

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

WEDNESDAY, THE 14TH DAY OF JANUARY 2015/24TH POUSHA, 1936

WP(C).No. 29299 of 2014 (J)

PETITIONER(S):

**IDEAL CHARITABLE TRUST,
NORTH EZHIPRAM, MARAMPALLY P.O.,
KUNNUVAZHAY, PIN- 683 105, REPRESENTED BY ITS
CHAIRMAN MR. ABDUL RAHMAN, AGED 64 YERS,
S/O. MOHAMMEDKUTTY, DHARURAHMAYIL HOUSE,
PALLIPRAM MANJAPPETTY, MARAMPALLY P.O, PIN -683 107.**

**BY ADVS.SRI.N.S.MOHAMMED USMAN,
SRI.A.S.BENOY,
SMT.PRIYA DEVI.P,
SRI.P.A.FIROZKHAN.**

RESPONDENT(S):

- 1. VAZHAKKULAM GRAMA PANCHAYAT,
VAZHAKKULAM , MARAMPALLY P.O.,
REPRESENTED BY ITS SECRETARY, PIN- 683 107.**
- 2. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO
LOCAL SELF GOVT., THIRUVANANTHAPURAM -695 001.**

**R1 BY DR.K.P.SATHEESAN, SENIOR ADVOCATE.
ADVS. SRI.M.R.JAYAPRASAD
SRI.P.MOHANDAS (ERNAKULAM)
SRI.ANOOP.V.NAIR
SRI.S.VIBHEESHANAN
R2 BY SR. GOVT. PLEADER SMT.K.A. SANJEETHA.**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 14-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT P1 SALE DEED NO. 6113 OF 2013 OF PERUMBAVOOR SUB REGISTRY.
- EXHIBIT P2 TRUE COPY OF THE SALE DEED NO. 2683 OF 2011 OF PERUMBAVOOR SUB REGISTRY.
- EXHIBIT P3 TRUE COPY OF THE SALE DEED NO. 4554 OF 1986 OF PERUMBAVOOR SUB REGISTRY.
- EXHIBIT P4 TRUE COPY OF THE SALE DEED NO. 4167 OF 1983 OF PERUMBAVOOR SUB REGISTRY.
- EXHIBIT P5 TRUE COPY OF THE BASIC TAX RECEIPT NO. 4642807 DATED 30-06-2014 ISSUED BY THE VILLAGE OFFICER, VAZHAKULAM.
- EXHIBIT P6 THE TRUE COPY OF THE PROPERTY TAX ASSESSMENT REGISTER OF THE BUILDING BEARING NO.III/288 OF VAZHAKULAM GRAMA PANCHAYATH.
- EXHIBIT P7 THE PROPERTY TAX RECEIPT BEARING NO. 6983729 DATED 18-10-2014.
- EXHIBIT P8 TRUE COPY OF THE CERTIFICATE DATED 23/10/2014 ISSUED BY THE VILLAGE OFFICER, VAZHAKKULAM.
- EXHIBIT P9 TRUE COPY OF THE PROPOSED BUILDING PLAN OF THE PETITIONER.
- EXHIBIT P10 TRUE COPY OF THE ORDER NO. B-1 5260/14 DATED 05-07-2014 OF THE 1ST RESPONDENT.
- EXHIBIT P11 THE PHOTOGRAPH OF THE PETITIONER'S PROPERTY SURROUNDED WITH LANDS WITH BUILDING.

RESPONDENT'S EXHIBITS:-

NIL.

//TRUE COPY//

P.A TO JUDGE

rs.

C.K. ABDUL REHIM, J.

W.P.(c) No. 29299 OF 2014-J

DATED THIS THE 14th DAY OF JANUARY, 2015.

J U D G M E N T

The petitioner is a Charitable Trust. This writ petition is filed aggrieved by Ext.P10 proceedings issued by Secretary of the 1st respondent Grama Panchayat rejecting application for building permit submitted by them for construction of a building in the property purchased by the petitioner as per Ext.P1 sale deed. In Ext.P10 proceedings it is mentioned that the building permit cannot be granted because description of the nature of property contained in the records is as 'Nilam' (wet land).

2. Contention of the petitioner is that there existed a building in the property in question, which was assigned with building number III/288 by the 1st respondent panchayat. The petitioner had produced prior title deeds of the property, Exts.P2 to P4, which reveal that the description of the property in all those documents since the year 1983 onwards is as 'Purayidam' (garden land). Assessment of the building which existed in the land is

evident from Ext.P6, the extract of Property Tax Assessment Register as well as from Ext.P7 Tax Receipt, dated 18-10-2014. Exhibit P8 certificate of the Village officer is produced to the effect that the building which was situated in the property was having the age of more than 15 years. It is stated that the application for permit for construction of the Cultural complex was submitted after demolition of the said building. Exhibit P11 photographs produced by the petitioner would show that the property is remaining as dry land surrounded by various buildings.

3. Further contention of the petitioner is that the 1st respondent was duty bound to ascertain the present condition of the land, before rejecting the application for building permit. Without ascertaining the present condition as to whether the land is remaining as wet land or paddy field, the rejection of the application made summarily by depending on the description of the property in the revenue records, was totally illegal and unsustainable, is the contention. The petitioner relies on various decisions of this court on the subject.

4. Heard; Standing counsel appearing on behalf of 1st respondent.

5. It is held by a Division Bench of this court in a recent decision **Aishabeevi and another V. Superintendent of police, Ernakulam (2014 (3) KHC 678 (DB)** that, the bar to grant building permit contained under Section 14 of the Conservation of Paddy Land and Wetland Act, 2008 is not applicable to a land converted prior to commencement of the said Act, even if such conversion was made in violation of the Land Utilization Order. It is held that Section 3 & Section 13 of the said Act has no retrospective operation and conversions made prior to coming into force of the Act, i.e: before 12-08-2008, cannot be said as violative of provisions of the Act. It is further held that, whether the land in question would come under the definition of paddy land or wetland under the Conservation Act is a matter to be determined based on facts as existed on the ground and not on the basis of description contained in revenue records. This court further held that there is no provision contained either in the Land

Utilization Order or in the Conservation Act prescribing any legal presumption that in the absence of an order granting permission for such conversion, the land converted after commencement of the KLU order is to be treated as illegally converted land and permit for construction of the building cannot be granted.

6. In view of the legal position remaining settled as above, rejection of the application for building permit, merely for the reason that description of the land in the revenue records remains as 'Nilam', cannot be sustained. It is for the 1st respondent panchayat to consider the physical position existing as on the land and to ascertain whether the land in question was converted prior to enactment of the Conservation of Paddy Land and Wetland Act. If it is convinced that the conversion was made prior to enactment of Act, there is no justifiable reason to reject the building permit.

7. Under the above mentioned circumstances the writ petition is allowed and Ext.P10 is hereby quashed. The Secretary of the 1st respondent is directed to re-consider the

application for building permit in the light of the observations contained herein above and to take an appropriate decision with respect to granting of building permit, at the earliest possible, at any rate within a period of one month from the date of receipt of a copy of this judgment.

Sd/-
C.K. ABDUL REHIM
JUDGE

AMG

True copy

P.A. to Judge