

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

THURSDAY, THE 30TH DAY OF JULY, 2015/8TH SRAVANA, 1937

W.P.(C).No. 4050 of 2014 (E)

PETITIONER(S):

1. HAVVA T.P, AGED 65 YEARS,
W/O LATE ABOOBAKER, PANNIKANDATHIL HOUSE,
PAN BAZAR, TIRUR,
MALAPPURAM DISTRICT.
2. SEBEEBA, AGED 32 YEARS,
D/O LATE ABOOBAKER, PANNIKANDATHIL HOUSE,
PAN BAZAR, TIRUR,
MALAPPURAM DISTRICT.
3. SHAVAD.P, AGED 29 YEARS,
D/O LATE ABOOBAKER, PANNIKANDATHIL HOUSE,
PAN BAZAR, TIRUR,
MALAPPURAM DISTRICT.
4. SABIRA, AGED 26 YEARS,
D/O LATE ABOOBAKER, PANNIKANDATHIL HOUSE,
PAN BAZAR, TIRUR,
MALAPPURAM DISTRICT.

BY ADVS.SRI.M.I.JOHNSON
SMT.N.DEEPA

RESPONDENT(S):

TIRUR MUNICIPALITY,
MUNICIPAL OFFICE BUILDING, TIRUR (P.O)
MALAPPURAM DISTRICT REPRESENTED BY ITS SECRETARY -PIN- 676 101

*ADDL. 2ND RESPONDENT

THE DISTRICT COLLECTOR,
MALAPPURAM.

* IS SUO MOTU IMPEADED AS ADDITIONAL 2ND RESPONDENT BY
JUDGMENT DATED 30.07.2015 IN W.P.(C) NO.4050 OF 2014.

R1 BY ADVS. SRI.GILBERT GEORGE CORREYA
SRI.P.K.VIJAYAMOHANAN, STANDING COUNSEL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24.07.2015,
THE COURT ON 30.07.2015 DELIVERED THE FOLLOWING:

P.T.O.

W.P.(C).No. 4050 of 2014 (E)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 TRUE COPY OF THE PARTITION DEED NO.2990/1999 OF SRO TIRUR.

**EXHIBIT P2 TRUE COPY OF THE DRAFT DATA BANK PERTAINING TO
THRIKKANDIYUR VILLAGE, PREPARED BY THE AUTHORIZED OFFICER
UNDER THE CONSERVATION OF PADDY LAND AND WET LAND ACT
2008.**

**EXHIBIT P3 TRUE COPY OF THE INTIMATION DATED 08-11-2013 ADDRESSED TO
THE IST PETITIONER, ISSUED BY THE RESPONDENT MUNICIPALITY.**

RESPONDENT'S EXHIBITS:

**EXHIBIT R1(A): TRUE COPY OF THE SPECIFICATION OF THE BUILDING
FURNISHED ALONG WITH THE APPLICATION.**

//TRUE COPY//

P.S. TO JUDGE

St/-

C.R.

SHAJI P. CHALY, J.

W.P.(C) No.4050 of 2014

Dated this the 30th day of July, 2015

J U D G M E N T

This writ petition is filed by the petitioners seeking to quash Ext.P3 order passed by the Respondent-Municipality declining permit for construction of a basement plus two storied building applied for by the petitioners.

2. Brief facts required for disposal of the writ petition are as follows:

3. Petitioners are the owners in possession of 7.5 cents of property comprised in Re-survey No.213/2 of Thrikkandiyur Village, Malappuram District. Petitioners became vested with the said property as per registered Partition Deed bearing No.2990/1999 of the office of the Sub Registrar, Tirur. The said property was a paddy field ('nilam') earlier and immediately after the registration of the above partition deed, the same was filled up and converted as a garden land. This fact of developing the land by conversion of the same from paddy field to garden land is proved by Ext.P2 Data Bank prepared under the Kerala Conservation of Paddy Land and

Wetland Act No.28 of 2008 (for short, Act No.28 of 2008). It was also contended that the remaining properties abutting the property of the petitioners are all developed into garden land even at the time of the above mentioned partition deed.

