

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 6TH DAY OF MARCH 2015/15TH PHALGUNA, 1936

WP(C).No. 2218 of 2015 (B)

PETITIONER:

T.V. MOIDEEN, S/O. ABOOBACKER, AGED 59 YEARS,
RESIDING AT A.T.HOUSE, P.O.MOONNIYUR,
TIRURANGADI, MALAPPURAM-676 314.

BY ADVS.SRI.T.C.SURESH MENON
SRI.P.S.APPU

RESPONDENTS:

CHITTUR - THATHAMANGALAM MUNICIPALITY,
REPRESENTED BY ITS SECRETARY, CHITTER.P.O.,
PALAKKAD-678 101.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
06-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

P1- TRUE COPY OF THE RECEIPT ISSUED BY THE VILLAGE OFFICE,
THATHAMANGALAM DATED 2.5.2014.

P1(a)- TRUE COPY OF THE ENGLISH TRANSLATION OF EXT.P1.

P2- TRUE COPY OF THE POSSESSION CERTIFICATE ISSUED BY THE VILLAGE
OFFICE, THATHAMANGALAM DATED 26.9.2014.

P3- TRUE COPY OF THE ORDER PASSED BY THE RESPONDENT TO THE
PETITIONER DATED 22.12.2014.

P3(a)- TRUE COPY OF THE ENGLISH TRANSLATION OF EXT.P3.

P4- TRUE COPY OF FEW PHOTOGRAPHS DEPICTING THE LIE OF THE PROPERTY
DATED -NIL-

P5- TRUE COPY OF THE JUDGMENT IN W.P[C]NO.1939/14 ON THE FILE OF THIS
HONOURABLE COURT DATED 21.3.2014.

RESPONDENTS' EXHIBITS : NIL

/True Copy/

P.A to Judge.

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 2218 of 2015 (B)

Dated this the 6th day of March, 2015.

JUDGMENT

Heard the learned counsel for the petitioner. Despite service of notice, none appears for the respondent Municipality.

2. The petitioner, being the owner of certain property in Thathamangalam Village of the respondent Municipality, applied for building permit to construct a commercial building. The respondent Municipality has, however, rejected the said application through Ext.P3, assigning the reason that the Council has taken a decision 'to prepare an Interim Development Plan taking in the property under Chapter X of the Kerala Town Planning Ordinance' and submit the same before the Government. Assailing Ext.P3, the petitioner has filed the present writ petition.

3. The learned counsel for the petitioner has strenuously contended that through a plethora of precedents the Hon'ble

Supreme Court as well as this Court has decided the issue conclusively that in anticipation of any future acquisition, no present right of the property owner can be interdicted. In support of his submissions, the learned counsel has placed reliance on Raju S. Jetmalani v. State of Maharashtra and others¹ and also a decision of this Court in Padmini v. State of Kerala². The learned counsel has also brought to my notice Ext.P5 judgment involving an identical issue.

4. On appreciation of the submission made by the learned counsel for the petitioner and on a perusal of the material on record, I am of the considered opinion that the respondent Municipality cannot refuse building permit on the ground that it has proposed to acquire the property of the petitioner in future. Thus, applying the ratio of Raju and Padmini, as well as Ext.P5 judgment of this Court, I deem it appropriate to set aside and accordingly set aside Ext.P3. Consequently, the respondent Municipality is directed to consider the petitioner's application

1 (2005) 11 SCC 222

2 1999(3) KLT 465

afresh and pass appropriate orders thereon, without reference to the proposed acquisition, as expeditiously as possible, at any rate within one month from the date of receipt of a copy of this judgment.

This writ petition is disposed of as above.

sd/- DAMA SESHADRI NAIDU, JUDGE.

