

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 16TH DAY OF JULY 2015/25TH ASHADHA, 1937

WP(C).No. 2967 of 2015(U)

PETITIONER:

DR.SURESH JOHN,
PULICKAPARAMBIL, CHEGALAM SOUTH P.O.,
KOTTAYAM

BY ADV.SRI.V.G.ARUN
SRI.T.R.HARIKUMAR
SMT.SARITHA THOMAS

RESPONDENTS:

1. THE KOTTAYAM MUNICIPALITY,
REPRESENTED BY ITS SECRETARY, KOTTAYAM 686001
2. THE DISTRICT TOWN PLANNER,
KOTTAYAM - 686001
3. THE CHIEF TOWN PLANNER,
THIRUVANANTHAPURAM 695 001
4. STATE OF KERALA REPRESENTED BY THE SECRETARY,
LOCAL SELF GOVERNMENT DEPARTMET
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001

BY ADV. SRI.PHILIP J.VETTICKATTU, SC FOR R1
BY ADV. GOVT.PLEADER, SMT.AJITHA RAVEENDRAN FOR R2 TO R4

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
16.07.2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: A TRUE COPY OF POSSESSION CERTIFICATE DATED 18.2.2014
BEARING NO.373/2014 ISSUED BY THE VILLAGE OFFICER,
MUTTAMBALAM

EXT.P1 (a) : COPY OF ENGLISH TRANSLATION OF EXHIBIT P1

EXT.P2: A TRUE COPY OF THE BASIC TAX REGISTER IN FORM F IN
RESPECT OF THE PETITIONER'S LAND

EXT.P2 (a) : COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P2

EXT.P3: A TRUE COPY OF THE BASIC TAX RECEIPT DATED 11.02.2014
BEARING NO. 5948831

EXT.P4: A TRUE COPY OF THE PHOTOGRAPHS OF THE PETITIONER'S
LAND

EXT.P5: A TRUE COPY OF THE MEMO DATED 10.6.2014 ISSUED BY THE
FIRST RESPONDENT

EXT.P5 (a) : COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P6

EXT.P6: A TRUE COPY OF THE G.O.(P) NO.219/2008/LSGD, DATED
04.08.2008

RESPONDENTS' EXHIBITS: Nil

//TRUE COPY//

PA TO JUDGE

PtK/

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 2967 of 2015

Dated this the 16th day of July, 2015.

JUDGMENT

Ext.P5, by which the petitioner's application for building permit was rejected, is under challenge.

2. The petitioner is the owner in possession of 27.25 Ares of land in Muttambalam Village. The petitioner's property is situated by the side of the Chalukunnu - Chungam road and lies in close proximity to the CMS High School, Kottayam. The petitioner alleges that over the years, the entire area has been developed into a fully commercial area with multi-storied buildings constructed by the commercial establishments. The petitioner's land is a garden land in which no agricultural operations has been carried out for so many years. Being desirous of conducting a hospital in his property, the petitioner submitted an application before the first respondent municipality seeking permission for construction of a hospital building. To the surprise and dismay of the petitioner, the

second respondent refused to grant permit to the petitioner, placing reliance on G.O.(P) No.219/2008/LSGD dated 4.8.2008. It is submitted that refusal to grant permission to the petitioner is legally not sustainable and is also discriminatory. Multi-storied commercial building owned by Deshabhimani Publications is situated adjacent to the petitioner's land and pursuant to a query raised by the petitioner under the Right to Information Act, the Information Officer of the first respondent has issued a reply stating that the office of the Deshabhimani news paper is situated in the green zone. Moreover, Ext.P6 Government order is issued without authority and without taking into consideration the actual fact situation. Had the fact situation been taken into consideration, the Government would not have issued Ext.P6 order, since the declaration of a fully commercial area, where there is no possibility of carrying out any agricultural operation, the idea to have an agricultural zone militates against common sense. The refusal to grant permit to the

petitioner based on an unsustainable order is in violation of the rights guaranteed to the petitioner under Article 14, 19, 21 and 300 A of the Constitution of India; it is alleged. It is with this background, the petitioner has come up before this Court.

3. Arguments have been heard.

4. The learned counsel for the petitioner 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.P5 is set aside and the respondent municipality is directed to reconsider petitioner's 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.