4. It was further contended that in order to put up a residential building in the aforesaid property, they had applied for a building permit to the Municipality. But the Respondent Municipality rejected the application for building permit stating that the property is narrated as "Nanja" as per the possession certificate issued by the Village authorities and further that the road included in the DTP Scheme Map-I named as CC Road with 12 meters width was proposed through the property of the petitioners. Therefore, on both the above grounds, the permit sought for by the petitioners for construction of the building was declined by the Municipality as per Ext.P3 order dated 08.11.2013. It is thus aggrieved by the said order, the petitioners have approached this Court seeking to quash Ext.P3 and for other related reliefs.

5. The Municipality has filed a counter affidavit virtually supporting the stand taken in Ext.P3 order and also contended that there was no illegal action on the part of the

Municipality in order to grant permit to the petitioners to carry out the construction of the building proposed. What I understand from the contentions put forth by the Respondent was that since under the possession certificate, the property is described as 'Nanja', [according to Counsel for the petitioners, 'Nanja' means a low lying 'Nilam' (paddy field)] and further that there is a road proposed as per the Detailed Town Plan Scheme (D.T.P. Scheme), they are unable to grant permission to the petitioners to put up construction of the multi-storied building. The Respondent has also contended that as per the permit sought for, the building has basement plus two floors, and same is a commercial building and therefore the contention of the writ petitioners that they have submitted the application and plan for a residential building was not true or correct. It was also contended that under the D.T.P Scheme, the property of the petitioners is situated in a mixed zone and therefore they are not entitled to carry out the construction of a commercial building in the said zone.

6. Heard Sri. M.I.Johnson, learned counsel appearing for the petitioners and Sri.P.K.Vijayamohanan, learned Standing Counsel for the Municipality.

7. On perusal of Ext.P3 impugned order passed by the Respondent, permit was declined on two grounds:

(1) the possession certificate produced along with the application for permit shows that the property is "Nanja"; and

(2) the property for which the petitioners sought permission for construction of the building is included in the Map-I of Detailed Town Planning Scheme for the purpose of construction of a road in 12 meters width named as CC Road.

8. In order to ascertain the situation as comprehended by the Respondent in its counter affidavit, I have gone through the same and found that the Respondent has not disputed the contention put forth by the petitioners that the property was developed prior to the introduction of Act No.28 of 2008 by the State Government, but contended that even if the land was converted so, no permission was sought for conversion of the same and therefore the Municipality had no obligation to grant permit to the petitioners. On verification of Ext.P2 Draft Data Bank prepared by the Trikkandiyur Village, which is not disputed by the Respondent, the Survey No.213/2 that is the property belonging to the petitioners is included in Sl.No.739 and in the column against to which the approximate date of

conversion is mentioned, it is shown that "above 10-15 years". Therefore, according to the Data Bank prepared, the petitioners property is converted as a dry land prior to the introduction of Act No. 28 of 2008, and the property is incorporated in the data bank prepared under said Act knowing fully well that the same was a converted land prior to the introduction of the Act. But, that by itself will not enable the petitioners to seek permit since for the purpose of use of land for a different purpose, petitioners require appropriate sanction from the authority under the Kerala Land Utilization Order, 1967 (for short, 'K.L.U.O').

