

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 7TH DAY OF DECEMBER 2015/16TH AGRAHAYANA, 1937

WP(C).No. 34589 of 2015 (W)

PETITIONER :

**UMMER, AGED 42 YEARS
S/O.MUHAMMED, ULPILAPATTA HOUSE, KULAVATTOM
KARULAI P.O., MALAPPURAM DISTRICT, PIN-679330.**

**BY ADVS.SRI.K.M.SATHYANATHA MENON
SRI.A.SANTHOSHKUMAR
SMT.KAVERY S. THAMPI
SRI.ARUN AJAY SHANKAR**

RESPONDENTS :

- 1. THE KARULAI GRAMA PANCHAYAT,
KARULAI P.O., MALAPPURAM DISTRICT, PIN-679330
REPRESENTED BY ITS SECRETARY.**
- 2. THE SECRETARY,
KARULAI GRAMA PANCHAYAT, KARULAI P.O.,
MALAPPURAM DISTRICT, PIN-679 330.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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WP(C).No. 34589 of 2015 (W)

APPENDIX

PETITIONERS' EXHIBITS :

- EXT. P1 TRUE COPY OF THE POSSESSION CERTIFICATE DATED 11.6.2015
ISSUED BY THE VILLAGE OFFICER, KARULAI VILLAGE.**
- EXT. P2 TRUE COPY OF THE TAX RECEIPT DATED 10.6.2015 ISSUED BY THE
VILLAGE OFFICER, KARULAI VILLAGE IN FAVOUR OF THE
PETITIONER.**
- EXT. P3 PHOTOGRAPH SHOWING THE PROPERTY OF THE PETITIONER AS
2WELL AS THAT OF THE NEARBY RESIDENTIAL HOUSES.**
- EXT. P4 TRUE COPY OF SKETCH DESCRIBING THE AREA .**
- EXT. P5 TRUE COPY OF THE RELEVANT PAGE OF THE DATA BANK PREPARED
BY AGRICULTURAL OFFICER, KRISHI BHAVAN, KARULAI GRAMA
PANCHAYAT.**
- EXT. P6 TRUE COPY OF THE COMMUNICATION DATED 22.4.2014 ISSUED BY
THE 2ND RESPONDENT.**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

K.HARILAL, J.

W.P.(C) No.34589 of 2015

Dated this the 7th day of December, 2015.

JUDGMENT

The petitioner herein is the absolute owner in possession of 4 Ares and 05 Sq.Mtrs. of land comprised in R.S.No.85/3 (old Sy.No.73/2) of Karulai Village, Nilambur Taluk in Malappuram District by virtue of Ext.P1. According to the petitioner, the land covered by Ext.P1 is absolutely a garden land and it is surrounded by residential building in its three boundaries. The entire area wherein the property of the petitioner is situated in a pucca residential area with no trace of paddy cultivation in its vicinity. That apart, in the property of the petitioner, there were also several yielding trees such as arecanut and coconut trees, which is evidenced by Ext.P3. The fact that the property of the petitioner was also planted with trees is evident from the entry made in the data bank also. The petitioner submitted an application before the 1st respondent seeking building permit for

the construction of a commercial building. But, the application was rejected, by Ext.P6, stating that permit can be granted for construction of the residential building, which does not exceed 300 Sq.Mtrs. only. This is the grievance projected in this writ petition. In this backdrop the petitioner prayed for issuing a writ of certiorari or any other appropriate writ, order or direction, calling for Ext.P6 and quash the same and also to direct the 2nd respondent to issue building permit to the petitioner as requested by him.

2. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents. Even though notice has been duly served to the respondents 1 and 2, they have not chosen to enter appearance to oppose the reliefs sought in this writ petition.

3. It is the case of the petitioner that his property is lying as garden land and the same is evidenced by Ext.P4 sketch and Ext.P5 Data Bank. Going

by Ext.P5, it is seen that as claimed by the petitioner his property is not included in the data bank prepared by the Local Level Monitoring Committee. In the absence of any challenge against the genuineness of Ext.P3 photograph, it is discernible that the petitioner's property is lying as a dry land and surrounded by garden land, wherein residential buildings are situated. It is evident from Exts.P1 to P5 that the 2nd respondent has not applied his mind properly while passing Ext.P6 order rejecting the application for permit.

4. Going by Ext.P6 the respondents have no case that the property in question was converted after 2008 in violation of the prohibition under the Kerala Conservation of Paddy Land and Wetland Act, 2008 and the Rules made thereunder. If the land is not a converted one after the commencement of the said Act, the denial of licence or permit as contemplated under Section 14 of the said Act will not come into application. In various decisions, this Court

considered the question whether the building permit can be denied on the basis of the mere entries in the Revenue Records as “Nilam” and held that notwithstanding the entries in the Revenue Records the statutory authority is liable to take a decision on the application for building permit, considering the ground realities, i.e., the present nature and lie of the land on the ground.

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 above decisions, the 2nd respondent is directed to conduct a site inspection in the property so as to ascertain whether the property has been converted after the commencement of the Conservation of Paddy Land and Wetland Act, 2008. Certainly, if the land is one converted after the commencement of the said Act, the petitioner is not entitled to get building permit. On the other hand, if the land is not one converted after the commencement of the said Act, the petitioner is entitled to get building permit, notwithstanding the extent of plinth area and the entries in the revenue records.

8. Consequently, Ext.P6 will stand set aside. The 2nd respondent is directed to conduct a site inspection within a period of one month from the date of receipt

of a copy of this judgment and pass orders afresh on the application seeking building permit within a period of one month from the site inspection, in view of the observations made above.

This writ petition is disposed of accordingly.

K. HARILAL, JUDGE

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