IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 04TH DAY OF DECEMBER 2020 / 13TH AGRAHAYANA, 1942

WP(C).No.13031 OF 2020(D)

PETITIONER:

ABDUL KHADER
AGED 61 YEARS
S/O. MOHAMMED, RESIDING AT KATTAKATH HOUSE,
ELOOR NORTH, UDYOGAMANDAL,
KOCHI-683501,

BY ADVS.
SRI.T.C.SURESH MENON
SRI.P.S.APPU

RESPONDENTS:

ELOOR MUNICIPALITY
REPRESENTED BY ITS SECRETARY, MUNICIPAL BUILDING,
UDYOGAMANDAL,
KOCHI-683501.

R1 BY ADV. SRI.K.S.ARUN KUMAR
R1 BY ADV. SRI.JUSTINE JACOB
SRI.K.J.MANURAJ - GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04.12.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)No.13031 of 2020

JUDGMENT

The petitioner is the owner of a parcel of land comprising of 52 cents within the limits of the respondent Municipality. He obtained Ext.P6 building permit to put up a residential building in a portion of a said land as early on 02.06.1992. It is stated that on the strength of Ext.P6 building permit, the petitioner has put up a residential building in the land and he is residing in that building ever since 1992. It is stated by the petitioner that sometime after the issuance of Ext.P6 building permit, the local body was downgraded as a Panchayat and the Building Rules were consequently not enforced. It is stated that while so, the petitioner has put up an additional construction in the existing building. It is also stated that it is thereafter that the local body was upgraded again as a Municipality. It is alleged by the petitioner that when the officials of the Municipality inspected the building during the year 2019 in connection with the process of revising the property tax,

the additional construction carried out by the petitioner was noticed and the petitioner was directed to take steps to regularise the said construction. Ext.P2 is the communication issued by the Municipality to the petitioner in this regard. Pursuant to Ext.P2 communication, the petitioner preferred an application for regularization of the additional construction and he is now issued on the said application, Ext.P5 notice stating that the request of the petitioner cannot be considered unless the petitioner obtains requisite permission for changing the classification of the land. It is stated that it is in the light of the provision contained in Act 29 of 2018, in terms of which the Kerala Conservation of Paddy Land and Wetland Act, 2008 (the Act) was amended incorporating a provision for change of classification that the petitioner has been issued Ext.P5 communication. The case of the petitioner is that the land owned by him is though classified in the revenue records as 'Nilam', it was one converted as a dry land long prior to the coming into force of the Act; that the same is not a land included in the data bank prepared under the Act and therefore, insistence in Ext.P5 communication that the

application submitted by the petitioner for regularisation of the additional construction cannot be considered unless the petitioner obtains permission for change of classification of the land, is illegal. The petitioner, therefore, challenges Ext.P5 communication in this proceedings filed under Article 226 of the Constitution of India on that ground.

2. Heard the learned counsel for the petitioner as also the learned Standing Counsel for the respondent.

3. The materials on record especially Exts.P6, P7 and P8 indicate beyond doubt that the petitioner has been granted building permit by the Municipality for the purpose of erecting a structure in the land and that he has put up the building referred to in Ext.P5 communication on the basis of the said building permit, as early as in the year 1992. The materials also indicate that the building constructed by the petitioner has been assessed to property tax by the Municipality and property tax is being collected by the Municipality from the petitioner in respect of the building accordingly. The Municipality has no case

that the additional construction made by the petitioner is not one that could be regularized by the Municipality. The objection of the Municipality, however, is concerning the right of the petitioner to put up a building in the land. Having issued a building permit to the petitioner for putting up a building and having assessed and collected property tax for the building put up by the petitioner on that basis for several years, the Municipality is precluded from raising any objection as to the right of the petitioner to put up a building in the land. If the Municipality is precluded from raising any objection as to the right of the petitioner to put up the building in the land, the Municipality cannot refuse to consider the application submitted by the petitioner for regularisation of the additional construction also, made by him on that ground. The said view has been taken by this Court in **Mahin v. Keezhmad Grama Panchayat,** 2020 (2) KLT 478 and **Leela Santu v. Secretary, Kothamangalam Municipality,** 2020 (4) KLT 1011. In the light of the aforesaid decisions of this court, the petitioner is entitled to succeed.

In the result, the writ petition is allowed and

Ext.P5 communication issued by the Municipality is quashed. The Municipality is directed to consider the application for regularization submitted by the petitioner, which is referred to in Ext.P5 in accordance with law afresh, without insisting the petitioner to obtain orders under Act 29 of 2018. This shall be done within one month from the date of receipt of a copy of this judgment.

Sd/-
P.B.SURESH KUMAR
JUDGE

YKB

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1	TRUE COPY OF THE LAST TAX RECEIPT ISSUED BY THE RESPONDENT TO THE PETITIONER DATED 12.02.2018.
EXHIBIT P2	TRUE COPY OF THE COMMUNICATION SERVED ON THE PETITIONER BY THE RESPONDENT DATED 6.12.2019.
EXHIBIT P3	TRUE COPY OF THE SKETCH DATED NIL
EXHIBIT P4	TRUE COPY OF THE COVERING LETTER DATED NIL
EXHIBIT P5	TRUE COPY OF THE COMMUNICATION ISSUED BY THE RESPONDENT MUNICIPALITY DATED 2.3.2020.
EXHIBIT P6	TRUE COPY OF THE BUILDING PERMIT ISSUED BY THE RESPONDENT DATED 2.6.1992.
EXHIBIT P7	TRUE COPY OF THE RESIDENTIAL CERTIFICATE ISSUED BY THE RESPONDENT DATED 07.08.1992.
EXHIBIT P8	TRUE COPY OF THE ASSESSMENT ORDER ISSUED BY THE RESPONDENT DATED 15.12.1992.