

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

FRIDAY, THE 30TH DAY OF OCTOBER 2015/8TH KARTHIKA, 1937

W.P.(C).No. 5176 of 2014 (V)

PETITIONER(S):

R. GOPALAKRISHNAN NAIR,
CHAKKALAVILAKAM HOUSE, T.C.25/2867 (OLD),
T.C.27/542(NEW), VANCHIYOOR P.O.,
THIRUVANANTHAPURAM -695 035

BY ADVS. SRI. V.G. ARUN
SRI. T.R. HARIKUMAR

RESPONDENT(S):

1. CORPORATION OF THIRUVANANTHAPURAM,
REPRESENTED BY ITS SECRETARY,
THIRUVANANTHAPURAM - 695 027.

2. TOWN PLANNING OFFICER,
TOWN PLANNING OFFICE,
CORPORATION OF THIRUVANANTHAPURAM,
THIRUVANANTHAPURAM-695 027

*Addl.3. REGIONAL TOWN PLANNING OFFICER,
REGIONAL TOWN PLANNING OFFICE,
HOUSING BOARD BUILDING, GENERAL POST OFFICE,
THIRUVANANTHAPURAM -695 001.

*ADDL. R3 IS IMPEADED AS PER ORDER DATED 15/07/2014 IN IA 9359/2014.

R1 & 2 BY ADV. SRI. N. NANDAKUMARA MENON (SR.)
R1 & 2 BY ADV. SRI. P.K. MANOJKUMAR, SC, TVPM CORPORATION
ADDL. R3 BY SENIOR GOVERNMENT PLEADER, SRI. R. PADMARAJ.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30-10-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.T.O.

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXT.P1 - COPY OF THE POSSESSION CERTIFICATE DATED 16-4-2013 ISSUED BY THE VILLAGE OFFICER VANVHIYOOR PERTAINING TO THE PETITIONER'S PROPERTY IN SY.NO.1546/5-1-1.
- EXT.P2 - COPY OF THE POSSESSION CERTIFICATE DATED 22-4-2013 ISSUED BY THE VILLAGE OFFICER, VANCHIYOOR PERTAINING TO THE PETITIONER'S PROPERTY IN SY.NO.1546/5-1, 1360/B1-2.
- EXT.P3 - COPY OF THE TAX RECEIPT DATED 16-04-2013 EVIDENCING THE TAX REMITTED BY THE PETITIONER FOR THE PERIOD 2013-2014.
- EXT.P4 - COPY OF THE TAX RECEIPT DATED 22-04-2013 EVIDENCING THE TAX REMITTED BY THE PETITIONER FOR THE PERIOD 2013-2014.
- EXT.P5 - COPY OF THE BUILDING PLAN SUBMITTED BY THE PETITIONER.
- EXT.P6 - COPY OF THE NOTICE NO.T.PEUBA1/87/13 DATED 18-12-2013 ISSUED BY THE 2ND RESPONDENT.
- EXT.P7 - COPY OF THE PHOTOGRAPHS OF THE THREE STORIED BUILDING RECENTLY CONSTRUCTED BY THE SIDE OF THE MATHRUBHOOMI ROAD.
- EXT.P8 - COPY OF THE PHOTOGRAPHS SHOWING AN ONGOING CONSTRUCTION BY THE SIDE OF THE MATHRUBHOOMI ROAD.
- EXT.P9 - COPY OF THE PHOTOGRAPHS OF AN APARTMENT COMPLEX SITUATED BY THE SIDE OF THE MATHRUBHOOMI ROAD.
- EXT.P10 - COPY OF THE PHOTOGRAPH SHOWING THE RESIDENTIAL HOUSE WITHIN THE PETITIONER'S PROPERTY.
- EXT.P11 - COPY OF THE APPLICATION FILED UNDER RTI ACT, BY THE PETITIONER DATED 21-09-2013.
- EXT.P12 - COPY OF THE REPLY NO.E11/154841/13 DATED 04-12-2013.
- EXT.P13 - COPY OF THE APPLICATION FILED UNDER RT ACT, BY THE PETITIONER DATED 09-12-2013.

P.T.O.

- EXT.P14 - COPY OF THE REPLY NOD/2706/13 DATED 31-12-2013.
- EXT.P15 - COPY OF THE NEWS ITEM PUBLISHED IN THE METRO MANORAMA DATED 08-02-2014.
- EXT.P16 - COPY OF THE NEWS ITEM PUBLISHED IN THE MATHRUBHOOMI DAILY DATED 08-02-2014.
- EXT.P17- A TRUE COPY OF THE JUDGMENT DATED 10.07.2015 IN W.P.(C) NO.16773 OF 2015.

