

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 9TH DAY OF JUNE 2015/19TH JYAISHTA, 1937

WP(C).No. 32142 of 2014 (P)

PETITIONER :

**DAISON, AGED 35 YEARS,
S/O. ANTHONY, CHERUVATHOOR HOUSE,
MUNDATHIKODE.P.O., THRISSUR-680623.**

**BY ADVS.SRI.P.K.NIJOY
SMT.C.PRABITHA**

RESPONDENTS :

- 1. THE CORPORATION OF THRISSUR,
REPRESENTED BY ITS SECRETARY, THRISSUR-680001.**
- 2. THE SECRETARY,
CORPORATION OF THRISSUR-680001.**
- 3. THE ASSISTANT ENGINEER,
THRISSUR CORPORATION, ZONAL OFFICE,
OLLUKKARA, THRISSUR-680001.**

**R1 TO R3 BY ADV. SRI.K.P.VIJAYAN
BY ADV. SRI.V.N.HARIDAS
BY SRI.K.P.VIJAYAN,SC,THRISSUR CORPORATION**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 09-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

WP(C).No. 32142 of 2014 (P)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: TRUE COPY OF THE ORDER DATED 11-4-2014 IN APPEAL NO. 54 OF 2013 OF THE LSGI TRIBUNAL AT THIRUVANANTHAPURAM.**
- P2: TRUE COPY OF THE BUILDING PERMIT DATED 11-6-2014 ISSUED TO THE PETITIONER.**
- P3: TRUE COPY OF THE NOTICE DATED 6-11-14 OF THE 3RD RESPONDENT.**
- P4: TRUE COPY OF THE JUDGMENT REPORTED IN 2012 (4) KHL 489.**

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No.32142 of 2014

Dated this the 9th day of June, 2015.

JUDGMENT

The petitioner is the owner in possession of 2.02 Ares of land within the local limits of the respondent Corporation, who applied for a building permit, which was refused for the reason that the said area comes under the paddy field zone. The order was set aside by the Tribunal as per Ext.P1 and the building permit was granted as per Ext.P2. While the petitioner started the work and completed the entire structures, Ext.P3 notice was given to the petitioner revoking the permit on the basis of an order from the Sub Collector. It is with this background, the petitioner has come up before this Court.

2. Arguments have been heard.

3. 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.

4. 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.

5. 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 petitioners' application.

6. Moreover, Rule 16 of the Kerala Municipality

Building Rules, 1999, confers the power of suspension and revocation of building permits subject to certain conditions. As per Rule 16, the Secretary shall suspend or revoke any permit issued under the rules if it is satisfied that the permit was issued by mistake or that a patent error has crept in it or that the permit was happened to be issued on misrepresentation of fact or law or that the construction if carried on will be a threat to life or property.

The impugned order does not reflect any of these situations. Therefore, this writ petition is allowed. Ext.P3 is quashed. The petitioner is permitted to continue with the construction and in the event of the construction, it shall be open to the petitioner to approach the respondent Corporation for occupancy certificate and numbering the building. It shall be considered by the Corporation within one month after the submission of the application.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.