
(2016) 02 KL CK 0008
In the High Court Of Kerala
Case No : WP(C) No. 2512 of 2016 (L)

Vipin Velluva Reyiroth

APPELLANT

Vs

Secretary, Palakkad Municipality

RESPONDENT

Date of Decision : 01-02-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 300A

Citation : (2016) 02 KL CK 0008

Hon'ble Judges : K. Harilal, J.

Bench : Single Bench

Advocate : Rajesh Sivaramankutty, Advocate, for the Appellant; T.C. Suresh Menon, P.S. Appu and A.R. Nimod, Advocates, for the Respondent

Final Decision : Disposed off

Judgement

K. Harilal, J.—1. The petitioner is the title holder in possession of 5.28 cents of land in Sy. No. 2978/1 in Ward No. 1, Block No. 72 of Palakkad-II Village, Palakkad Taluk, within the limits of the respondent/Municipality. According to the petitioner, the said property was left uncultivated being not fit for cultivation for more than one decade and the petitioner purchased the said property noticing the said fact and with an intention to put up a residential building. So also, there was no agricultural activity in the properties in the neighbourhood. In the above circumstance, the petitioner, having no residential building of his own, made an application seeking a building permit, for the construction of a residential building having an area of 190.51 M2 plinth area. But, the respondent/Municipality had earlier rejected an application, by Ext. P2, stating that the description of the property in the revenue records shows that the property is lying as "Nilam" and the said property can be used for paddy cultivation and also certain corrections are seen crept in the application. Aggrieved by Ext. P2, the petitioner had preferred W.P.(c) No. 20834/15 which culminated into Ext. P3 judgment of this Court. In Ext. P3 judgment, this Court set aside the impugned order passed by the respondent/Municipality and directed to reconsider the

application for construction of the building filed by the petitioner and if there is any error in the application, the petitioner may be allowed to rectify the same or fresh application may be called for and an order may be passed within a period of 15 days from the date of receipt of a copy of the judgment. In compliance with the said direction, the respondent/Municipality again heard the matter and rejected the application again, by Ext. P4, stating that in the Master Plan, which came into existence in the year 1986 and renewed in the year 2009, the said property is lying in the zone earmarked for "paddy cultivation". So, the building permit cannot be granted in violation of the zonal classification in the Master Plan and the Plan is pending for approval of the Government. The legality and propriety of the reasoning, whereby the petitioner's application, seeking building permit, stands rejected under Ext. P4, are under challenge in this writ petition.

2. Heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the respondent/Municipality.

3. As rightly submitted by the learned counsel for the petitioner, going by Ext. P3 judgment, it is seen that this Court earlier set aside the order rejecting the petitioner's application for building permit and remitted the matter back to the respondent/Municipality for fresh consideration, in the light of the observations made in the said judgment.

4. Going by Ext. P2, it is seen that earlier application was rejected on the sole reason that the property is lying as "paddy land" and the same is shown as "Nilam" in the revenue records. At that time, there was no case that the property is situating in a zone earmarked for paddy cultivation and granting of permit would violate the zonal classification in the Master Plan. But, after remittance of the case back to the respondent/Municipality, it is seen that the respondent/Municipality has again rejected the application on a new ground which was not raised earlier in Ext. P2. Going by Ext. P4, it is seen that the Master Plan was drafted in the year 1986. Though, the Master Plan was drafted in the year 1986, the same has not come into force even after the lapse of more than 25 years and even now the draft plan is pending consideration of the Government. The question, whether the building permit can be rejected on the basis of the Master Plan, which was not come into force, was considered by the Supreme Court in the following decisions.

5. Raju S. Jetmalani v. State of Maharashtra and Ors. [, (2005) 11 SCC 222] and Nazar v. Malappuram Municipality [, 2009(3) KLT 92] and Saidu P. v. State of Kerala and Ors. [, 2010 (3) KHC 974] and Gopalakrishnan T.V. v. State of Kerala and Ors.[2011 (3) KHC 162].

6. The decision laid down by the Supreme Court in Raju S. Jetmalani's case (Supra) assumes significance and relevancy in the instant case. In the above decision, the Apex Court held that land belonging to private individuals cannot be included in development plans unless a land is acquired by the State Government or the Municipal Corporation. The State Government cannot deprive the land

owner of beneficially using his property under the guise of DTP scheme, when no steps have been taken to actually implement the scheme. Further, in *Nazar v. Malappuram Municipality* [, 2009(3) KLT 92], this Court held as follows:

"if any demand to create a rider over the title of the owner of the property under the pretext of a Town Planning Scheme which has not become operational by acquisition would essentially be oppressive and would not be countenanced on the face of Article 14 of the Constitution of India."

7. In *Saidu P. v. State of Kerala and Ors.* [, 2010 (3) KHC 974] this Court held that mere proposal under a Town Planning Scheme, without implementation of the same cannot be a ground for rejection of an application for building permit. In *Gopalakrishnan's* case (Supra) this Court held as follows:

"If an area is earmarked as a residential zone number of constructions for commercial purpose were permitted whether under orders issued by the Government or not, then the only sensible thing for the Corporation to do is to take a realistic approach by not regarding the area any longer as a residential zone"

8. In *Muhammed Subair v. Corporation of Kozhikode* [, 2015 (3) KHC 307], this Court held that in *Nasar's* case, a learned Single Judge of this Court following the ratio of *Padmini v. State of Kerala* [, 1999 KHC 619], has observed that in so far as the owner of the land is concerned, the acquisition affects his interest only from the issuance of notifications and declarations under the Land Acquisition Act, therefore, any attempt to curb the rights of the owners of lands, until the publication of those statutory notifications and declarations, would result in infraction of the right to property under Art. 300A of the Constitution. It is further opined that any infraction of that nature would also result in the violation of the equality principle in the matter of enforcement of laws as is enshrined in Art. 14 of the Constitution. It is, in the end, emphatically held that any demand to create a rider over the title of the owner of the property under the pretext of a Town Planning Scheme which has not become operational by acquisition would, essentially, be oppressive and would not be countenanced in the face of Art. 14 of the Constitution. It is also observed that in terms of the ratio laid down in the decisions referred to above, no property right can be interdicted and ipso facto no building permit can be refused on a mere proposal to have certain lands acquired. In other words, contemplation on the part of the officials cannot be a substantive ground to defeat the constitutional right of a person who wants to enjoy his property in the manner he desired fit, albeit, subject to legal limitations.

9. In *Shahanaz Shukkoor v. Chelannur Grama Panchayat* [, 2009 (3) KLT 899], it was 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."

10. Moreover, in Mohammed Abdul Basheer C.P. v. State of Kerala and Another [2012 (3) KLT 86], this Court held that the present lie of the land can be taken into consideration while granting permission to make construction.

11. 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.

12. In Jafarkhan v. K.A. Kochumakkar and others [2012 (1) KHC 523 (DB)], this Court has categorically stated that mere description of the property in the revenue records as "Nilam" is not conclusive proof of the same and the property cannot be treated as a "paddy field" or "wetland" coming within the definition of the Kerala Conservation of Paddy Land and Wetland Act, 2008.

13. In the light of the proposition laid down in the above decisions, it can be held that the building permit cannot be rejected on the basis of the zonal classification in the Master Plan which has not come into force so far.

14. In the above view of the matter, Ext. P4 will stand set aside. The respondent/ Municipality is directed to grant building permit to the petitioner, if the plan is in conformity with the Kerala Municipality Building Rules, within a period of one month from the date of receipt of a copy of this judgment.

This writ petition is disposed of accordingly.