

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 26TH DAY OF FEBRUARY 2015/7TH PHALGUNA, 1936

WP(C).No. 4313 of 2014 (L)

PETITIONERS:

1. S. SREEJITH
S/O.T.S.SREEKUMAR, SREELAYAM, KP.6/541
EDHEN GARDENS, KUDAPPANAKKUNNU P.O.
THIRUVANANTHAPURAM-695043.
2. SUDHA ANNIE SAIGAL
W/O.S.SREEJITH, SREELAYAM, KP.6/541
EDHEN GARDENS, KUDAPPANAKKUNNU P.O.
THIRUVANANTHAPURAM-695043.

BY ADVS.SRI.D.SAJEEV
SMT.LIGEY ANTONY

RESPONDENTS:

1. THE SECRETARY TO GOVERNMENT
LOCAL SELF GOVERNMENT (RD) DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.
2. THE SECRETARY
CORPORATION OF THIRUVANANTHAPURAM
CORPORATION OFFICE, PALAYAM, THIRUVANANTHAPURAM-695004.
3. TOWN PLANNING OFFICER
CORPORATION OF TRIVANDRUM-695004.
4. TOWN PLANNER
REGIONAL TOWN PLANNING OFFICE, THIRUVANANTHAPURAM-695004.

R2,R3 BY SRI.N.NANDAKUMARA MENON, SENIOR ADVOCATE
R2,R3 BY ADV. SRI.P.K.MANOJKUMAR, SC, TVPM CORPORATION
R1 & R4 BY SENIOR GOVERNMENT PLEADER SRI.T.RAMAPRASAD UNNI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

EXHIBIT-P1: TRUE COPY OF THE SALE DEED NO.4422/1/2012 DATED 10/12/2012
ALONG WITH PLAN.

EXHIBIT-P2: TRUE COPY OF THE NOTICE BEARING NO.TP.UE2/BA-139/13 DATED
12/6/2013 OF THE 3RD RESPONDENT.

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

EXHIBIT-P3: TRUE COPY OF THE REVISION PETITION ALONG WITH THE LIST OF
RESIDENTIAL BUILDINGS IN THE LOCALITY.

EXHIBIT-P4: TRUE COPY OF THE GOVT. ORDER G.O.(MS) NO.283/2012/LSGD
DATED 3/11/2013.

EXHIBIT-P5: TRUE COPY OF THE ORDER NO.E/2707/13/L.DIS. DATED
17/01/201R OF THE 4TH RESPONDENT.

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

EXHIBIT-P6: TRUE COPY OF THE NOTIFICATION NO.K-13430/08 DATED
14/12/2009 OF THE R.D.O., THIRUVANANTHAPURAM.

EXT.P7: COPY OF NOTIFICATION G.O(P).NO.227/2014/LSGD DTD.
20.12.2014, PUBLISHED IN THE KERALA GAZETTE.

RESPONDENT(S)' EXHIBITS:

EXT.R4(a): ORDER NO.G.O.(MS)294/76/LA & SWD DTD. 30.11.1976.

EXT.R4(b): COPY OF KERALA TOWN AND COUNTRY PLANNING ORDINANCE,
2013.

EXT.R4(c): COPY OF THE JUDGMENT IN 1996 (S) SCC 459

// TRUE COPY //

P.A TO JUDGE.

ALEXANDER THOMAS, J.

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Dated this the 26th day of February, 2015.

J U D G M E N T

The petitioners, who are spouses, purchased 1.42 ares (3.500 cents) of dry land property in R.Sy.No.738/4 (old Survey No.1140) of Cheruvaickal Village, Thiruvananthapuram Taluk, Thiruvananthapuram District, as per Ext.P-1 sale deed dated 10.12.2012. The petitioners wanted to construct a residential building in the above said land and accordingly on 5.4.2013 they have submitted a plan along with requisite application for building permit before the 2nd respondent-Secretary of Thiruvananthapuram Corporation for grant of building permit. The plinth area covered by the said application is 107.93 sq.m. The above said application for building permit was rejected by the 2nd respondent as per the impugned Ext.P-2 proceedings dated 12.6.2013 on the ground that the aforementioned survey No.1140 (in which the petitioners' property is situated) is included in the Development Plan for Medical College Area Development Scheme and is included in Schedule II(a) of the Agricultural Zone of the Scheme and therefore, construction of the

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residential building is not allowable as the property is in the aforementioned Agricultural Zone of the Scheme. However, it has been made clear in Ext.P-2 that the petitioners can apply as and when the new Scheme is duly approved and promulgated by the State Government. The proceedings dated 17.5.2013 of the 4th respondent-Regional Town Planner is referred to in the impugned Ext.P-2. Aggrieved by the rejection in Ext.P-2, the petitioners have preferred Ext.P-3 styled as a revision petition dated 9.12.2013 before the 4th respondent-Regional Town Planner, Thiruvananthapuram. In Ext.P-3, the specific contention of the petitioner was that Ext.P-4 herein is the draft new Scheme and that as per clause 6(a) of Ext.P-4 draft Scheme, permission can be granted for the construction of a residential building up to floor area of 300 sq.mtrs in Agricultural Zone and that since the application of the petitioner for building permit is for constructing the residential building having plinth area of 107.93 sq.m, necessary concurrence of the Regional Town Planner may be granted. However, the request in Ext.P-3 was rejected by the Regional Town Planner as per the impugned Ext.P-5