9. Under these circumstances, the learned counsel for the petitioners has invited my attention to the judgment of the Hon'ble Apex Court in '**Revenue Divisional Officer v. Jalaja Dileep**' [2015 (1) KLT 984 (SC)], in order to canvass for the proposition that the properties which are already developed and converted as dry land prior to the introduction of Act No.28 of 2008 does not suffer from any disqualification for carrying out construction activities as prohibited under Act No.28 of 2008. It was further contended by the learned counsel that the Hon'ble Apex Court has not prohibited the

construction of buildings in such properties but only stipulated that consequent to conversion, such alteration of the nature of the property shall be got approved by making appropriate applications before the authority under the K.L.U.O, 1967. In order to evaluate the situation properly, it is only proper that paragraph 17 of the said judgment is extracted here:

"17. "Paddy land" and "Wetlands" are defined under Sections 2(xii) and 2(xviii) of the Act respectively. As per Section 5(4), the Committee shall inter alia prepare a Data Bank with details of cultivable paddy land within the jurisdiction of the Committee. If the land is not included in the Data Bank or Draft Data Bank prepared under the Kerala Cultivation of Paddy Land and Wetland Act, 2008 and if it is not a "Paddy land" or "Wetland" as defined under Act 28 of 2008, at the time of commencement of the Act 12 (sic Act 28) of 2008 and the classification of land is noted as "Nilam" in the revenue records, the provision of Kerala Land Utilization Order, 1967 will be applicable to such land and the Collector as defined in Clause 2(a) of K.L.U. Order 1967 has the power to grant permission to utilize the land for other purposes. As stated in Clause 2(a) of K.L.U. Order, Collectors shall examine such request for residential purpose, on merits on a case to case basis.

x	x	x	x	x	x	x
x	x	x	x	x	x	x"

10. Therefore, on a reading of paragraph 17 of the said judgment, it is categoric and clear that a 'Nilam' (paddy field) or wet land which was developed before the introduction of Act No. 28 of 2008, the land will not be imposed with any prohibition contemplated under Act 28 of 2008. But, such property owners will have to make suitable applications to the competent authority under K.L.U.O, 1967 for utilizing such lands for other purposes. The Hon'ble Apex Court has also directed the Collectors discharging functions under the K.L.U.O shall examine such requests on merits and on a case to case basis and take appropriate decision.

11. After rendering so, in paragraph 18 of the said judgment, it was held that if a property is included in the Data Bank or the draft Data Bank prepared under Act No.28 of 2008 as a "paddy land" or "wet land" and the classification of the land is noted as "Nilam" in revenue records, the provisions of Act No. 28 of 2008 would apply. Further, it was held that there is ample provision within the Act itself to grant permission for such land for residential purpose or public purpose as defined in the Act and as elaborated if the property is not included in the data bank as 'paddy land' or 'wet land' as

defined under Act No. 28 of 2008, it is still governed by the provisions of K.L.U.O, 1967. In that view of the matter, I am of the considered opinion that admittedly the property under which the construction is sought for is a converted land prior to the introduction of Act No. 28 of 2008 as is evident from Ext.P2 Data Bank prepared by the appropriate authority under Act No.28 of 2008, which aspect is also not disputed by the Respondent specifically in the counter affidavit.

12. In that circumstances, learned counsel for the petitioners has also brought my attention to the judgment of a learned Single Judge of this Court in '**Beena Johnson v. Revenue Divisional Officer, Idukki and Another**' [2015 (3) KHC 727], wherein the very same question with regard to the land utilization order was considered taking into account the various judgments rendered by this Court under the subject issue and also the judgment of the Hon'ble Apex Court cited *supra*. The learned Single Judge, after appreciating the circumstances, held in paragraph 22 as follows:

"22. x x x x x x x

However the fact remains that in the BTR, the land is described as 'Nilam'. In such circumstance, the petitioner would have to make an application under the

KLUO before the Sub Collector and on such application being made, the same shall be considered in accordance with law and in accordance with the observations made herein above."

13. Therefore, taking into account all these circumstances, I am of the considered opinion that so far as the first reason contained in Ext.P3 with regard to the description of the land in the possession certificate as "Nanja" is concerned, the petitioners can rectify the same by filing suitable application before the appropriate authority under the K.L.U.O and secure such permission.

