

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

WA.No. 2535 of 2009 () IN WP(C).25473/2008

AGAINST THE JUDGMENT IN WP(C) 25473/2008 of HIGH COURT OF KERALA
DATED 14-08-2009

APPELLANT/5TH RESPONDENT:

THIRUVANANTHAPURAM CORPORATION,
REPRESENTED BY ITS SECRETARY
THIRUVANANTHAPURAM CORPORATION, THIRUVANANTHAPURAM.

BY ADVS.SRI.N.NANDAKUMARA MENON (SR.)
SRI.P.K.MANOJKUMAR

RESPONDENTS/PETITIONER AND RESPONDENTS 1 TO 4:

1. SMT. SATHI GOPINATH, 'SARANG',
ELANKAM GARDENS, VELLAYAMBALAM, THIRUVANANTHAPURAM
REPRESENTED BY HER POWER OF
ATTORNEY HOLDER SMT.SOBHA.V.S, W/O. AJITH KUMAR.S.R
KOUSTHUBHAM, CLIFF HOUSE ROAD, KOWDIAR,
THIRUVANANTHAPURAM.

2. THE STATE OF KERALA, REPRESENTED BY THE
CHIEF SECRETARY TO GOVERNMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

3. THE SECRETARY TO GOVERNMENT,
LOCAL SELF GOVERNMENT DEPARTMENT,
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.

4. THE CHIEF TOWN PLANNER,
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.

5. THE REGIONAL TOWN PLANNER,
REGIONAL TOWN PLANNING OFFICE, THIRUVANANTHAPURAM.

R,R1 BY ADV. SRI.LEO GEORGE
R,R1 BY ADV. SRI.M.RAJENDRAN NAIR
R,R1 BY ADV. SMT.BABITHA THAMBI
R2 TO 5 BY SENIOR GOVERNMENT PLEADER SRI SHYSON P.MANGUZHA

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD
ON 01-09-2015 ALONG WITH W.A.NO.2063/2010, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & P.V ASHA, JJ.

**W.A Nos.2535 of 2009 and
2063 of 2010**

Dated this the 1st day of September, 2015

JUDGMENT

Antony Dominic, J.

W.A.No.2535 of 2009 is filed by the Thiruvananthapuram Corporation against the judgment of the learned Single Judge in Writ Petition No.25473 of 2008. W.A No.2063 of 2010 is filed by the State of Kerala and others challenging the order dismissing R.P.No.374 of 2010 filed by them seeking review of the judgment in the Writ Petition mentioned above.

2. In the Writ Petition, the 1st respondent in these appeals challenged Ext.P3 order passed by the Thiruvananthapuram Corporation rejecting an application made by her power of attorney holder for a building permit on the ground that the proposed construction for which permit was sought for, was impermissible in view of the General Town Planning Scheme prepared by the Government in 1971. There was also a challenge against Ext.P4, the order of the Town

Planner, informing that the area in question is a green strip area.

3. By the judgment under appeal the learned Single Judge, held that the Corporation and the Government cannot rely on the General Town Planning Scheme prepared by the Government in 1971 for the purpose of denying building permit sought for and on that basis, quashing the impugned orders, the Corporation was directed to reconsider the application.

4. Today when the appeals were taken up, the learned counsel for the 1st respondent submitted that the application which led to Ext.P3 was submitted by the power of attorney holder of the 1st respondent on the understanding with the 1st respondent that the power of attorney holder would develop the property on the basis of the permit applied for. It is stated that subsequently due to strained relationship between the parties, that project has been dropped.

5. If as stated by the learned counsel for the 1st respondent, due to difference of opinion between the parties, the very basis on which building permit was applied for, no longer survives. Therefore it is unnecessary to go into merits of the controversy raised in these appeals. On the other hand, if the 1st

respondent herself, being the owner, wants to develop the property on her own, it is upto her to apply for building permit and it is upto the authorities concerned to deal with the application also.

In such circumstances, we dispose of these appeals vacating the findings of the learned Single Judge and leaving it open to the 1st respondent to apply for a building permit in case she desires to obtain any building permit and also clarifying that if any such application is made, it will be upto the authorities to deal with such application in accordance with law.

Sd/-
ANTONY DOMINIC
Judge

Sd/-
P.VASHA
Judge

rtr/

/true copy/

P.S to Judge