RESPONDENT(S)' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

St/-

SHAJI P. CHALY, J.

W.P.(C) No.5176 of 2014

Dated this the 30th day of October, 2015

JUDGMENT

This writ petition is filed by the petitioner seeking to quash Ext.P6 order passed by the 2nd Respondent whereby petitioner was directed to produce a revised plan taking into account the proposal in the Master Plan to widen a road to a width of 18 metres.

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

3. Petitioner is the owner of landed property having a total extent of 4.372 cents situated in Vanchiyoor Village of Thiruvananthapuram District, lying in Survey Nos.1546/5-1, 1360/B1-2 and 1546/5-1-1. Petitioner submitted Ext.P5 building plan for construction of a residential-cum-office building. Ext.P5 plan was rejected by the 2nd Respondent as per Ext.P6 order dated 18.12.2013, holding that there is a proposal for widening of the road passing along the front side of the property of the petitioner at a width of 18 metres and

therefore taking into account the said proposal, a revised plan is to be submitted by the petitioner. It is thus challenging Ext.P6 order passed by the 2nd Respondent, this writ petition is filed.

4. Additional 3rd Respondent has filed a counter affidavit contending that the property belonging to the petitioner is proposed to be utilized for widening of a road, 'Mathrubhumi road' from the existing width to 18 metres. It is further contended that the Master Plan for Thiruvananthapuram sanctioned by the Government in 1971 is the Master Plan in force for the City as the Master Plans published in 1993 and 2013 are not Government sanctioned Plans and since the said Master Plan of 1971 is in force, the provisions contained thereunder shall apply until published Master Plan is sanctioned. Therefore, it is contended that the order passed by the Municipality rejecting the plan submitted by the petitioner is in order and no interference is called for.

5. Heard the learned counsel for the petitioner, Sri. V.G. Arun, learned Senior Counsel appearing for the 1st Respondent, Sri. N. Nandakumara Menon and the learned Senior Government Pleader, Sri. R. Padmaraj.

6. Having considered the rival submissions, the question that is to be decided in this writ petition is whether the 1st Respondent is entitled to reject the plan submitted by the petitioner in accordance with law. Learned counsel for the petitioner contended that the revised Master Plan published by the Government is kept in abeyance. Learned counsel also contended that even though by Ext.P6 order, the plan submitted by the petitioner was rejected, same was not based on any material with regard to acquisition of land. Learned Senior Government Pleader also could not bring to my notice any acquisition notice issued by the Government to acquire the property of the petitioner for widening of the proposed road. Learned counsel for the petitioner also contended that in the application filed by the petitioner under the Right to Information Act, it was informed that several permissions were granted for construction of various buildings on the side of the proposed road and further that the same is being done even now for construction of buildings.

7. Heard the learned Senior Counsel for the 1st Respondent, who also contended that there are no notifications issued by the Government in order to acquire the land of the

petitioner or any other land required for widening of the aforesaid road. It is the settled position of law that without any proceedings for acquisition, the Government or the Municipality are not at liberty to contend that since there is a proposal for acquisition of land, they are entitled to reject the plan taking into account the said proposal. This Court had occasion to consider the said issue in a number of judgments and has held that without proceedings for acquisition in the guise of proposals, permissions and plans could not be rejected by the Government or the Local Self Government Institutions. I find force in the contention of the learned counsel for the petitioner that Ext.P6 rejection is made by the 2nd Respondent without taking into account the provisions of the Municipalities Act as well as the law laid down by this Court in such situations. Learned counsel has also brought to my notice Sec.393(vii) of the Municipality Act and contended that the land under acquisition proceedings means the land sought to be acquired by the Government under appropriate legal proceedings. This was also a subject matter considered by this Court in one of its decisions.

8. Taking into account the entire cumulative circumstances and the factual situations involved in this case, I am of the considered opinion that Ext.P6 order passed by 2nd Respondent cannot be sustained under law. In that view of the matter, I set aside Ext.P6 order passed by the 1st Respondent.

9. Therefore, there will be a direction to the 1st Respondent Municipality to re-consider Ext.P5 plan produced by the petitioner in accordance with law and taking into account the aforesaid observations and take a final decision within a period of two months from the date of receipt of a copy of this judgment.

This writ petition is allowed accordingly.

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.S. to Judge

St/-
30.10.2015