14. So far as the next question with regard to the inclusion of the property in the Detailed Town Planning Scheme and the mixed zone was concerned, even according to the Municipality, the property was situated in a mixed zone. Therefore that by itself shows that the petitioners were entitled to put up construction of commercial building and in that view of the matter, the contention made by the Respondent Municipality that since the area is a mixed zone and not a commercial zone, the petitioners are not entitled to put up commercial structure cannot be said to be correct. Anyhow, I am not entering into a finding on that factual

aspect, which can be settled by the Municipality on verification of the application for permit and the plan submitted by the petitioners.

15. But, again, it was contended by the Municipality that since under the D.T.P. Scheme, a road is proposed viz. C.C. Road with 12 meters width as per G.O.(P) No.179/92/LAD dated 02.07.1992, permit could not be granted and therefore they were right in rejecting the application seeking permit.

16. Learned counsel for the petitioners, to meet the said contention put forth by the Municipality, has invited my attention to the judgment of the Hon'ble Apex Court in '**Raju S. Jethmalani and Others v. State of Maharashtra and Others**' [(2005) 11 SCC 222] = [2005 KHC 1983] and contended that merely because a Town Planning Scheme was launched by the State Government on the basis of old Town Planning Act the Scheme cannot be pressed into service for the purpose of declining permit to the petitioners. In the said case, Hon'ble Apex Court was considering the question of the inclusion of the land in development Plans and the parameters required for sustaining such Schemes and I think it is only appropriate that the relevant portion of paragraph 3 of the said

judgment is extracted for a proper evaluation of the findings.

"3. x x x x x x
 x x x x x x

The question is whether without acquiring the land the Government can deprive a person of his use of the land. This in our opinion, cannot be done. It would have been possible for the Municipal Corporation and the Government of Maharashtra to acquire the land in order to provide civic amenities. But the land in question has not been acquired. We are quite conscious of the fact that the open park and garden are necessary for the residents of the area. But at the same time we cannot lose sight of the fact that a citizen is deprived of his rights without following proper procedure of law.

 x x x x x x
 x x x x x x"

17. The principle that was evolved by the Hon'ble Apex Court in the said judgment was that in order to implement the development plan, the land should be acquired by the State Government or Municipal Corporation to effectuate the public purpose and the land owner cannot be deprived from using the property for any other purpose under the guise of the Town Planning Scheme. So also, learned counsel invited my attention to the judgments of this Court in '**Abdul Kabeer v. Malappuram Municipality**' [2012 (3) KLT 106], '**Muhammed Subair v. Corporation of Kozhikode**' [2015

(2) KLT 757] and '**Muthoot Finance Ltd. (M/s.), Kochi v. Corporation of Cochin and Others**' [2015 (2) KHC 491] and contended that in all the judgments cited *supra*, this Court considered the question of development plans vis-a-vis the right of the Municipality to deprive the properties from being developed in the guise of D.T.P Scheme. In those judgments, this Court has categorically held that no property right can be interdicted and *ipso facto* no building permit can be refused on the basis of D.T.P. Scheme or on a mere proposal for acquisition of land. So also, the aspect of construction being carried out in a mixed zone was also considered in '**Muthoot Finance Ltd. case**' (*supra*) and held in paragraph 18 as follows:

"18. *Indeed, it is not disputed that the area is densely constructed, albeit, after due sanction from the respondent Corporation; nor is it disputed that the area comes under mixed use. But the fact remains that the survey numbers in which the petitioner's property is situated lie in 'Ground and Public Open Space Zone'. The property in question is shown in Kochi City Structure Plan as a place earmarked for public utility. It is axiomatic that in any master plan, various areas may be marked as public utility places or as lung spaces or recreational open spaces. The places thus shown may belong to the Corporation or to any individuals. To sub-*

serve the public purpose, the properties owned by individuals, having been earmarked for public use, are, in fact, required to be acquired before they could be dedicated for the declared purpose. In the present instance, no acquisition proceedings have been initiated."

