

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. 33751 of 2015 (T)

PETITIONERS:

1. K.P.UMMER, AGED 51 YEARS, S/O. YOUSUFKUTTY,
KELATHUPARAMBIL HOUSE, P.O.KONDOORKARA,
ONGALLOOR, PATTAMBI, PALAKKAD DISTRICT.
2. K.U.MOHAMMED SHUKKOOR, AGED 24 YEARS,
S/O. K.P.UMMER, KELATHUPARAMBIL HOUSE,
P.O.KONDOORKARA, ONGALLOOR, PATTAMBI,
PALAKKAD DISTRICT.
3. K.U.MOHAMMED SHEREEF, AGED 29 YEARS,
S/O. K.P.UMMER, KELATHUPARAMBIL HOUSE,
P.O.KONDOORKARA, ONGALLOOR,
PATTAMBI, PALAKKAD DISTRICT.

(THE 1ST AND 2ND PETITIONERS ARE REPRESENTED BY THE 3RD PETITIONER,
THEIR POWER OF ATTORNEY HOLDER)

BY ADVS.SRI.BINOY VASUDEVAN
SMT.P.G.BABITHA

RESPONDENTS:

1. THE THRISSUR CORPORATION,
REPRESENTED BY ITS SECRETARY,
CORPORATION OFFICE, THRISSUR.
2. THE SECRETARY, THRISSUR CORPORATION,
CORPORATION OFFICE, THRISSUR 680 001.
3. THE EXECUTIVE ENGINEER,
THRISSUR CORPORATION,
CORPORATION OFFICE, THRISSUR 680 001.

R1 -R 3 BY ADV. SRI.K.P.VIJAYAN
R1 -R 3 BY ADV. SRI.V.N.HARIDAS

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

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1	-	TRUE COPY OF DOCUMENT NO. 318/2014 OF S.R.O., THRISSUR.
EXHIBIT P2	-	TRUE COPY OF DOCUMENT NO. 4590/2013 OF S.R.O, THRISSUR.
EXHIBIT P3	-	TRUE COPY OF DOCUMENT NO. 5575/2007 OF S.R.O, THRISSUR.
EXHIBIT P4	-	TRUE COPY OF DOCUMENT NO. 3984/2013 OF S.R.O THRISSUR.
EXHIBIT P5	-	TRUE COPY OF DOCUMENT NO. 254/2008 OF S.R.O THRISSUR.
EXHIBIT P6	-	TRUE COPY OF DOCUMENT NO. 4680/2007 OF S.R.O, THRISSUR.
EXHIBIT P7	-	TRUE COPY OF DOCUMENT NO. 661/2014 OF S.R.O, THRISSUR.
EXHIBIT P8	-	TRUE COPY OF DOCUMENT NO. 4664/2007 OF S.R.O, THRISSUR.
EXHIBIT P9	-	TRUE COPY OF DOCUMENT NO. 660/2014 OF S.R.O, THRISSUR.
EXHIBIT P10	-	TRUE COPY OF DOCUMENT NO. 314/2008 OF S.R.O, THRISSUR.
EXHIBIT P11	-	TRUE COPY OF DOCUMENT NO. 417/04 OF S.R.O, THRISSUR.
EXHIBIT P12	-	TRUE COPY OF DOCUMENT NO. 4591/13 OF SRO, THRISSUR.
EXHIBIT P13	-	TRUE COPY OF POSSESSION CERTIFICATE NO. 2113/2015 DT. 18.08.2015 ISSUED BY THE VILLAGE OFFICER, AYYANTHOLE VILLAGE.
EXHIBIT P13(a)-		TRUE COPY OF POSSESSION CERTIFICATE NO. 2119/2015 DT. 18.08.2015 ISSUED BY THE VILLAGE OFFICER, AYYANTHOLE VILLAGE.
EXHIBIT P13(b)-		TRUE COPY OF POSSESSION CERTIFICATE NO. 2118/2015 DT. 18.08.2015 ISSUED BY THE VILLAGE OFFICER, AYYANTHOLE VILLAGE.
EXHIBIT P13(c)-		TRUE COPY OF POSSESSION CERTIFICATE NO. 2115/2015 DT. 18.08.2015 ISSUED BY THE VILLAGE OFFICER, AYYANTHOLE VILLAGE.
EXHIBIT P13(d)-		TRUE COPY OF POSSESSION CERTIFICATE NO. 2114/2015 DT. 18.08.2015 ISSUED BY THE VILLAGE OFFICER, AYYANTHOLE VILLAGE.
EXHIBIT P13(e)-		TRUE COPY OF THE POSSESSION CERTIFICATE DT. 18.08.2015 ISSUED BY THE VILLAGE OFFICER, AYYANTHOLE VILLAGE.
EXHIBIT P13(f)-		TRUE COPY OF POSSESSION CERTIFICATE NO. 2117/2015 DT. 18.08.2015 ISSUED BY THE VILLAGE OFFICER, AYYANTHOLE VILLAGE.

