

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY, THE 24TH DAY OF MARCH 2015/3RD CHAITHRA, 1937

WP(C).No. 4759 of 2015 (T)

PETITIONER:

**DILEEP V. IDATHALA, AGED 40 YEARS,
S/O VARGHESE, IDATHALA HOUSE,
KUTTAMPUZHA PO., THIRUVALLA,
PATHANAMTHITTA.**

BY ADV. SRI.R.T.PRADEEP

RESPONDENT(S):

- 1. THE SECRETARY,
DEPARTMENT OF URBAN AFFAIRS,
SECRETARIAT, THIRUVANANTHAPURAM-695001.**
- 2. CHIEF TOWN PLANNER,
OFFICE OF CHIEF TOWN PLANNER, 2ND FLOOR,
SWARAJ BHAVAN, THIRUVANANTHAPURAM-3.**
- 3. DISTRICT TOWN PLANNER,
OFFICE OF DISTRICT TOWN PLANNER,
MINI CIVIL STATION, ALAPPUZHA-688001.**
- 4. SECRETARY,
ALAPPUZHA MUNICIPALITY, ALAPPUZHA-688001.**
- 5. CHIEF AREA MANAGER, INDANE,
INDIAN OIL CORPORATION LTD., PANAMPILLY AVENUE,
PANAMPILLY NAGAR, KOCHI-682036.**

**R1 TO R3 BY SENIOR GOVT. PLEADER SMT.K.A.SANJEETHA
R4 BY ADV. SRI.AZAD BABU, SC, ALAPPUZHA MUNICIPALITY
R5 BY SRI.M.GOPIKRISHNAN NAMBIAR, SC**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 24-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

mbr/

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXHIBIT P1: TRUE COPY OF THE LEASE DEED DATED 21.10.2013.
- EXHIBIT P2: TRUE COPY OF THE CERTIFICATE DATED 12.12.2014 BY VILLAGE OFFICER OF ARYAD SOUTH VILLAGE EVIDENCING THE BIFURCATON OF THE PROPERTY OF THE PETITIONER FROM VILLAGE PANCHAYAT TO MUNICIPALITY CONSEQUENT TO RESURVEY IN THE YEAR 2006.
- EXHIBIT P3: TRUE COPY OF THE LETTER DATED 7.7.2014 BY WHICH LPG STORAGE GODOWN AND SHOW ROOM ALLOTTED TO THE LEASEHOLD PROPERTY OF PETITIONER BY INDIAN OIL CORPORATION LTD.
- EXHIBIT P4: TRUE COPY THE APPROVAL DATED 19.8.2014 UNDER GAS CYLINDER RULE 2004 BY PETROLEUM AND EXPLOSIVE SAFETY ORGANIZATION.
- EXHIBIT P5: TRUE COPY OF THE NO OBJECTION CERTIFICATE DATED 16.9.2014 BY THE DIVISIONAL OFFICER, FIRE & RESCUE SERVICES, KOTTAYAM.
- EXHIBIT P6: TRUE COPY OF THE NO OBJECTION CERTIFICATE NIL DATED OF 18 RESIDENTS WITHIN A RADIUS OF 100 METRES FROM THE LEASE HOLD PROPERTY.
- EXHIBIT P7: TRUE COPY OF COMMUNICATION DATED 20.1.2015 UNDER THE RIGHT TO INFORMATION ACT BY THE MUNICIPALITY.
- EXHIBIT P8: TRUE COPY OF THE ORDER DATED 20.1.2015 DECLINING CONCURRENCE BY THE 2ND RESPONDENT.
- EXHIBIT P9: TRUE COPY OF THE JUDGMENT DATED 17.1.2014 IN WPC NO.856/2014 BY THIS HON'BLE COURT.

RESPONDENT(S)' EXHIBITS: - NIL

/TRUE COPY/

P.A. TO JUDGE

mbr/

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 4759 of 2015

Dated this the 24th day of March, 2015

JUDGMENT

Heard the learned counsel for the petitioner and the learned Standing Counsel, as well as the learned Government Pleader for the respondents, 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. Briefly stated, the petitioner is said to have applied for a building permit to the fourth respondent for constructing an LPG storage godown. As has been statutorily required, when the fourth respondent forwarded the petitioner's application, the second respondent issued Exhibit P8 order refusing concurrence on the ground that the petitioner's property, where godown is proposed to be constructed, is covered by zoning regulations of District

Town Planning, Alappuzha. Consequently, the fourth respondent could not further process the petitioner's application. Assailing Exhibit P8 order of the second respondent, the petitioner filed the present writ petition.

3. The learned counsel for the petitioner has strenuously contended that so far no Town Planning Scheme has been put in place for Alappuzha Municipality. He has further submitted that it may have been in the process. The learned counsel, adverting to the issue of consent from the neighbors, has drawn my attention to Exhibit P6 consent deed said to have been signed by 18 neighbors living within 100 meters vicinity from the property. With a specific reference to Exhibit P9 judgment, the learned counsel has tried to point out that there is no statutory obligation for the petitioner to obtain the consent from the neighbors.

4. It is the singular contention of the learned counsel for the petitioner that unless the Town Planning Scheme is notified in the manner known to law, no right in presenti of the petitioner can be interdicted based on a future course of events. According to him, Exhibit P8 cannot be sustained, because it does not have any statutory basis.

5. The learned Standing Counsel for the fourth respondent has submitted that the Municipality, on its part, has already proposed to have the Town Planning Scheme and accordingly passed resolution, which was forwarded in due course to the Government. According to him, the said proposal of the respondent Municipality has been under active consideration of the Government. At any rate, the learned Standing Counsel has agreed that presently there is no Town Planning Scheme notified, as such. He has further contended that unless the second respondent withdraws Exhibit P8 and issues consent thereof, it is not possible for the respondent Municipality to consider petitioner's application.

6. The learned Government Pleader, on her part, has submitted that if no Town Planning Scheme has so far not been notified, the second respondent will consider the proposal of the respondent Municipality regarding building permit to be granted to the petitioner in terms of the extant statutory provisions.

7. In the facts and circumstances, having regard to the respective submissions of the learned counsel for the

petitioner and the learned Standing Counsel, as well as the learned Government Pleader for the respondents, this Court hereby sets aside Exhibit P8 with a consequential direction to the second respondent to re-consider the proposal forwarded by the fourth respondent in the light of the fact that there is no notified Town Planning Scheme and further process petitioner's application, keeping in view Exhibit P6 consent deed and also Exhibit P9 judgment and pass appropriate orders thereon, as expeditiously as possible, at any rate, within a period of one month from the date of receipt of a copy of this judgment.

With the above observations, this writ petition is disposed of. No order as to costs.

DAMA SESHADRI NAIDU
JUDGE

DMR/-