IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

WA.No. 2137 of 2015

AGAINST THE JUDGMENT DATED 05-08-2015 IN WP(C) 10905/2015 .
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APPELLANT/IST RESPONDENT IN WPC:

THE DISTRICT TOWN PLANNER,
TOWN PLANNING OFFICE, KANNUR-670 012.

BY SENIOR GOVERNMENT PLEADER SRI.P.I.DAVIS

RESPONDENTS/PETITIONER AND RESPONDENTS 2 & 3 IN WPC:
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1. **SUDHEESHNA, AGED 52 YEARS,**
   W/O SASI, THYKANDI HOUSE, CHAVASSERRY P.O,
   THALASSERY, KANNUR DISTRICT.

2. **MATTANNOOR MUNICIPALITY,**
   REPRESENTED BY ITS SECRETARY,
   MATTANNUR, KANNUR-670 702.

3. **THE SECRETARY,**
   MATTANNOOR MUNICIPALITY,
   MATTANNOOR, KANNUR-670 702.

R1 BY ADV. SRI.S.SHANAVAS KHAN
R2 & R3 BY ADVS. SRI.V.M.SYAM KUMAR
SMT.KRIPA ELIZABETH MATHEWS
SMT.P.FROSY
SMT.DIVYA C.MOHAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 29-10-2015 ALONG WITH WA. 2228/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WA.No. 2137 of 2015

APPENDIX

PETITIONERS' ANNEXURES:

ANNEXURE A : **TRUE COPY OF THE FLOOR AREA STATEMENT SUBMITTED BY THE PETITIONER.**

RESPONDENTS' ANNEXURES: **NIL.**

//TRUE COPY//

P.S. TO JUDGE

mbr/

ASHOK BHUSHAN, C.J. &
A.M.SHAFFIQUE, J.

W.A.Nos.2137 and 2228 of 2015

Dated this the 29th day of October, 2015.

J U D G M E N T

SHAFFIQUE, J.

These appeals have been filed by the District Town Planner and the Mattanur Municipality challenging the judgment dated 5.8.2015 in W.P.(C)No.10905/15. The 1st respondent herein is the writ petitioner who is hereinafter referred to as the 'petitioner'.

2. The petitioner has approached this Court seeking for a direction to the respondents to approve the revised plan submitted by him in respect of the commercial building named 'Links Mall, Mattannoor". The short facts involved in the writ petition would disclose that the petitioner obtained a building permit from the Municipality for the construction of a commercial building having two basement floors, ground and first floor. Thereafter, a revised plan was submitted for the three additional floors. The revised plan was not initially approved and the petitioner was asked to

make the provision for a theatre in terms of the Rules of the Kerala Municipal Building Rules, since the building was put up in the place of a theatre. The petitioner submitted the revised plan and according to the petitioner, despite the repeated request of the petitioner, the revised plan was not sanctioned. By a letter dated 30.10.2014, the District Town Planner had sent Ext.P10 communication to the Secretary of the Municipality and the English translation of which would show the following defects :

> "1) Since the earlier application had been submitted with respect to a commercial building and since a cinema theatre was included in the subsequently submitted plans, the measurement of the theatre has to be specifically mentioned.
>
> 2) The parking with respect to the theatre and the commercial building has to be ascertained separately and should be separately mentioned.
>
> 3) Before permit for construction can be granted, the plans submitted should specifically mention the facilities provided for physically challenged persons.
>
> 4) With respect to the retention of the theatre under Rule 55 (10) of the KMBR, 1999, the documents pertaining to the earlier theatre are to be submitted."

3. The petitioner submitted Ext.P11 letter stating that he had complied with all requirements. However no further action had been taken in the matter. The Municipality by Ext.P12 reminder dated 6.1.2015, submitted that the order is pending before the District Town Planner and further steps can be taken only after the concurrence from the District Town Planner. In the meantime, the petitioner contends that he completed the construction in accordance with the revised plan.

4. The learned Single Judge by the impugned judgment allowed the writ petition and directed the respondents to approve the revised plan submitted by the petitioner.

5. The Municipality as well as the District Town Planner had filed these appeals inter alia contending that the direction issued by the learned Single Judge for approving the revised plan is absolutely baseless. It is stated that the contention raised by the Municipality is that the District Town Planner will have to approve the plan and certain defects have been pointed out and unless the District

Town Planner is satisfied that the defects are cured, the Municipality cannot take a decision to approve the revised plan.

6. The learned Senior Government Pleader appearing on behalf of the District Town Planner submits that the revised plan produced by the petitioner lacks various particulars, especially regarding the percentage of Floor Area Ratio ('FAR'). It is pointed out that the petitioner has constructed a commercial building along with the theatre and it can be considered only as an occupancy for theatre/ assembly hall which comes under Group(D) Assembly occupancy. In that view of the matter, the FAR that could be approved is with reference to the FAR permissible for assembly hall and that it should not exceed 40% ; whereas the total FAR, including the commercial block, will come to 54.68%. That apart, it is pointed out by the learned Government Pleader that sufficient car parking space has not been provided.

7. It is apparent from the aforesaid factual situation that it cannot be disputed that revised plan submitted by the petitioner will have to comply with the provisions of Kerala Municipality Building Rules, 1999. It might be true that the theatre of the petitioner is only occupying less than 7% of the total commercial block. However, these are matters to be verified by the competent authorities and unless the District Town Planner approves the revised plan, it may not be possible for the Municipality to approve the revised the plan. Under such circumstances, when such disparities are brought to the notice of this Court, we do not think that the learned Single Judge was justified in giving direction to grant approval of the revised plan. It is for the District Town Planner to consider the entire issues afresh and take a fresh decision in the matter and the Municipality has to act accordingly. Therefore, the petitioner will have to make suitable modification to the plan to suit the requirements under the Building Rules.

8. In the event, the petitioner submits the revised plan, after removing the defects pointed out by the District Town Planner, the said authority shall consider the revised plan in accordance with the procedure prescribed and thereafter take a decision. On the petitioner approaching the District Town Planner with necessary modification as stated above, the District Town Planner shall consider the same as expeditiously as possible and at any rate within a period of one month from the date of receipt of a copy of the documents.

Writ appeals are disposed of accordingly.

Sd/-
ASHOK BHUSHAN,
CHIEF JUSTICE.

Sd/-
A.M.SHAFFIQUE,
JUDGE.

ami/

//True copy//

P.A. to Judge