

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 16TH DAY OF NOVEMBER 2015/25TH KARTHIKA, 1937

WP(C).No. 31523 of 2015 (M)

PETITIONER(S):

KRISHNAN K.P.,
S/O.PARANGODAN, AGED 60 YEARS,
RESIDING AT KOMARATH HOUSE, 4/304,
EASWARAMANGALAM, PONNANI-679 577.

BY ADVS.SRI.T.C.SURESH MENON
SRI.P.S.APPU
SRI.A.R.NIMOD

RESPONDENT(S):

KUNNAMKULAM MUNICIPALITY,
REPRESENTED BY ITS SECRETARY, MUNICIPAL OFFICE,
KUNNAMKULAM, THRISSUR-680 503.

BY ADV. SRI.RAJIT, SC,KUNNAMKULAM MUNICIPALITY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 16-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C).No. 31523 of 2015 (M)

APPENDIX

PETITIONER(S)' EXHIBITS

P1- TRUE COPY OF THE TAX RECEIPT ISSUED BY THE VILLAGE OFFICE, MARATHAKKARA TO THE PETITIONER DATED 1.9.2015.

P2- TRUE COPY OF THE ORDER PASSED BY THE RESPONDENT PANCHAYATH TO THE PETITIONER DATED 4.8.2015.

P3- TRUE COPY OF THE COMMUNICATION ADDRESSED TO THE DISTRICT COLLECTOR BY THE AGRICULTURAL FIELD OFFICER, KRISHI BHAVAN, KUNNAMKULAM DATED 8.7.2013.

P4- TRUE COPY OF THE CERTIFICATE ISSUED BY THE VILLAGE OFFICER, KUNNAMKULAM DATED 8.7.2013.

P5- TRUE COPY OF THE JUDGMENT IN W.P[C]NO.14858/2015 ON THE FILE OF THIS HONOURABLE COURT DATED 16.6.2015.

RESPONDENT(S)' EXHIBITS

P. BHAVADASAN, J.

W.P.(C) No. 31523 of 2015

Dated this the 16th day of November, 2015.

JUDGMENT

Aggrieved by Ext.P2 order whereby the permission sought by the petitioner for putting up a construction in his property was rejected by the local authority, the petitioner has come up before this Court seeking the following reliefs:

“(i) call for the records leading to the passing of Ext.P2 and quash the same by the issue of a writ of certiorari or other appropriate writ, order or direction;

(ii) issue a writ in the nature of mandamus directing the respondent Municipality to reconsider the application for building permit submitted by the petitioner, in the light of the dictum laid down by this Honourable Court in 2012(3) KLY 86, 2013(3) KLT 333 and 2009(3) KLT 899 and taking into consideration the present state of affairs now prevailing in the area in question.”

2. Petitioner is the absolute owner in possession and enjoyment of 0.5395 hectares of land comprised in R.S. 99/28 of Kunnamkulam Village which he purchased in 2013.

For the purpose of putting up a commercial building in his property, the petitioner applied to the local authority for permission to put up a structure. That was rejected vide Ext.P2 order by pointing out that apart from the fact that in the revenue records, the property is shown as nilam, the local authority is unable to give permission, for, only buildings upto 300M² can be permitted to be put up.

3. The petitioner assails the said order on the ground that the claim made by the local authority that the property is a nilam is not correct and also that the reason given that buildings above 300M² cannot be put up in the property is negated by Ext.P4 dated 8.7.2013 issued by the Village Officer. It shows that in and around the property of the petitioner, there are shopping complexes which have already come up.

4. The petitioner points out that at one point of time the property was nomenclatured as paddy land does not mean that the property is still a paddy land. In support of his

claim the learned counsel for the petitioner relies on the communication issued by the Agricultural Field Officer produced as Ext.P3 and also Ext.P4 issued by the Village Officer which indicates that the property is no longer a nilam. If it is so, then the reason given for rejecting the application cannot have support in law. In fact, an identical question was considered in the unreported decision in W.P.(C) 14858 of 2015 dated 16.6.2015, copy of which is produced as Ext.P5. In the said decision, after referring to the several decisions of the Apex Court and in a similar situation, this Court disposed of the writ petition as follows:

“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 petitioners and surrounding properties. The respondent is also directed to re-consider the application and pass orders granting permit, if they are satisfied that the land in the present form is unfit for paddy cultivation, after affording the petitioners and 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.”

5. Learned counsel appearing for the respondent pointed out that there is a circular issued by the Secretary of the Panchayat wherein it is specified that permission cannot be granted for putting up structure beyond 300M².

6. If as a matter of fact the property now owned by the petitioner is no longer a nilam and had been reclaimed long ago, then there is no reason for rejecting his application. Further, the Circular relied on by the learned counsel for the respondent does not inspire confidence in the mind of the court in the light of Ext.P4 issued by the Village Officer. It is to be noticed that in and around the property of the petitioner, there are shopping complexes. It thus becomes clear that the Circular relied on by the learned counsel for the respondent has no force at all and the Panchayat has discretion to permit such constructions. Whatever that be, following the decisions relied on as mentioned above, this writ petition is disposed of as follows:

Ext.P2 is quashed and 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 respondent is also directed to re-consider the application and pass orders granting permit, if they are satisfied that the land in the present form is unfit for paddy cultivation, after affording the petitioner and opportunity of being heard. Appropriate orders shall be passed within a period of one month from the date of receipt of a copy of this judgment.

sb.

P. BHAVADASAN,
JUDGE