

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 20TH DAY OF JULY 2015/29TH ASHADHA, 1937

WP(C).No. 2383 of 2015 (W)

PETITIONER(S):

1. P.T.PRASANTH,
AGED 49 YEARS, S/O.BALAN,
THAYYIL HOUSE, CHELAVOOR P.O.,
KOZHIKODE DISTRICT, PIN-673 571.
2. SREENIVASAN P.T.,
S/O.MADHAVAN, THAYYIL HOUSE, CHELAVOOR P.O.,
KOZHIKODE DISTRICT, PIN-673 571.

BY ADVS.SRI.BABU JOSEPH KURUVATHAZHA &
SRI.P.T.ABHILASH.

RESPONDENT(S):

KOZHIKODE CORPORATION,
NAGARAM AMSOM - DESOM,
BEECH ROAD, KOZHIKODE,
PIN-673 001,
REPRESENTED BY ITS SECRETARY.

BY SRI.K.D.BABU, SC, KOZHIKODE CORPORATION.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
20-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXT.P1 - TRUE COPY OF THE NOC NO.WB1/KKD/TSY/CAT/01/T-8140/12 DATED 3-10-2013 ISSUED TO THE 2ND PETITIONER BY THE DIVISIONAL FOREST OFFICER KOZHIKODE.
- EXT.P2 - TRUE COPY OF THE CONSENT TO OPERATE DATED 12-12-2013 VALID UP TO 30-6-2016 ISSUED BY THE KERALA STATE POLLUTION CONTROL BOARD.
- EXT.P3 - TRUE COPY OF THE LICENCE DATED 30-12-2013 ISSUED BY THE DIRECTOR OF FACTORIES AND BOILERS VALID UP TO 31-12-2014.
- EXT.P4 - TRUE COPY OF THE ENQUIRY REPORT BEARING NO.19/14 OF THE VILLAGE OFFICER CHELAVOOR VILLAGE.
- EXT.P5 - TRUE PHOTOCOPIES OF THE CONSENT/NOC GIVEN BY THE PEOPLE WHO ARE RESIDING WITHIN 200 METERS OF THE PROPOSED SITE OF THE 1ST PETITIONER.
- EXT.P6 - TRUE COPY OF THE ORDER DATED 27-11-2014 ISSUED BY THE RESPONDENT WITH ENGLISH TRANSLATION.
- EXT.P7 - TRUE COPY OF THE DEVELOPMENT PLAN (GENERAL TOWN PLANNING SCHEME) FOR CALICUT URBAN AREA PUBLISHED AS PER NOTIFICATION NO.GO(MS) 159/07/LSGD DATED 16-6-2007.
- EXT.P8 - TRUE COPY OF THE ZONING REGULATIONS PUBLISHED ALONG WITH EXT.P7.
- EXT.P8 (A) - TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN NASAR V. MALAPPURAM MUNICIPALITY (2009(3) KLT 92).
- EXT.P9 - TRUE COPY OF THE REPRESENTATION DATED 5-1-2015 SUBMITTED BY THE 1ST PETITIONER BEFORE THE RESPONDENT.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No.2383 of 2015

Dated this the 20th day of July, 2015.

JUDGMENT

Ext.P6, by which the petitioners' application for building permit was rejected, is under challenge.

2. The petitioners allege that the second petitioner enjoys Ext.P1 NOC from the Forest Department and Ext.P2 consent to operate from the Pollution Control Board and all other statutorily required permits/licences for running the saw mill owned by him. On the basis of the agreement dated 3.7.2014 entered into between the petitioners, the second petitioner authorized the first petitioner to transfer/shift the machineries of the saw mill owned by the second petitioner covered by Exts.P1 to P3. It was in the above circumstances, the first petitioner submitted the application dated 4.8.2014 before the respondent, complying with all the conditions of Section 448 of the Kerala Municipality Act, 1994, for establishing the factory/work place and for erecting machineries. As per Section 448 (3) of the said Act, it is necessary to dispose of the said application within the outer

limit of 45 days and when the application was not disposed, the applicant would enjoy the deemed licence, as contemplated under Section 492 (15) of the Act. The application dated 4.8.2012 submitted by the petitioner before the respondent was not disposed of within the statutory limit of 45 days, as contemplated under section 448 (3) of the Act and hence the first petitioner enjoys the deemed licence; it is alleged. However, without any just and sustainable reason, the respondent issued Ext.P6 order dated 27.11.2014 rejecting the application dated 4.8.2014 relying on Ext.P7 town planning scheme. Absolutely, no piece of property has been acquired in pursuance to the said scheme so far and when the first petitioner enjoys the deemed permits/licences, by virtue of Section 492(15) of the Act, Ext.P6 proceeding of the respondent is void ab-initio. It is with this background, the petitioner has come up before this Court.

3. Arguments have been heard.

4. The learned counsel for the petitioners invited my attention to a Division Bench decision of this Court in **Padmini**

v. **State of Kerala** [1999 (3) KLT 465], wherein it was held that no building permit can be refused to any person because there is a proposal to acquire the land in future. Reliance was also placed to the decision of the apex court in **Raju S. Jethmalani** v. **State of Maharashtra** [(2005) 11 SCC 222], wherein it was held that refusing to grant permits relying on obsolete DTP schemes is a clear violation of the provisions of the Constitution. Viewed in that profile, this Court is of the view that the petitioners are entitled to get the reliefs prayed for.

Therefore, the writ petition is allowed.

Ext.P6 is set aside and the respondent corporation is directed to reconsider petitioners' application for building permit within a period of one month from the date of receipt of a copy of this judgment in the light of what has been stated above.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.