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- EXHIBIT P13(g)- TRUE COPY OF THE POSSESSION CERTIFICATE NO. 2120/2015 DT. 18.08.2015 ISSUED BY THE VILLAGE OFFICER, AYYANTHOLE VILLAGE.
- EXHIBIT P13(h)- TRUE COPY OF POSSESSION CERTIFICATE NO. 2116/2015 DT. 18.08.2015 ISSUED BY THE VILLAGE OFFICER, AYYANTHOLE VILLAGE.
- EXHIBIT P14 - TRUE COPY OF THE LAND TAX RECEIPT DT. 17.8.2015 ISSUED BY THE VILLAGE OFFICER, AYYANTHOLE VILLAGE.
- EXHIBIT P14(a)- TRUE COPY OF THE LAND TAX RECEIPT DT. 17.1.2015 ISSUED BY THE VILLAGE OFFICER, AYYANTHOLE VILLAGE.
- EXHIBIT P14(b)- TRUE COPY OF THE LAND TAX RECEIPT DT. 17.8.2015 ISSUED BY THE VILLAGE OFFICER, AYYANTHOLE VILLAGE.
- EXHIBIT P15 - TRUE COPY OF THE PHOTOGRAPHS OF THE PETITIONERS' PROPERTY AND ALSO THE ADJACENT PROPERTY SHOWING THE PRESENT LIE AND NATURE.
- EXHIBIT P16 - TRUE COPY OF THE ORDER BEARING NO. DW5/BA/292/15-16 DT. 29.10.2015 ISSUED BY THE EXECUTIVE ENGINEER, THRISSUR CORPORATION.

RESPONDENT(S)' EXHIBITS : NIL

/TRUE COPY/

P.A. TO JUDGE.

ncd

K.HARILAL, J.

W.P.(C) No.33751 of 2015

Dated this the 1st day of December, 2015.

JUDGMENT

The petitioners have preferred this writ petition challenging Ext.P16 order whereby the application for building permit stands rejected by the 2nd respondent. The first petitioner is the absolute owner in possession of 0.5321 Hectares of land in Ayyanthole Village in Thrissur Taluk, Thrissur District by virtue of Exts.P3, P6 & P8 documents. The second petitioner is the absolute owner in possession of 0.9327 Hectares of land in Ayyanthole Village in Thrissur Taluk, Thrissur District by virtue of Exts.P1, Ext.P2,P4, P7, P9, P11 & P12. The third petitioner is the absolute owner in possession of 0.4411 Hectares of land in Ayyanthole Village in Thrissur Taluk, Thrissur District by virtue of Exts.P5 and P10. The petitioners intend to construct a commercial building in the property covered by Ext.P1 to P12 documents and they

submitted an application seeking building permit before the 2nd respondent. But, the 2nd respondent has rejected the said application by Ext.Pl6 order stating that the property, wherein the construction was sought to be made, was originally a paddy land and the description of the property shown in the Revenue Records is as Nilam. Hence the petitioners prayed for issuing a writ of certiorari calling for all records leading to Ext.Pl6 and quash the same and also to direct the respondent Corporation to grant building permit to the proposed construction.

2. Heard the learned counsel for the petitioners and the learned Standing Counsel for the respondent Corporation.

3. Going by Ext.Pl6, it is seen that the building permit has been declined on the sole ground that the land, in question, is included in the mixed zone-commercial & residential. The petitioners have produced Ext.Pl5 photographs to show the present lie of the land. The genuineness of the photographs is not challenged by the respondents.

4. Obviously, the photographs show that as contended by the petitioners, the property is surrounded by dry land wherein huge residential buildings are situated. In the said circumstance, the decision laid down by this Court in W.A. No.1731/2008 dated 14/6/2011 is relevant which reads as follows:

“If in an area earmarked as a residential zone large number of constructions for commercial purposes were permitted whether under orders issued by the Government or not, then the only sensible thing for the Corporation to do is to take a realistic approach by not regarding the area any longer as a residential zone and request the Government to make suitable change in the Master Plan to make it in conformity with ground reality.”

5. It was held in *Shahanaz Shukkoor v. Chelannur Grama Panchayat* [2009 (3) KLT 899] 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.”

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. In the light of the proposition laid down by this Court in the above decisions, Ext.Pl6 order will stand set aside. Further, the 2nd respondent is directed to conduct a site inspection and pass orders, after issuing notice to the petitioners, based on the ground reality, i.e., the actual lie of the land to be found in the site inspection, notwithstanding the inclusion of the property in the zone of 'paddy field'.

8. So also, the fact that the sale deed has been

executed after 2008 has no relevancy at all, if the 2nd respondent is satisfied that the conversion of the said property was not effected after the commencement of the Kerala Conservation of Paddy Land and Wet Land Act, 2008. Certainly, if the land is one converted after the commencement of the above Act, the issuance of building permit would be barred under Section 14 of the said Act. Needless to say, if not, the 2nd respondent will be at liberty to issue building permit, where the application is in order. However, the 2nd respondent is directed to pass orders on the basis of the actual lie of the land to be found in the site inspection, within a period of two months from the date of receipt of a copy of this judgment.

This writ petition is disposed of accordingly.

Sd/-
K. HARILAL, JUDGE

okb.