
(2025) 07 KL CK 1219

In the High Court Of Kerala

Case No : Writ Petition (C) No.24296 Of 2018

P.P.Manoj Kumar

APPELLANT

Vs

The Secretary, Thalassery Municipality

RESPONDENT

Date of Decision : 25-07-2025

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 81(1)

Kerala Conservation of Paddy Land and Wetland Act, 2008 — Section 10

Citation : (2025) 07 KL CK 1219

Hon'ble Judges : Harisankar V. Menon, J

Bench : Single Bench

Advocate : R.Surendran, Kum.S.Mayukha, I.V.Pramod, T.Jayan

Final Decision : Disposed Of

Judgement

Harisankar V. Menon, J

1. The petitioner, a resident of Thalassery, Kannur District, has filed the captioned writ petition contending that he owns some properties in the Thalassery Municipality as evidenced by Ext.P1 document of the year 2016. He further states that though an application seeking a building permit for the construction of a residential building was filed before the Municipality, the same is returned pursuant to Ext.P3 communication dated 30.05.2017, making reference to the development plan of the year 2007, as per which the property is included in the "agricultural zone". It is further pointed out that since the property in question was included in the data bank under the provisions of the Kerala Conservation of Paddy Land and Wetland Act, 2008 (hereinafter referred to as the 'Act'), he approached the District Level Authorised Committee, pointing out that he does not have any other site for the construction of a residential building and the Committee by Ext.P4 dated 22.06.2018 found that the petitioner is to be permitted to fill the paddy land, for the limited purpose of construction of the residential building. It is with reference to the aforesaid proceedings at Ext.P4, the petitioner seeks to challenge the order at Ext.P3 referred to above.

2. I have heard Sri.R.Surendran, the learned counsel for the petitioner, and Sri.I.V.Pramod, the learned counsel for the respondent Municipality.

3. The learned counsel for the respondent Municipality seeks to rely on the judgment of a Division Bench of this Court in Regional Town Planner v. Muhammed Rasheed [2019 (3) KLT 433] to contend that the Municipality cannot consider the application for a building permit without reference to the zoning provisions under the development scheme. However, the learned counsel for the petitioner seeks to rely on the judgment of another Division Bench of this Court in State of Kerala v. Falcon Infrastructures Ltd. [2025 KLT OnLine 2155], to contend that the order at Ext.P4 needs to be extended the required effect, by construing the orders at Exts.P3 and P4 harmoniously.

4. True, with reference to the provisions of the Kerala Municipality Building Rules,1999 in comparison to the Kerala Town and Country Planning Act, 2016, the judgment of the Division Bench of this Court in Regional Town Planner (supra), has found that future constructions have to be made with specific reference to the terms of the development scheme, unless and until, the scheme is varied by the State Government, in accordance with the Provisions of the Kerala Town and Country Planning Act, 2016. Therefore, at first blush, the learned counsel for the Municipality is justified in relying on the afore judgment, when he seeks to sustain the proceedings at Ext.P3.

5. At the same time, this Court notices the findings in Falcon Infrastructures Ltd. (supra). That was a case where the Division Bench considered the purport of the Act and the Kerala Land Reforms Act, 1963, finding as under: -

"9. On a consideration of the rival submissions, we find that the exemption that is granted to the writ petitioner under the Kerala Land Reforms Act, is with a specific condition that the exemption will enure to him only so long as he utilises the land for the specific purposes, for which the exemption is granted. The exemption granted in respect of 24.5 Acres of land, mandates that the land in question must be used for commercial/industrial purposes and not for any other purpose. This would mean that if the writ petitioner decides to use the land for any other purpose, he would stand to lose the benefit of the exemption granted by the Government from the ceiling provisions under the Land Reforms Act. Under such circumstances, we fail to see how the authorities under the 2008 Act can insist on the writ petitioner maintaining his land in the same state without altering its nature in any manner. We would think that statutory provisions under different State enactments have to be read harmoniously so that the provisions of one statute are not invoked to defeat the rights/privileges obtained by a citizen under the other. If the provisions of 2008 Act are strictly implemented against the writ petitioner in the instant case, he will lose the benefit of the exemption granted to him under the Kerala Land Reforms Act. We are quite clear in our minds that the attempt of this Court in such situations must be to read the provisions of both the statutes harmoniously, so that they can operate together in relation to a particular land. Since the lands in question are already covered by

an order of exemption under Section 81(3) of the Kerala Land Reforms Act, the discretion of the State Government under Section 10 of the 2008 Act, which enables the Government to grant exemption from the provisions of the Act if such conversion or reclamation of the land is essential for any public purpose, can also be deemed to have been exercised in favour of the same land so that there is no interference with the benefits granted to the writ petitioner under the Kerala Land Reforms Act, on account of an implementation of the provisions of the 2008 Act."

(Underlining supplied)

I am of the opinion that the afore principles would apply to the facts and circumstances of the case at hand, for the following reasons.

6. As already noticed, the petitioner sought for a building permit, which was rejected by Ext.P3 with reference to the provisions of the development scheme. The afore scheme described the area as "agricultural zone" and hence denied the permit to the petitioner. It is with reference to the description of the property in the data bank as a wetland - meaning thereby as an agricultural property where paddy was being cultivated - an appropriate application was filed by the petitioner before the District Level Authorised Committee, pointing out that he has no property other than the one mentioned in the application. The Committee, while issuing Ext.P4, categorically found the requirement pointed out by the petitioner to be genuine and hence permitted conversion of an extent of five cents for the specific purpose of construction of a residential building. I am of the opinion that when the authorities under the Act permitted conversion of the afore property to the limited extent stated therein, the Municipality would not be justified in seeking to place reliance on the development scheme wherein the property is shown as falling under "agricultural zone". This would render the benefits flowing out of Ext.P4 as a dead letter as regards the petitioner herein. When that be so, the harmonious construction as laid down by this Court in the aforesaid judgment, between the two different enactments, has to be made applicable as regards the case at hand also. This is especially so, since under both enactments, the land is seen described as falling under agricultural activity. Therefore, I am of the opinion that the petitioner is entitled to the benefits as prayed for in this writ petition.

Resultantly, this writ petition is disposed of, setting aside Ext.P3. There will be a direction to the respondent Municipality to process the application filed by the petitioner for building permit, afresh, also taking into account the benefits extended by the District Level Authorised Committee at Ext.P4, as expeditiously as possible, at any rate, within a period of four months from the date of receipt of a certified copy of this judgment.