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proceedings dated 17.1.2014 on the ground that since the aforementioned Sy.No.1140 of Cheruvaickal Village is included in the sanctioned land development plan for Medical College Area in which land reserved for agricultural use is included and that concurrence for building construction cannot be granted at that stage and that the petitioners' application will be considered as and when the new Scheme is approved and promulgated by the State Government. Essentially, the ground for rejection raised in the impugned Exts.P-2 and P-5 are on the same basis. However, it has been made clear that the petitioners' application will be considered as and when the new Scheme is approved by the State Government. It is not in dispute that Ext.P-4 draft proposal has been finalised and approved by the State Government and the same has been duly statutorily promulgated by the State Government as per Ext.P-7 proceedings in terms of G.O.(P).No.227/14/LSGD dated 20.12.2014 vide S.R.O.No.809/2014 and the same has been published in the Gazette of Kerala on 24.12.2014. Clause 6(a) of Ext.P-7 Scheme is identical to the corresponding clause 6(a) of Ext.P-4 draft Scheme and the said clause 6(a) of

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Ext.P-7 permits construction of residential building up to floor area of 300 sq.mtrs in the Agricultural Use Zone as can be seen from internal page No.9 of Ext.P-7. It is in the light of these facts and circumstances, the petitioners have filed the instant writ petition with the following prayers:

"i) To issue a writ of certiorari or other appropriate writ, direction or order to quash Exhibits P2 and P5 orders passed by the 3rd and 4th respondents in so far as it rejects the petitioners' application for building permit;

ii) To issue a writ of mandamus or other appropriate writ, direction or order directing the respondents to grant building permit to the petitioners after taking into consideration of Cl.6(a) of Ext.P4 Govt. Order and

iii) To issue a writ of mandamus or other appropriate writ, direction or order commanding the 4th respondent to reconsider Ext.P3 review application filed by the petitioners and grant building permit to the petitioners after obtaining necessary undertakings from the petitioners."

2. Heard Sri.D.Sajeev, learned counsel appearing for the petitioners, Sri.N.Nandakumara Menon, learned Senior Counsel, instructed by Sri.P.K.Manoj Kumar, learned counsel appearing for the 2nd respondent-Thiruvananthapuram Corporation and the learned Government Pleader appearing for official respondents 1, 3 & 4.

3. One of the prayers in the writ petition instituted on 11.2.2014 is for issuance of a writ of certiorari to quash the impugned decisions in Exts.P-2 and P-5. However, during the

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pendency of the present writ petition, Ext.P-4 draft Scheme has been finalised and promulgation of the new Scheme as per Ext.P-7 has come into force on 24.12.2014. In the impugned Exts.P-2 & P-5 it is clearly stated by the respondent authorities concerned that application of the petitioners will be considered as and when the new Scheme is duly promulgated by the State Government. Therefore, in view of the promulgation of the new Scheme as per Ext.P-7, with effect from 24.12.2014, there is no necessity to adjudicate on the legality and correctness of Exts.P-2 & P-5. In view of the stand taken by the 2nd respondent and the 4th respondent in the impugned Exts.P-2 & P-5 respectively that the matter will be considered after the promulgation of the new Scheme, the respondent authorities are bound to consider the application of the petitioner in terms of the provisions contained in clause 6(a) of Ext.P-7 Scheme published in Kerala Gazette dated 24.12.2014. Accordingly, it is directed that the application submitted by the petitioners, which is referred to in Exts.P-2, shall be reconsidered afresh in the light of the provisions contained in clause 6(a) of Ext.P-7 Scheme. The petitioners shall produce

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certified copies of this judgment before respondents 2 & 4.

4. The following directions are issued.:-

(i) The 2nd respondent-Thiruvananthapuram Corporation will issue necessary requisition to the 4th respondent-Regional Town Planner, in the matter of issuance of the necessary concurrence in the light of Ext.P-7 Scheme and this, the 2nd respondent will do, within a period of two weeks from the date of receipt of a copy of this judgment.

(ii) The 4th respondent-Regional Town Planner shall consider the matter afresh and take a decision in the matter of grant of concurrence in the light of clause 6(a) of Ext.P7 Scheme and communicate the same to the 2nd respondent-Thiruvananthapuram Corporation within three weeks from the date of receipt of the aforementioned requisition of the 2nd respondent.

(iii) On receipt of the above communication in that regard from the 4th respondent, the 2nd respondent shall reconsider the application of the petitioners and pass necessary orders in the matter of petitioners' request for grant of building permit for constructing a residential building, within one month therefrom.

The Writ Petition (Civil) stands finally disposed of, with the above observations and directions. There will be no order as to costs.

**ALEXANDER THOMAS,
Judge.**

bkn/-