

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

WEDNESDAY, THE 14TH DAY OF JANUARY 2015/24TH POUSHA, 1936

WP(C).No. 1259 of 2015 (F)

PETITIONER :

**SUBASH NAIR,
AURA, ERRA 23, ELAVUNGAL ROAD
SAMSKARA JUNCTION, PALARIVATTOM,
ERNAKULAM - 682 025.**

**BY ADVS.SRI.DIPU R.
SRI.BENHUR JOSEPH MANAYANI
SRI.SANAL P. RAJ**

RESPONDENT(S) :

- 1. MUNICIPAL CORPORATION OF THRISSUR
BY AND THROUGH ITS SECRETARY
THRISSUR MUNICIPAL CORPORATION OFFICE, M.O.ROAD
THRISSUR - 680 001.**
- 2. ASSISTANT ENGINEER
VILVATTOM REGION, THRISSUR MUNICIPAL CORPORATION
THRISSUR - 680 001.**

**R1 & R2 BY ADVS. SRI.K.P.VIJAYAN, SC
SRI.V.N.HARIDAS**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 14-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Mn

...2/-

WP(C).No. 1259 of 2015 (F)

APPENDIX

PETITIONERS' EXHIBITS :

- EXT. P1 - TRUE COPY OF THE POSSESSION CERTIFICATE ISSUED TO THE PETITIONER.**
- EXT. P2 - TRUE COPY OF THE ENGLISH TRANSLATION OF EXT. P1.**
- EXT. P3 - TRUE COPY OF THE COMMUNICATION DT. 03.5.14 ISSUED BY THE 2ND RESPONDENT.**
- EXT. P4 - TRUE COPY OF THE ENGLISH TRANSLATION OF EXT. P3.**
- EXT. P5 - PHOTOGRAPHS SHOWING A HOUSE ADJACENT TO PETITIONER'S PROPERTY.**
- EXT. P6 - TRUE COPY OF JUDGMENT IN WPC NO. 31210/2013 DT. 20.2.14.**

RESPONDENT(S)' EXHIBITS : **NIL**

//TRUE COPY//

P.A. TO JUDGE

Mn

C.K. ABDUL REHIM, J.

W.P.(c) No. 1259 OF 2015-F

DATED THIS THE 14th DAY OF JANUARY, 2015.

J U D G M E N T

Application seeking permission for construction of a residential building submitted by the petitioner was rejected by the 2nd respondent showing the reason that the land in question is included in the “Paddy Field” zone under the zonal classification effected in the Master Plan prepared by the 1st respondent Corporation.

2. Contention of the petitioner is that rejection of the building permit application based on the above ground is totally unsustainable. It is stated that, despite inclusion of the zonal classification in the master plan no acquisition proceedings has been initiated in respect of any property in question. It is pointed out that, on an identical situation this court in Ext.P6 judgment had set aside such refusal.

3. Heard; Standing counsel appearing for the respondents.

4. In the decision in **Padmini V. State of Kerala (1999 (3) KLT 465)** it was held by this court that, an application for construction of a building cannot be rejected on the ground that the land is proposed to be acquired or on the ground that the land is included in an area covered under any Town Planning Scheme which is not so far implemented and no acquisition proceedings has been initiated on such scheme. The apex court in **Raju S. Jethmalani and others V. State of Maharashtra and others (2005) 11 SCC 222** it is held that existence of such a scheme could not be a reason for depriving a land owner to enjoy his property.

5. In view of the legal position remaining settled as mentioned above, the reasons mentioned in Ext.P3 cannot be sustained. Hence Ext.P3 is hereby set aside. The respondents are directed to re-consider the application after conducting physical verification of the property and to take an appropriate decision with respect to grant of the permit, taking note of the observations contained herein

above. A decision in this regard shall be taken at the earliest possible, at any rate within a period of one month from the date of receipt of a copy of this judgment.

Sd/-
C.K. ABDUL REHIM
JUDGE

AMG

True copy

P.A. to Judge