
(2014) 08 KL CK 0176
In the High Court Of Kerala
Case No : WP(C). No. 1506 of 2014 (K)

P.V. Mohammed Abdul Kareem Faizal	APPELLANT
Vs	
Corporation of Kozhikode	RESPONDENT

Date of Decision : 12-08-2014

Acts Referred:

Kerala Conservation of Paddy Land and Wetland Act, 2008 — Section 14

Citation : (2014) 08 KL CK 0176

Hon'ble Judges : A.V. Ramakrishna Pillai, J

Bench : Single Bench

Advocate : K. Jaju Babu (Sr.), M. U. Vijayalakshmi and Brijesh Mohan, Advocate for the Appellant; K.D. Babu, Adv., SC, Kozhikode Corporation, Advocate for the Respondent

Judgement

A.V. Ramakrishna Pillai, J.—Ext.P8 rejecting the petitioner's application for building permit is under challenge in this writ petition.

2. The petitioner is the proprietor of Emerald Group of Business Enterprises, Kozhikode and also the managing director of Green Metro Developers and Builders Pvt. Ltd. He is the owner in possession of 10.5 acres of property in Sy.Nos.67/2, 73/1, 73/4 and 74/1 and 2 in Vengeri Village, Kozhikode Taluk, covered by Exts.P1 to P6. The petitioner alleges that the properties are on the side of NH-17 mini bypass. The petitioner submitted application for constructing a commercial building, for setting up an auditorium, which was returned by Ext.P8 saying that in the possession certificate in respect of Sy. Nos. 73/1, 73/4 and 74/1 it is shown as wetland.

3. According to the petitioner, in Ext.P8 it is admitted that there are buildings in and around the locality. The further objection raised is that in the master plan, the property comes within the area earmarked for Dream City (Swapna Nagari). The petitioner alleges that in the new data bank prepared under the Kerala Conservation of Paddy Land and Wetland Act, 2008 all items except the property in Sy. No. 74/1 is shown as dry land.

4. In the statement filed by the standing counsel for respondent, they would contend that as per the village records, the properties of the petitioner lying in Sy. Nos. 74/1, 73/1 and 73/4 are shown as nilam, which is clear from the possession certificate. They have stated that as per the zoning regulation rules and Section 14 of the Kerala Conservation of Paddy Land and Wetland Act, 2008, no construction work could be permitted in the properties in question. Hence, they prayed for a dismissal of the writ petition.

5. Arguments have been heard.

6. The learned Senior Counsel for the petitioner, inviting my attention to Ext.P8 photographs, submitted that the properties are being used by the Corporation for conducting exhibitions for the past 8 years. The possession of the properties is approved by the respondent Corporation as per certificate dated 28.5.2013. Ext.P8 photos show the present nature of the properties of the petitioner.

7. It is submitted that an application was submitted initially Pvt. Ltd. and the NOC for the said application was rejected, which was challenged in W.P(C) No. 6072/2007 wherein this Court as per Ext.P14 judgment gave a direction for issuance of building permit, subject to conditions. Thereafter, a fresh application was submitted on 11.4.2008 and after waiting for 30 days, a representation was made to the Mayor on 11.5.2008. The petitioner alleges that the application was submitted on 10.5.2006 and, therefore, the same cannot be rejected on the strength of the statute which came into force only after 11.4.2008.

8. The decision of this Court in Mohammed Abdul Basheer Vs. State of Kerala, lays down the principle that the present position of the land has to be taken into consideration and on ascertaining these facts, permission can be granted for construction. It was pointed out by the learned Senior Counsel for the petitioner that there is a workshop in the said property which is a commercial building for which property tax is remitted from 2006. It was also submitted that Ext.P8 relates to the properties in five survey numbers. Out of this, the properties in four survey numbers are not included in the data bank maintained under the Act, which is evident from Ext.P16 certificate issued by the Agricultural Officer.

9. The learned Senior Counsel for the petitioner invited my attention to a Division Bench decision of this Court in Padmini and Others Vs. State of Kerala and Another wherein it was held that no building permit can be refused to any person because there is a proposal to acquire the land in future. Reliance was also placed on the decision of the Apex Court in Raju S. Jethmalani and Others Vs. State of Maharashtra and Others, wherein it was held that refusing to grant permits relying on obsolete DTP schemes is a clear violation of the provisions of the Constitution.

10. In Jalaja Dileep Vs. Revenue Divisional Officer and others, this Court observed that the description in the title deed or in revenue records will not be crucial if the property is reclaimed already. The aforesaid legal position settled by this Court escaped the attention of the authorities while rejecting the petitioner's

application. Therefore, this writ petition is allowed. Ext.P8 is quashed.

The respondent Corporation is directed to conduct a local inspection of the property regarding the present lie as well as the condition of the property of the petitioner and surrounding properties. The respondent is also directed to reconsider the application of the petitioner and pass appropriate orders in the light of what is stated above, after affording him an opportunity of being heard. This shall be done within a period of two months from the date of receipt of a copy of this judgment.