18. So also, in the decision reported in '***Padmini v. State of Kerala***' [1999 (3) KLT 465], it was held in paragraph 8 that in the instant case it is not in dispute that there was no proposal to acquire the land in question on the date of the appellant's submitting the application for permission to construct a residential building on 16.01.1996 or when he again applied for permission to construct the building on 23.12.1997 which was rejected by the Municipality by the endorsement as contained in Ext.P3 and no notification under Sec.4(1) of the Act was issued. Therefore, the Municipality had no authority to reject the application on the ground that the land is proposed to be acquired. Therefore, on an appreciation of the factual situation contained in this case, it is therefore clear that as on the date of submitting the application seeking permission to construct building in the case on hand, there was no proposal for acquisition as contemplated under law.

19. After appreciating the entire facts and circumstances and the principles laid down in the aforesaid judgments, I am of the considered opinion that the Respondent Municipality is not at liberty to saddle the petitioners by the proposed public purpose provided under a D.T.P. Scheme, without the land being acquired by the State Government or the Municipality for the purpose notified under the Scheme.

20. So also, by virtue of Article 300A of the Constitution, a civil right is conferred on every property owner to possess the property and the same cannot be deprived without authority of law. The Hon'ble Apex Court had occasion to consider the said question in '**Bishamber v. State of Uttar Pradesh**' [AIR 1982 SC 33] and it was held in paragraph 41 thus:

"41. There still remains the question whether the seizure of wheat amounts to deprivation of property without the authority of law. Art. 300A provides that no person shall be deprived of his property save by authority of law. The State Government cannot while taking recourse to the executive power of the State under Art. 162, deprive a person of his property. Such power can be exercised only by authority of law and not by a mere executive fiat or order. Article 162, as is

clear from the opening words, is subject to other provisions of the Constitution. It is , therefore, necessarily subject to Art. 300A. The word 'law' in the context of Art. 300A must mean an Act of Parliament or of a State Legislature, a rule, or a statutory order, having the force of law, that is positive or State-made law.

x x x x x x x
x x x x x x x".

21. In yet another decision in '**Jilubhai Nanbhai Khachar & Others v. State of Gujarat & Others**' [AIR 1995 SC 142], the Hon'ble Apex Court had occasion to consider the extent of right conferred on a citizen under Article 300A of the Constitution and held in paragraphs 32 and 48 as follows:

"32. In Subodh Gopal's case [AIR 1954 SC 92] Patanjali Sastri, C.J., held that the word 'deprived' in Cl. (1) of Art. 31 cannot be narrowly construed. No cut and dry test can be formulated as to whether in a given case the owner is deprived of his property within the meaning of Art.31; each case must be decided as it arises on its own facts. Broadly speaking it may be said that an abridgment would be so substantial as to amount to a deprivation within the meaning of Art. 31, if, in effect, it withheld the property from the possession and enjoyment by him or materially reduced its value. S.R. Das, J. as he then was, held that Cls. (1) and (2) of Art. 31 dealt with the topic of 'eminent domain', the expressions 'taken possession of' or 'acquired' according

to Cl. (2) have the same meaning which the word 'deprived' used in Cl. (1). In other words, both the clauses are concerned with the deprivation of the property; taking possession of or acquired used in Cl.(2) is referable to deprivation of the property in Cl.(1). Taking possession or acquisition should be in the connotation of the acquisition or requisition of the property for public purpose. Deprivation specifically referable to acquisition or requisition and not for any and every kind of deprivation. In Dwarka Das Srinivas of Bombay v. Solapur Spinning and Weaving Co. Ltd., 1954 SCR 674: (AIR 1954 SC 119), Mahajan, J., as he then was, similarly held that the word 'deprived' in Cl. (1) of Art. 31 and acquisition and taking possession in Cl.(2) have the same meaning delimiting the field of eminent domain, namely, compulsory acquisition of the property and given protection to private owners against the State action. S.R. Das, J. reiterated his view held in Subodh Gopal's case (AIR 1954 SC 92), Vivian Bose, J. held that the word 'taken possession of' or 'acquired' in Art. 31(2) have to be read along with the word 'deprived' in Cl.(1). Taking possession or acquisition amounts to deprivation within the meaning of Cl.(1). No hard and fast rule can be laid down. Each must depend on its own facts. The word "law" used in Art. 300A must be an Act of Parliament or of State Legislature, a rule or statutory order having force of law. The deprivation of the property shall be only by authority of law, be it an Act of Parliament or State Legislature, but not by executive fiat or an order. Deprivation of property is by acquisition or requisition or

taken possession of for a public purpose."

