

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

WP(C).No. 2824 of 2015 (C)

PETITIONER:

SMITHA SANTHOSH, TC.6/833, ASWANI,
AKKULAM, THURUVICKAL P.O.,
THIRUVANANTHAURAM-32.

BY ADVS.SRI.L.MOHANAN
SMT.LIGEY ANTONY

RESPONDENTS:

1. STATE OF KERALA REP. BY THE SECRETARY,
LOCAL ADMINISTRATION, GOVERNMENT SECRETARIAT,
THIRUVANANTHAURAM-695 001.
2. CORPORATION OF THIRUVANANTHAPURAM
REP. BY ITS SECRETARY, CORPORATION OFFICE,
THIRUVANANTHAPURAM-695 003.
3. CHIEF TOWN PLANNER,
REGIONAL TOWN PLANNING OFFICE,
THIRUVANANTHAPURAM-695 003.

R1 & R3 BY GOVERNMENT PLEADER SMT.C.K.SHERIN
R2 BY SRI.P.K.MANOJKUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
05-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 2824 of 2015 (C)

PETITIONER'S EXHIBITS :

EXHIBIT P1: COPY OF THE SETTLEMENT DEED NO.2637/2012 & TRANSLATION

EXHIBIT P2: COPY OF THE TAX RECEIPT DATED 22.5.2014 AND TRANSLATION.

EXHIBIT P3: COPY OF THE PLAN ALONG WITH APPLICATION FOR THE BUILDING PERMIT.

EXHIBIT P4: COPY OF THE LETTER REJECTING APPLICATION FOR BUILDING PERMIT ALONG WITH THE LETTER FROM THE CHIEF TOWN PLANNER DATED 19.9.2014 AND TRANSLATION.

EXHIBIT P5: COPY OF THE BASIC TAX REGISTER AND TRANSLATION.

EXHIBIT P6: COPY OF THE GAZETTE NOTIFICATION (RELEVANT PAGES) DATED 14.12.09.

EXHIBIT P7: COPY OF THE JUDGMENT DATED 12.7.2006 IN OP 34791/2001.

EXHIBIT P8: COPY OF THE JUDGMENT DATED 12.7.2006 IN WPC 16291/2012.

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.A. TO JUDGE

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 2824 of 2015 (C)

Dated this the 5th day of March, 2015.

JUDGMENT

Heard the learned counsel for the petitioner, the learned Government Pleader and the learned Standing Counsel for the respondent Corporation, apart from perusing the record. Since the issue lies in a narrow compass, this Court proposes to dispose of the writ petition at the admission stage itself.

2. The petitioner, being the owner in possession of 3.44 Ares of land in re-survey No. 174/7-1 of Cheruvakkal village, submitted Ext.P3 application to the second respondent Corporation for building permit. The respondent Corporation, in turn, in compliance with the statutory terms, has forwarded the said application for the concurrence of the 3rd respondent, the Chief Town Planner. Eventually, the 3rd respondent issued Ext.P4. Thus, based on the communication dated 19.09.2014 issued by the 3rd respondent, the respondent Corporation rejected the building permit through its communication with

reference No. ZUE2/BA-407/12, undated though. Assailing Ext.P4, the petitioner has filed the present writ petition.

3. The learned counsel for the petitioner has brought to my notice Ext.P6 gazette notification issued by the first respondent showing that the petitioner's property is a residential plot with a private road. According to him, in the face of Ext.P6, the initial refusal of concurrence by the 3rd respondent and the subsequent rejection by the respondent Corporation through Ext.P4 cannot be sustained.

4. The learned Senior Counsel for the respondent Corporation, to his credit, has candidly submitted that Ext.P4 refusal of concurrence by the 3rd respondent cannot be sustained, because there could not have been any legal impediment on a mere premise that there are no residential buildings in the vicinity. What matters, according to the learned Senior Counsel, and in the view of this Court as well, is the nature of the land rather than the incidence of construction in the vicinity.

5. The learned Government Pleader has, however, submitted that the 3rd respondent will take Ext.P6 into account and pass revised orders, in the face of earlier proceedings dated 19.09.2014.

In the facts and circumstances, Ext.P4 is set aside. Consequently, the 3rd respondent is directed to re-consider the application forwarded by the respondent Corporation for concurrence and pass appropriate orders thereon. It is further made clear that once the respondent Corporation receives the necessary communication from the 3rd respondent, it shall proceed further with the petitioner's application and pass orders thereon as expeditiously as possible, at any rate within 30 days from the date of receipt of a copy of this judgment.

sd/- DAMA SESHADRI NAIDU, JUDGE.

