

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 8TH DAY OF DECEMBER 2015/17TH AGRAHAYANA, 1937

WP(C).No. 35733 of 2015 (N)

PETITIONER(S):

**PANORAMIC UNIVERSAL LIMITED,
4TH FLOOR, AMAN CHAMBERS, PRABHA DEVI,
DADAR, MUMBAI, REPRESENTED BY ITS DIRECTOR,
DNYANARAJ MORAVEKAR, AGED 24 YEARS,
S/O.SUDHEER MORAVEKAR, THROUGH HIS
POWER OF ATTORNEY JOSEPH MATHEW,
AGED 54 YEARS, S/O.T.J. MATHEW, THAYIL HOUSE,
KUMARAKOM P.O., KOTTAYAM, KERALA.**

**BY ADVS.SRI.GEORGE SEBASTIAN,
SRI.JOHNSON K.KURIEN.**

RESPONDENT(S):

- 1. THE VECHOOR GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY,
KUDAVECHOOR P.O., PIN-686 144,
KOTTAYAM DISTRICT.**
- 2. THE SECRETARY,
VECHOOR GRAMA PANCHAYATH,
KUDAVECHOOR P.O., PIN-686 144,
KOTTAYAM DISTRICT.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 08-12-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

WP(C).No. 35733 of 2015 (N)

APPENDIX

PETITIONER'S EXHIBITS:-

- P1 :** TRUE COPY OF THE BASIC TAX RECEIPT DTD. 26-09-2015 ISSUED FROM THE VECHHOOR VILLAGE OFFICE.
- P2 SERIES :** PHOTOGRAPH SHOWING THE NATURE AND LIE OF THE PROPERTY OF THE PETITIONER.
- P3 :** TRUE COPY OF THE COMMUNICATION DTD. 05-08-2014 ISSUED BY 2ND RESPONDENT TO THE PETITIONER.
- P4 :** TRUE COPY OF THE JUDGMENT DTD. 17-09-2015 IN WP(C).NO. 27360/2015.
- P5 :** TRUE COPY OF THE JUDGMENT DTD. 21-03-2013 IN WP(C).NO. 865/2013.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

K.HARILAL, J.

W.P.(C) No.35733 of 2015

Dated this the 8th day of December, 2015.

JUDGMENT

The petitioner herein is a private limited company represented by the power of attorney holder. He preferred an application for building permit before the 2nd respondent. According to the petitioner, the 2nd respondent did not conduct any site inspection on the basis of the said application. No notice was issued to the petitioner for hearing on the said application; instead, Ext.P3 communication was issued to the petitioner, informing that the petitioner's application is rejected as major portion of the property is shown as paddy land in the possession certificate. It is also stated that the 2nd respondent has no power to grant building permit for any construction in the properties which are shown as

Nilam, in the possession certificate, except for the residential purpose, as per the circular referred to in Ext.P3.

2. According to the petitioner, his property is lying as a garden land planted with coconut trees. But, merely on the reason that the description of the property is shown as Nilam, in the Revenue Records, the application for building permit has been rejected. It is with this back ground, the petitioner has filed this writ petition with a prayer to issue a writ of certiorari calling for the original of Ext.P3 and to quash the same and also to issue a writ of mandamus or order directing the 2nd respondent to re-consider the application referred to in Ext.P3.

3. Heard the learned counsel for the petitioner. Even though notice had been duly served on the respondents, the respondents have not chosen to enter appearance to oppose the reliefs sought for.

4. It is well settled under various decisions of this Court that the application for building permit is to be considered on the basis of ground realities and

not on the basis of the mere entries in the Revenue Records. Going by Ext.P3, it is seen that the application for building permit has been rejected on the reason that the land comprised in survey number referred to in the possession certificate is shown as Nilam. The petitioner has produced the photographs of the property involved in this writ petition. The genuineness of the photographs is not challenged by the respondent. However, it stands undisputed that the application for building permit has been rejected without conducting site inspection.

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.P3 order will stand set aside. Further, the 1st respondent is directed to conduct a site inspection, after issuing notice to the petitioner and pass orders, based on the actual lie of the land to be found in the site inspection, notwithstanding the entries in the revenue records, within a period of two months from the date of receipt of a copy of this judgment. It is made clear that if the conversion was made before the commencement of the Kerala Conservation of Paddy Land and Wet Land Act, 2008, the bar under Section 14 of the Act will not come into play; on the other hand , no

permit can be granted.

This writ petition is disposed of accordingly.

Sd/-
K. HARILAL, JUDGE

okb.