

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 31ST DAY OF OCTOBER 2023 / 9TH KARTHIKA, 1945

WP(C) NO. 36189 OF 2022

PETITIONER:

LALY ASHOKAN,
AGED 58 YEARS
W/O. ASHOKAN, VRINDHA BHAVAN NALLATHAMBI COLONY,
MANJUMALA, VANDIPERIYAR P.O., PEERUMEDU TALUK, IDUKKI-
685533.
BY ADVS.
A.A.SHIBI
SANJAY THAMPI
GAYATHRI A.L.

RESPONDENTS:

- 1 STATE OF KERALA,
REPRESENTED BY SECRETARY, DEPARTMENT OF LOCAL SELF
GOVERNMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-
695001.
- 2 VANDIPERIYAR GRAMA PANCHAYATH,
PANCHAYATH OFFICE, MANJUMALA, VANDIPERIYAR P.O.,
IDUKKI-685533 REPRESENTED BY ITS SECRETARY.
- 3 THE SECRETARY, VANDIPERIYAR GRAMA PANCHAYATH,
PANCHAYATH OFFICE, MANJUMALA, VANDIPERIYAR P.O.,
IDUKKI-685533.
- 4 THE VILLAGE OFFICER, MANJUMALA VILLAGE OFFICE,
VANDIPERIYAR P.O., IDUKKI-685533.
BY ADV ARUN THOMAS

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
31.10.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

BECHU KURIAN THOMAS, J.

W.P.(C) No.36189 of 2022

Dated this the 31st day of October, 2023

JUDGMENT

Petitioner challenges Ext.P9 rejecting petitioner's application for grant of a completion certificate and for allotment of building number. It is stated in Ext.P9 that since the possession certificate shows the property to be a plantation, building number cannot be allotted. Apart from challenging Ext.P9, petitioner has also sought for a direction to allot a number to the building.

2. Petitioner is the owner of an extent of 3.19 Ares of property in Sy.No.139/4-2 of Manjumala Village, Peerumedu Taluk. Pursuant to Ext.P5 building permit issued on 27-08-2019, petitioner completed construction of a building and thereafter applied for a completion certificate and allotment of building number. However, by the impugned order Ext.P9, the 3rd respondent rejected the said application, pointing out that in the possession certificate, the property is described as a plantation as per the BTR and therefore the building number cannot be allotted. Petitioner challenges the said order as being perverse and without any authority of law.

3. In the counter affidavit filed by respondents 2 and 3, it is stated that building permit was applied for construction in Sy.No.139/A-2, which property was described in the revenue records as purayidam, and therefore the building permit was issued. Subsequently, petitioner applied for correction of the survey number on 09-11-2022, pointing out that the actual survey number is 139/4-2. Respondents have further stated that the government had issued an order on 22-02-2021 directing that permits for construction ought to be granted only after verifying the possession certificate issued by the Revenue Authorities and after verifying whether the property had been assigned for any specific purpose. It is further pointed out that the construction of a commercial building is not permissible in a plantation and hence due to the correction in the survey number the grant of building number, for the petitioner's commercial construction is not permissible.

4. I have heard the arguments of Shibi A.A., the learned counsel for the petitioner as well as Sri.Arun Thomas, the learned Standing Counsel for the Panchayat and Smt.Devishri R., the learned Government Pleader.

5. Petitioner's application for a completion certificate and allotment of a building number has been rejected stating that the property is a plantation. There is no restriction in

constructing a building in a plantation as held by this Court in **Mathew K. Jacob and Another v. District Environmental Impact Assessment Authority 2018 (5) KHC 487**. The reasoning of the Secretary in the impugned order is therefore perverse and illegal.

6. However, on a reading of the counter affidavit it is noticed that the Secretary had proceeded on the basis that the property was initially assigned for agricultural purposes and therefore construction of a commercial building on land assigned for agricultural purposes cannot be permitted. When the petitioner applied for a building permit, he had shown the survey number as 139/A-2, and the permit was issued to construct on such land. Subsequently, petitioner had, by Ext.R2(b), applied to correct the survey number to 139/4-2. The corrected survey number is stated in the counter affidavit to be a land that was assigned for agricultural purposes and for that reason the construction is stated to be illegal.