"48. The word "property" used in Article 300A must be understood in the context in which the sovereign power of eminent domain is exercised by the State and expropriated the property. No abstract principles could be laid. Each case must be considered in the light of its own facts and setting. The phrase 'deprivation of the property of a person' must equally be considered in the fact situation of a case. Deprivation connotes different concepts. Art. 300A gets attracted to an acquisition or taking possession of private property, by necessary implication for public purpose, in accordance with the law made by the Parliament or of a State Legislature, a rule of a statutory order having force of law. It is inherent in every sovereign State by exercising its power of eminent domain to expropriate private property without owner's consent. Prima facie, State would be the Judge to decide whether a purpose is a public purpose. But it is not the sole Judge. This will be subject to judicial review and it is the duty of the Court to determine whether a particular purpose is a public purpose or not. Public interest has always been considered to be an essential ingredient of public purpose. But every public purpose does not fall under Art. 300A nor exercise of eminent domain and acquisition or taking possession under Art. 300A. Generally speaking preservation of public health or prevention of damage to life and property are considered to be public purposes. Yet deprivation of property for any such purpose would not amount to acquisition or possession taken under Art. 300A. It

would be by exercise of the Police power of the State. In other words, Art. 300A only limits the power of the State that no person shall be deprived of his property save by authority of law. There is no deprivation without any sanction of law. Deprivation by any other mode is not acquisition or taking possession under Art. 300A. In other words, if there is no law, there is no deprivation. Acquisition of mines, minerals and quarries is deprivation under Article 300A."

22. Therefore, going by the law laid down by the Hon'ble Apex Court, it is categoric and clear that either without acquisition or requisition or taken possession of for a public purpose, no citizen can be deprived of his property.

23. So far as a property whether immovable or movable is concerned, it is a precious and proud possession of a citizen and he is entitled to enjoy the same by utilising it in a manner suitable to him by respecting the authority propounded under law. According to me, such a right was conferred under the Constitution with the avowed object to deprecate inhuman attitude of the State or other authorities against interfering in the right of a citizen over his property without authority of law. Therefore such civil right of the property owners cannot be deprived by asserting futuristic public purpose, without the same being acquired either by the State Government or the

Municipality. Moreover, the owner of the property is entitled to enjoy the same during his life time and if the development of the property is deprived on the basis of alleged D.T.P. Scheme proposed either by the Government or by the Municipality and continuance of the same indefinitely, no person may be entitled to enjoy the property putting it to profitable use during his life time. Therefore, according to me, the Respondent Municipality cannot be allowed to take such a stringent stand so as to fetter the right of the petitioners from developing their property in accordance with the Municipal Building Rules.

24. Moreover, the State and other authorities are duty bound to act fairly to the citizens as envisioned under Article 14 of the Constitution. The State or any of the authorities are not at liberty to prohibit an owner of a property from using or utilising the same without resorting to acquisition of the property in a manner known to law, without which, such actions become arbitrary and therefore interferes with the fundamental right conferred to a citizen under Article 14 of the Constitution. In fact, Article 300A of the Constitution provides protection to a citizen from being deprived of the property otherwise than the authority of law. Bearing in mind the legal

principles evolved by the Courts *supra* and tested the same against the facts of this case, it is clear that the Respondent Municipality went wrong in rejecting the application of the petitioners seeking permission to construct a building in the property owned by the petitioners under the pretext of D.T.P. Scheme.

