

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. 35670 of 2015 (G)

PETITIONER :

**SHAHANAS Y.I.,
S/O. ISMAIL Y.A., AGED 28 YEARS
RESIDING AT YARATH HOUSE, VADOOKARA
THRISSUR-680 007.**

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

RESPONDENT(S) :

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

R1 & R2 BY ADV. SRI.K.P.VIJAYAN, SC

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 01-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Mn

...2/-

WP(C).No. 35670 of 2015 (G)

APPENDIX

PETITIONERS' EXHIBITS :

**EXHIBIT P1: TRUE COPY OF THE RECEIPT ISSUED BY THE VILLAGE OFFICER,
KOORKKANCHERRY TO THE PETITIONER DATED 12.11.2015.**

**EXHIBIT P2: TRUE COPY OF THE ORDER PASSED BY THE 2ND RESPONDENT
DATED 19.10.2015.**

**EXHIBIT P3: TRUE COPY OF FEW PHOTORAPHS DEPICTING THE LIE AND NATURE
OF THE PROPERTY DATED NIL.**

**EXHIBIT P4: TRUE COPY OF THE JUDGMENT IN W.A.NO.1731/2008 ON THE FILE OF
THIS HONOURABLE COURT DATED 14.6.2011.**

**EXHIBIT P5: TRUE COPY OF THE JUDGMENT IN WP(C) NO.13442/2014 ON THE FILE
OF THIS HONOURABLE COURT DATED 5.8.2014.**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

Mn

K. HARILAL, J.

W.P. (C) No.35670 of 2015-G

Dated this the 1st day of December, 2015

JUDGMENT

The petitioner is the owner in possession of a land having an extent of 0.0186 Hectares in Sy.No.247/P in Koorkkancherry Village, situated within the Thrissur Corporation. According to the petitioner, the said property is surrounded by residential houses. So, the petitioner wanted to construct a small residential house in the said property and applied for a building permit. But, the 2nd respondent rejected the said application seeking building permit, by Ext.P2 order, stating that the said land is included in the zone of 'paddy field' in the 'Master Plan' and the sale deed has been executed after 3/5/2008. Thus, this writ petition is filed challenging Ext.P2 order declining the building

permit to the petitioner.

2. Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

3. Going by Ext.P2, it is seen that the building permit has been declined on the sole ground that the land, in question, is included in the zone of paddy field in the Master Plan. The petitioner has produced Ext.P3 photographs to show the present lie of the land. The genuineness of the photographs is not challenged by the respondents. Obviously, the photographs show that as contended by the petitioner, 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.”

4. 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.”

In the light of the proposition laid down by this Court in the above decisions, Ext.P2 order will stand set aside. Further, the 1st respondent is directed to conduct a site inspection and pass orders, after issuing notice to the petitioner, based on 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'.

5. 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.

6. So also, the fact that the sale deed has been executed after 2008 has no relevancy at all, if the 1st 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 the said Act. However, the 1st 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)

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P.S. to Judge