

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

WP(C).No. 4592 of 2015 (Y)

PETITIONER(S):

**SANTOSH C.V,
S/O.VASU, CHOLAYIL HOUSE, NHAMANGHAT P.O.
PIN- 679 563, KUNNAMKULAM, TRICHUR DISTRICT.**

BY ADV. SRI.M.KRISHNAKUMAR

RESPONDENT(S):

- 1. GURUVAYOOR MUNICIPALITY,
REPRESENTED BY ITS SECRETARY, MUNICIPAL OFFICER,
GURUVAYOOR - 680 101.**
- 2. THE SECRETARY,
GURUVAYOOR MUNICIPALITY, MUNICIPAL OFFICE,
GURUVAYOOR - 680 101.**

**R1 & 2 BY ADVS. SRI.P.A.AHAMMED
SRI.M.SREEKUMAR**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 21-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

WP(C).No. 4592 of 2015 (Y)

APPENDIX

PETITIONER(S)' EXHIBITS

P1- TRUE COPY OF THE ORDER DATED 25.1.15

P2- TRUE COPY OF THE JUDGMENT DATED 2.4.12 IN WP(C) 6455/12

P3- TRUE COPY OF THE JUDGMENT DATED 7.11.2012, IN WPC.21722/12

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 4592 of 2015

Dated this the 21st day of May, 2015.

JUDGMENT

Ext.P1, by which the petitioners' application for building permit was rejected, is under challenge.

2. The petitioner purchased 5.04 cents of land within the local limits of the respondent municipality in the year 2012. The previous owner intending to construct a house had already obtained a building permit from the respondents for the construction of a building on this plot as early as in 2011. The previous owner was unable to commence construction due to financial difficulties and he sold the land to the petitioner. After transfer of registry in his name, when the petitioner applied to have the building permit also transferred to his name, the respondent Municipality passed an order withdrawing the building permit stating that there is a Government Circular prohibiting sale of houses for 10 years. The petitioner filed W.P.(C) No.29260/2014 challenging the same and the same was allowed directing the respondents to

ignore the Government order and the petitioner was directed to file a fresh application for permit and he filed a a fresh application for a building permit. The said application was rejected by the respondent municipality as per Ext.P1, stating that the aforesaid land is situated in the residential zone and therefore, no commercial building could be permitted. According to the petitioner, he cannot be prevented from putting his property to any use on the ground that there is an old proposed DTP Scheme. The petitioner has now come to understand that the alleged DTP Scheme of the year 1983 has never been notified by the Government as required under the Madras Town Planning Act, 1920. The petitioner further pointed out that this aspect was submitted before this Court on behalf of the Government and on that basis, similar writ petitions were allowed by this Court. Therefore, according to the petitioner, the municipality is bound to reconsider his application ignoring the DTP Scheme as done in the other cases. It is in this context, the petitioner has approached 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 petitioner is entitled to get the reliefs prayed for.

Therefore, the writ petition is allowed.

Ext.P1 is set aside and the respondent municipality is directed to reconsider petitioner's application for building permit and to pass orders granting permit within a period of one month from the date of receipt of a copy of this judgment in the light of above.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.