7. Construction on plantation land and construction on land assigned for agricultural purposes are both different aspects under law. A land that was exempted under the Kerala Land Reforms Act, 1961 as a plantation can be used for other purposes, as held in the decision in **Mathew K. Jacob Case (supra)**. The said principle cannot apply to a land that was

assigned for agricultural purposes under the Land Acquisition Act as can be seen from the decision in ***Haridas R Vs. State of Kerala and Others*** 2016 (5) KHC 615 and ***Mahindra Holidays and Resorts India Ltd., Vs. Stated of Kerala and Others*** 2019 (3) KHC 233.

8. The reason mentioned in Ext.P9 is vague and does not take into consideration the law existing. Since the reasons stated in Ext.P9 are incorrect, I am of the view that Ext.P9 has to be set aside and the application be reconsidered.

9. Therefore, Ext.P9 is set aside and the Secretary of the Panchayat is directed to reconsider the application for grant of completion certificate and allotment of a building number submitted by the petitioner as expeditiously as possible, at any rate, within a period of 60 days from the date of receipt of a copy of this judgment.

The writ petition is allowed as above.

BECHU KURIAN THOMAS
JUDGE

AJM

APPENDIX OF WP(C) 36189/2022

PETITIONER EXHIBITS

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| Exhibit P1 | TRUE COPY OF SALE DEED BEARING NO. 191/1/13 OF SUB REGISTRAR OFFICE, PEERUMEDU. |
| Exhibit P2 | TRUE COPY OF LAND TAX RECEIPT DATED 2.3.2019 EVIDENCING THE PAYMENT OF LAND TAX BY THE PETITIONER. |
| Exhibit P3 | TRUE COPY OF POSSESSION CERTIFICATE ISSUED BY THE 4TH RESPONDENT BEARING NO. 42307291 DATED 16/08/2019. |
| Exhibit P4 | TRUE COPY OF LOCATION CERTIFICATE ISSUED BY THE 4TH RESPONDENT BEARING NO. 770/2019. |
| Exhibit P5 | TRUE COPY OF APPLICATION WITH BUILDING PLAN FOR SANCTION OF BUILDING PERMIT SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT. |
| Exhibit P6 | TRUE COPY OF RECEIPT DATED 26/11/2019 ISSUED BY THE 2ND RESPONDENT GRAMA PANCHAYATH. |
| Exhibit P7 | TRUE COPY OF BUILDING PERMIT BEARING NO. A2-5945/2019 DATED 05/12/2019 ISSUED TO THE PETITIONER BY THE 3RD RESPONDENT. |
| Exhibit P8 | TRUE COPY OF POSSESSION CERTIFICATE ISSUED BY THE 4TH RESPONDENT BEARING NO. 478/2022 DATED 24/05/2022. |
| Exhibit P9 | TRUE COPY OF LETTER BEARING NO. 400581/ BAIN01/ GPO/2022/4969(1) DATED 06/10/2022 ISSUED BY THE 3RD RESPONDENT. |
| Exhibit P10 | PHOTOGRAPHS SHOWING THE LAND WHICH IS SITUATED IN A PRIME COMMERCIAL LOCATION. |

RESPONDENT EXHIBITS

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| Exhibit R2(a) | TRUE COPY OF THE ORDER DATED 22/02/2021 ISSUED BY THE STATE OF KERALA, L.S.G.D DEPARTMENT. |
| Exhibit R2(b) | TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER DATED |

WP(C) NO. 36189 OF 2022

7

NIL, BEFORE THE RESPONDENT
PANCHAYAT..

Exhibit R2(c) TRUE COPY OF THE COMMUNICATION
ISSUED BY THE PANCHAYAT DATED
10/11/2022 TO THE PETITIONER.