildar Thrissur and K.Dis 4686/85 of Revenue Divisional Officer, Thrissur upon her application dated 5.11.1984 and the land was reclaimed immediately after getting the order. According to the petitioner, nearby properties also were reclaimed by the other owners and they have constructed residential building in their property. It is further

made clear in Exts.P2 and P3 assignment deeds that she filled and improved that plot in question on the strength of the said sanctions granted to her by the authorities.

4. According to the petitioner, the petitioner and his wife purchased the property in question after verifying and satisfying that the predecessor in interest of the petitioner did reclamation of the land only after obtaining due sanction from the authorities. If the respondents duly verified these facts, they could not have passed the rejection order like Ext.P1; it is alleged.

5. According to the petitioner at the time of submission of the application for residential building permit, the petitioner was confident that it would be allowed without any delay, but Ext.P1 rejection order embarrassed the petitioner. The petitioner points out that under the provisions of Kerala Building Rules, the third respondent is having no power to pass such an order. Apart from that the respondents granted building permit to construct buildings in the

neighboring plots of the petitioner; it is alleged.

6. According to the petitioner, the photographs speak the truth that the reasons shown in Ext.P1 rejection order for rejection are lame excuses which are created for its sake. This Court interfered in another matter of same subject. According to the petitioner, when the respondents denied building permit to two applicants who are the plot owners of immediate vicinity of the petitioner's plot viz. T.K.Wilson and M.K.Aboobaker, they approached this Court by filing WPC No.25287/2010 which was allowed by this Court quashing the order of the respondents. It is with this background the petitioner has come up before this Court.

8. I have heard the learned counsel for the petitioner and the learned standing counsel for the respondent Municipality.

9. The learned counsel for the petitioner would submit that the petitioner's property has been reclaimed long prior to the amendment of the Kerala Panchayat Raj Act as evident from Ext.P4 order

issued by the Revenue Divisional Officer, Thrissur dated 6.5.1985. The petitioner predecessor in interest was permitted to reclaim 20 cents of property. It was also submitted that Ext.P1 is incompetent as it was not considered by the respondent Panchayat, but by the Assistant Engineer.

10. The learned counsel for the petitioner, invited my attention to Exts.P5 and P6 photographs which shows the present nature of the land of the petitioner.

11. 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.

12. 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.

13. 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.P1 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 positive orders granting permit, if they are satisfied that the property of the petitioner is not fit for paddy cultivation at present, 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**

CSS/

true copy

P.S.TO JUDGE