

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

WP(C).No. 5091 of 2015 (J)

PETITIONERS:

K.T. FRANCIS, AGED 58 YEARS,
S/O. JOSE, KUTTICHAK HOUSE,
C.R.IYYUNNI ROAD, THRISSUR.

BY ADVS.SRI.RENJITH THAMPAN (SR.)
SMT.P.R.REENA

RESPONDENTS:

1. THRISSUR CORPORATION,
REPRESENTED BY ITS SECRETARY, CORPORATION OFFICE,
THRISSUR, PIN 680 001.
2. SECRETARY, THRISSUR CORPORATION,
CORPORATION OFFICE, THRISSUR, PIN - 680 001.
3. TOWN PLANNING OFFICER,
THRISSUR CORPORATION, CORPORATION OFFICE, THRISSUR,
PIN - 680 001.

ADDL.R4 IMPEADED:

4. EXECUTIVE ENGINEER,
PUBLIC WORKS DEPARTMENT, THRISSUR, PIN - 680 003.

(ADDL.R4 IMPEADED AS PER ORDER DATED 13.03.2015 IN IA 3877/15.)

R1&2 BY ADV. SRI.K.P.VIJAYAN
R1&2 BY ADV. SRI.V.N.HARIDAS
R4 BY ADV. SRI. K.A. SANGEETHA, GOVERNMENT PLEADER
R BY SRI.K.P.VIJAYAN,SC,THRISSUR CORPORATION

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
10-04-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C).No. 5091 of 2015 (J)

APPENDIX

PETITIONER'S EXHIBITS :

P1- TRUE COPY OF BASIC TAX RECEIPT ISSUED BY THE VILLAGE OFFICER,
ARANATTUKARA VILLAGE DATED 6.1.15 WITH ENGLISH TRANSLATION.

P2- TRUE COPY OF THE ONLINE APPLICATION RECEIPT DATED 16.1.15 ISSUED
BY THE THRISSUR CORPORATION.

P3- TRUE COPY OF THE INTIMATION DATED 10.2.2015 ISSUED BY THE 1ST
RESPONDENT TO THE PETITIONER WITH ENGLISH TRANSLATION.

P4- TRUE COPY OF THE JUDGMENT REPORTED IN 2010(3) KHC 974.

P5- TRUE COPY OF THE JUDGMENT REPORTED IN 2012 (1) KLT 62.

RESPONDENTS' EXHIBITS : NIL

/True Copy/

P.A to Judge.

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 5091 of 2015 (J)

Dated this the 10th day of April, 2015.

JUDGMENT

Heard the learned counsel for the petitioner, the learned counsel for the respondent Corporation and the learned Government Pleader, apart from perusing the record.

2. Briefly stated, the petitioner, the owner in possession of 1.25 cents of land in Survey No. 216/1 of Aranattukara village, within the limits of the respondent Corporation, applied to the respondent Corporation for building permit. It was, however, rejected by the respondent Corporation through Ext.P3. Aggrieved thereby, the petitioner has filed the present writ petition.

3. As could be seen from Ext.P3 notice, the Corporation refused building permit on the premise that there is a proposal for extending the width of civil lane road to 22 metres on the western side of the property in question, and that in the light of the impending acquisition to be initiated by

the Government, building permit cannot be granted. In fact, the respondent Corporation in its counter affidavit echoed the same statement.

4. A statement has been filed by the 4th respondent, paragraph 5 of which reads as follows:

“It is submitted that the Thrissur-Kanjani State Highway Road (on record - Thrissur-Vadanappilly Road) starts from (Km 0/00) West Fort Junction (Padinjarekotta) and ends Vadanappally (Km 16/120) on NH-17. This is a main route connecting NH-17 and Thrissur Town. The present traffic volume is not able to accommodate the road and hence traffic conjunction is more frequent and travel through this road is time consuming. In order to improve the road, Government have accorded administrative sanction for Rs.33.60 Crores vide G.O.(Rt) No. 438/2011/PWD/TVM dated 01.03.2011 for improving the road to State Highway standards. True copy of the G.O.(Rt) No.438/2011/PWD/TVM dated 01.03.2011 is produced herewith and marked as Annexure R4(a). The alignment for this road has approved from Chainage Km 0/580 to Km 16/120 and land acquisition is in good progress. It is submitted that notification under Section 6(1) of the Survey and Boundaries Act have been published and boundary stones for which land is to be acquired has already been planted.”

5. The learned Senior counsel for the petitioner has, however, repelling the contentions of the respondents, submitted that until the proceedings are actually initiated in terms of the extant Land Acquisition Act, mere proposal or any

preparatory steps towards acquisition could not defeat the constitutional right of the petitioner to enjoy the property. The learned Senior Counsel has also submitted that exercising their power of eminent domain, the State is always at liberty to acquire the property of any individual, subject to the statutory limitations, but until a concrete step is taken towards that by way of publication of notice under Section 4(1) of the Land Acquisition Act, there shall not be any rejection of application — for instance, the building permit. According to him, through a profusion of precedents, the Courts have reiterated the same principle of law.

6. I do find force in the submission of the learned Senior Counsel for the petitioner. Indeed, it is very evident from the submission of the learned Government Pleader that the respondents may have taken preparatory steps towards acquiring the property, but the very acquisition has not yet been initiated. Under these circumstances, I do not see any justifiable ground for the respondent Corporation to deny building permit

to the petitioner.

7. In the facts and circumstances, Ext.P3 is set aside with a consequential direction to the respondent Corporation to re-consider the petitioner's application for building permit afresh.

8. Needless to observe that the respondent Corporation shall expedite the process of re-considering the petitioner's application and conclude the proceedings, as expeditiously as possible, at any rate within one month from the date of receipt of a copy of this judgment.

9. It is, however, abundantly made clear that granting of building permit by the Corporation or raising any structures on the property by the petitioner shall not come in the way of the additional 4th respondent invoking the provisions of the Land Acquisition Act and taking further consequential steps in the direction of acquiring the property for public purpose.

This writ petition is disposed of.

sd/- DAMA SESHADRI NAIDU, JUDGE.