25. The learned Standing Counsel for the Respondent-Municipality has also brought my attention to Rule 3A of the Kerala Municipality Building Rules and contended that consequent to the introduction of Rule 3A with effect from 16.12.2009, the D.T.P. Scheme launched by the State Government is protected, since as per the said rule, the provisions or regulations in any Town Planning Scheme (in force) under the Town Planning Acts shall prevail over the respective provisions of the K.M.B.R.

26. In order to understand the real purport of Rule 3A of the Kerala Municipality Building Rules, 1999, Rule 3 and 3A is extracted hereunder:

*"3. Applicability.-- These rules shall apply to,--
(i) any public or private building described
below, namely;-*

(a) where a building is newly erected, these rules shall apply to the designs and construction of the building;

(b) where the building is altered, these rules shall apply to the altered portion of the building;

(c) where the occupancy or use of a building is changed, these rules shall apply to all parts of the building affected by the change;

(d) where addition or extension is made to a building, the rules shall apply to the addition or extension only, but for calculation of floor area ratio and coverage permissible and for calculation of required off street parking area to be provided, the whole building (existing and the proposed) shall be taken into account;

(x x x)

(ii) all lands which is proposed to be developed or redeveloped for construction of building;

x x x x

3A. Provisions in the Town Planning Scheme shall prevail.--Notwithstanding anything contained in these rules, provisions or regulations in any Town Planning Scheme (in force) under Town Planning Acts (xx) shall prevail over the respective provisions of these rules wherever such schemes exist."

27. On a reading of Rule 3, it is clear that the applicability of the rule is for the purpose of carrying out construction of public or private buildings and for other related purposes. Therefore, the stipulation contained under Rule 3A with regard to the supremacy of the Town Planning Scheme can only be relating to the Rules regarding construction of the buildings provided under Rule 3 referred *supra*. So also, in all the afore cited judgments rendered by the Hon'ble Apex Court as well as this Court, the Courts were largely considering the question of Town Planning Schemes propounded under the Town Planning Acts with reference to Article 300A of the Constitution and held that without acquisition of the land, the schemes so launched cannot be put into effect. Therefore, the contention put forth by the Respondent that consequent to introduction of Rule 3A, the Respondent was justified in declining permit cannot be sustained. According to me, such a principle was evolved by the Courts taking into account the protection provided for enjoyment of the property conferred under Article 300A of the Constitution.

28. Taking into account all these circumstances and settled legal position in accordance with the principles so laid down by the Courts in the judgments cited *supra*, I am of the considered opinion that the stand adopted by the Respondent - Municipality that permit cannot be granted consequent on the pendency of D.T.P. Scheme can never be sustained under law. I also bear in mind that the judgment in '**Abdul Kabeer's case**' referred *supra* was also a case concerned with Malappuram Municipality.

29. Therefore, I set aside Ext.P3 order passed by the Respondent - Municipality and direct the Municipality to take a decision in the application submitted by the petitioners seeking permit for construction of the building on production of requisite order from the competent authority under the K.L.U.O for use of the land for a different purpose in accordance with law, taking into account the observations made above. This shall be done within a period of thirty days from the date of production of K.L.U. order.

30. The learned counsel for the petitioners has also requested that even though the State or the competent authority under the K.L.U.O are not parties in this writ petition,

there may be a direction to the said authority to consider the application of the petitioners if and when they file the same. I think such a prayer made by the counsel for the petitioners is only just and legal and in order to avoid multiplicity of proceedings, it is only proper that a direction can be issued to the District Collector, Malappuram either to consider the application by himself or the authority competent for that purpose.

31. The District Collector, Malappuram is *suo motu* impleaded as additional 2nd Respondent and directed that if and when an application is filed by the petitioners seeking change of nature of land as provided under K.L.U.O, the same shall be considered within a period of thirty days from the date of receipt of such an application. I make it clear that I have not made any observation on merits and the Additional 2nd Respondent is free to take a decision after due verification of the property and in accordance with law.

The writ petition is disposed of as above.

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.S. to Judge

St/-