

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. 35857 of 2015 (F)

PETITIONER:

JOSEPH.P.J., AGED 43 YEARS,
S/O JOSE, RESIDING AT PANANGADAN HOUSE,
PURANATTUKARA PO, THRISSUR-680 551.

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

RESPONDENTS:

1. THRISSUR COPORATION,
REPRESENTED BY ITS SECRETARY, CORPORATION OFFICE,
THRISSUR-680 001.

2. THE ASSISTANT ENGINEER,
THRISSUR CORPORATION, CORPORATION OFFICE,
THRISSUR-680 001.

R1 & R2 BY ADV.SRI.K.P.VIJAYAN,
SC,THRISSUR CORPORATION
ADV. SRI.V.N.HARIDAS

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

WP(C) .No. 35857 of 2015 (F)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1: TRUE COPY OF THE TAX RECEIPT ISSUED TO THE
PETITIONER DT. 19/10/15.

EXT.P2: TRUE COPY OF THE ORDER PASSED BY THE 2ND
RESPONDENT TO THE PETITIONER DT. 18/11/15.

EXT.P3: TRUE COPY OF THE JUDGMENT IN WPC 14858/15 ON
THE FILE OF THIS HONOURABLE COURT DT. 16/6/15.

RESPONDENT(S) ' EXHIBITS

NIL

//true copy//

P.S. to Judge

K. HARILAL, J.

W.P. (C) No.35857 of 2015-F

Dated this the 1st day of December, 2015

JUDGMENT

The petitioner is the owner in possession of a land having an extent of 0.0202 Hectares land comprised in Sy.No.27/IP of Ayyanthole Village in Thrissur Taluk within the limits of the 1st respondent Corporation. The petitioner wanted to construct a commercial building in his property and accordingly applied to the 1st respondent Corporation for a building permit. According to the petitioner, to his shock and dismay, the Corporation rejected the application, stating that the land in question, according to the possession certificate, has been referred to as 'Nilam' by Ext.P2 and thereby, the petitioner is not entitled to get the

building permit to make any construction in the said property. The petitioner further averred that the entire land surrounded by the aforesaid disputed land is a dry land and there is no paddy cultivation anywhere near or around the disputed land. Since the petitioner does not have any other property to construct a building, if the permit is not granted, he will be put to great hardship and irreparable injury. Hence, this writ petition is filed challenging Ext.P2 order rejecting the application for building permit on the ground that the nature of the property described in the possession certification is 'Nilam'.

2. Heard the learned counsel for the petitioner and the learned Government Pleader.

3. The learned counsel for the petitioner advanced arguments challenging the rejection of the application for the building permit merely on the basis of the description of the property erroneously shown as 'Nilam' in the possession certificate. According to

the learned counsel, the actual lie of the land on the ground is a deciding factor to be considered while considering the application for building permit. In support of the arguments, the learned counsel cited the decisions in Mohammed Abdul Basheer C.P. v. State of Kerala and another [2012 (3) KLT 86]; Jalaja Dileep v. Revenue Divisional Officer [2012 (3) KLT 333] and Shahanaz Shukkoor v. Chelannur Grama Panchayat [2009 (3) KLT 899].

4. Going by Ext.P2 order, as rightly submitted by the learned counsel for the petitioner, the building permit was rejected on the sole ground that in the possession certificate the nature and lie of the land is described as 'Nilam'. The 1st respondent Corporation has no case that the land wherein the proposed construction is sought to be made is a land converted after the commencement of the Kerala Conservation of Paddy Land and Wetland Act, 2008. It follows that if the land is not one converted after the

commencement of Kerala Conservation of Paddy Land and Wetland Act, 2008, the bar under Sec.14 of the said Act will not come into application. In the instant case, in the absence of such an observation, the provisions under the Kerala Conservation of Paddy Land and Wetland Act, 2008 are neither relevant nor significant. As regards the relevancy of the entries in the revenue records with respect to the description of the properties, this Court in the decision reported in *Shahanaz Shukkoor v. Chelannur Grama Panchayat* [2009 (3) KLT 899] held 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.”

5. In view of the above decision, the building permit cannot be denied on the basis of wrong or erroneous entries in the revenue records which stand in dissonance with the actual lie of the land or the ground realities. If that be so, the Corporation is at liberty to conduct a site inspection and pass orders in accordance with the nature of land found to be found in the said site inspection. It is made clear that if the 1st respondent Corporation is satisfied that the land in dispute is not one converted after the commencement of the Kerala Conservation of Paddy Land and Wetland Act, 2008, they are at liberty to take a decision in accordance with the ground realities found in the site inspection.

6. In the above view of the matter, Ext.P2 order will stand set aside and further, the 1st respondent Corporation 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 thereafter, take a decision thereon within the next one month from the date of inspection.

This writ petition is disposed of with the above observations.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge

