

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY, THE 20TH DAY OF JANUARY 2015/30TH POUSHA, 1936

WP(C).No. 34019 of 2014 (B)

PETITIONER:

S. MUHAMMED SHAFI, AGED 38 YEARS,
S/O.SULAIMAN KUNJU, ARAFA,
SHANTI NAGAR 57,
KAVANADU P.O, KOLLAM.

BY ADV. SRI.ARUN BABU

RESPONDENTS:

1. PUNALUR MUNICIPALITY REP. BY
ITS SECRETARY, PUNALUR-691 305.
2. VILLAGE OFFICER, OFFICE OF THE VILLAGE OFFICER,
PUNALUR-691 305.

BY GOVERNMENT PLEADER SRI.G.GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
20-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 34019 of 2014 (B)

PETITIONER'S EXHIBITS:

EXHIBIT P1. THE TRUE COPY OF THE SALE DEED 374/13 IN THE NAME OF THE PETITIONER AND HIS WIFE.

EXHIBIT P2. THE TRUE COPY OF THE BUILDING PERMIT NO.BA 305/11-12 DATED 28.10.11 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P3. THE TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER DATED 17.10.14 BEFORE THE 1ST RESPONDENT.

EXHIBIT P4. THE TRUE COPY OF THE ORDER OF THE 1ST RESPONDENT DATED 3.12.14.

EXHIBIT P5. THE TRUE COPY OF THE CERTIFICATE ISSUED BY THE AGRICULTURAL FILED OFFICER, PUNALUR DATED 27.11.14.

EXHIBIT P6. THE TRUE COPY OF THE REPORT OF THE 2ND RESPONDENT DATED 1.12.14.

EXHIBIT P7. THE PHOTOGRAPH SHOWING THE PROPERTY OF THE PETITIONER AND THE MULTISTORIED CONSTRUCTION GOING ON IN THE NEARBY PROPERTY.

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.34019 of 2014 B

Dated this the 20th day of January, 2015

JUDGMENT

Heard the learned counsel for the petitioner and the learned Government Pleader for the second respondent, apart from perusing the record. Since the issue lies in a narrow compass, this Court proposes to dispose of the writ petition at the admission stage itself.

2. Briefly stated, the petitioner purchased an extent of 22.25 ares of property in Sy.Nos.468/8A, 469/2/10 and 469/2 of Punalur Village, Pathanapuram Taluk through registered sale deed No.374/2013 dated 01.02.2013, as could be seen from Exhibit P1. Having thus become the owner of the property, the petitioner submitted Exhibit P3 application dated 17.10.2014 to have Exhibit P2 building permit granted earlier to the vendor of the petitioner transferred to him.

3. In response to Exhibit P3 application of the petitioner, the first respondent issued Exhibit P4 proceedings holding that in the revenue records the property is recorded as 'nilam' and 'purayidom' and as such the permit granted earlier to the petitioner's vendor could not be transferred.

4. Though notice has been served on the first respondent, none appears on its behalf.

5. This Court, through a series of judgments, including the one in **Jalaja Dileep v. Revenue Divisional Officer** (2012 (3) KLT 333), has held that by mere description of the land as nilam, the provisions of paddy land will not apply and that, it is to be based on the verification of the present state of the land in question.

6. The building permit granted earlier to the vendor of the petitioner by now stood expired and as such it may not be possible to issue a direction to the respondent

Municipality to transfer the said permit, which is no longer in existence in the eye of law. At the same time, in the interest of justice, it is desirable to direct the respondent Municipality to consider the petitioner's application for building permit, if made afresh, in accordance with law.

6. Accordingly, Exhibit P4 order is set aside and the respondent Municipality is directed to consider the petitioner's application for building permit, if made afresh, taking into account the ratio laid down by this Court in the decision cited above. It is made clear that the entire exercise of considering the application shall be completed within thirty days from the date of the petitioner making such an application.

With the above observation, the writ petition stands disposed of. No order as to costs.

Dama Seshadri Naidu, Judge

tkv