

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA, 1937

WP(C).No. 25769 of 2015 (U)

PETITIONER(S):

**JIBEE MATHEW, AGED 44 YEARS,
S/O.P.M. MATHEW, PALATTY HOUSE,
PUTHENVELIKKARA VILLAGE,
PARAVOOR TALUK.**

**BY ADVS.SRI.GEORGE SEBASTIAN,
SRI.R.SYLESHWAREN NAIR,
SRI.JOHNSON K.KURIEN.**

RESPONDENT(S):

- 1. THE PUTHENVELIKKARA GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY, PUTHENVELIKKARA P.O.,
PIN: 683 594, ERNAKULAM DISTRICT.**
- 2. THE SECRETARY,
PUTHENVELIKKARA GRAMA PANCHAYATH,
PUTHENVELIKKARA P.O., PIN: 683 594,
ERNAKULAM DISTRICT.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 01-12-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- P1: A TRUE COPY OF THE BASIC TAX RECEIPT DATED 13/04/2015 ISSUED FROM THE PUTHENVELIKKARA VILLAGE OFFICE WITH RESPECT OF THE PROPERTY OF THE PETITIONER.**
- P2: A TRUE COPY OF THE LOCATION SKETCH DATED 25/04/2015 ISSUED BY THE VILLAGE OFFICER, PUTHENVELIKKARA.**
- P3: A TRUE COPY OF THE COMMUNICATION DATED 07/05/2015 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.**

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

K.HARILAL, J.

W.P.(C) No.25769 of 2015

Dated this the 1st day of December, 2015.

JUDGMENT

The petitioner herein is the absolute owner in possession of an extent of 1.22 Ares of immovable property comprised in Sy.No.397/3-1 of Puthenvelikkara Village. The said property is lying as a dry land. Trees aged more than 10 years were standing in the said property. So also, there is no paddy land or wetland near to or adjacent to the said property and many buildings are situated near to the said property. In the Draft Data Bank also, the property is described as a land which has been lying as converted land before 50 years back. So, the petitioner filed an application seeking building permit to construct a commercial building having ground plus two floors. The 2nd respondent rejected the said application by Ext.P3 order, without hearing the petitioner or conducting the site inspection. This

is the grievance ventilated in this writ petition for the relieves prayed for.

2. Heard the learned counsel for the petitioner.

3. Going by Ext.P3, obviously, it is discernible that the application seeking building permit has been rejected on the ground that the description of the said property is shown as Nilam in the Revenue Records. So, the building permit can be given to residential occupancy alone to those who have no other residential building. Indisputably, the basis for rejection of the application is the description in the Revenue Records as Nilam. This Court had an opportunity to consider the question whether the building permit can be denied on the reason that in the Revenue Records the description of the building is shown as Nilam.

4. In *Shahanaz Shukkoor v. Chelannur Grama Panchayat* [2009 (3) KLT 899] it was held as follows:

“The Kerala Conservation of Paddy Land and Wetland Act, 2008, deals with the conversion 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 terms '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 ground realities and not on any quality or type of land, depending on its description in the title document."

5. Moreover, in Mohammed Abdul Basheer C.P. v. State of Kerala and Another [2012 (3) KLT 86], this Court held that the present lie of the land can be taken into consideration while granting permission to make construction. In Jalaja Dileep v. Revenue Divisional Officer 2012 (3) KLT 333] it was further held that the description in title deeds or Revenue Records are no material if the land had already been reclaimed, before the commencement of the Conservation of Paddy Land and Wet Land Act, 2008.

6. In Praveen v. Land Revenue Commissioner [2010 (2) KLT 617 (DB)], this Court held that mere description of the property in the revenue records by itself may not be conclusive and may not estop a party from

producing materials to show otherwise.

7. The sum and substance of the principles laid down in all the above decisions is that merely on the basis of the description of the land in the Revenue Records, building permit cannot be denied in contravention to the ground realities as regards the actual lie of the land.

8. In the instant case, the respondent Panchayat has no case that the land in question is one converted after the commencement of the Kerala Conservation of Paddy Land and Wetland Act, 2008. If that be so, the bar under Section 14 of the aforesaid Act will not come into application to the instant case. Needless to say, on the other hand no permission can be granted for construction of building as the same is barred by Section 14 of the said Act. In the above circumstance, the respondent Panchayat is at liberty to conduct a site inspection and take a decision accordingly in consonance with the ground realities to be found in inspection.

9. Consequently, Ext.P3 order will stand set

aside. The 2nd respondent is directed to conduct a site inspection within one month from the date of receipt of a copy of this judgment and pass orders accordingly within the next one month in consonance with the ground reality to be found in the inspection, notwithstanding the entries in the revenue records.

This writ petition is disposed of as above.

K. HARILAL, JUDGE

okb.