

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 4TH DAY OF NOVEMBER 2015/13TH KARTHIKA, 1937

WP(C).No. 6157 of 2015 (T)

PETITIONER(S):

**MRS.BETTY TERENCE,
TERENCE NIVAS, KAVANAD P.O.,
MUKKAD, KOLLAM - 691 003.**

**BY ADVS.SRI.M.V.BOSE,
SRI.VINOD MADHAVAN,
SMT.NISHA BOSE.**

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
LOCAL SELF GOVERNMENT DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 2. THE CHIEF TOWN PLANNER,
THIRUVANANTHAPURAM - 695 001.**
- 3. THE DISTRICT TOWN PLANNER,
KOLLAM - 691 601.**
- 4. THRIKKADAVUR GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY,
PERINAD P.O., PIN - 691 601, KOLLAM DISTRICT.**
- 5. THE SECRETARY,
THRIKKADAVUR GRAMA PANCHAYAT, PERINAD P.O.,
PIN - 691 601, KOLLAM DISTRICT.**

**R1 TO R3 BY GOVT. PLEADER SMT.ANITHA RAVINDRAN.
R4 & R5 BY ADV. SRI.M.T.SURESHKUMAR.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 11/08/2015, THE COURT ON 04/11/2015 DELIVERED THE
FOLLOWING:**

rs.

WP(C).No. 6157 of 2015 (T)

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1: A COPY OF NOTICE DATED 11.09.2012 FROM THE INDIAN OIL CORPORATION LIMITED.
- EXT.P2: A COPY OF NO OBJECTION CERTIFICATE DATED 19.07.2014.
- EXT.P3: A COPY OF CRZ CLEARANCE DATED 01.09.2014.
- EXT.P4: A COPY OF THE LETTER DATED 02.02.2015 RECEIVED FROM THE INDIAN OIL CORPORATION.
- EXT.P5: A COPY OF LETTER DATED 04.02.2015 FROM THE INDIAN OIL CORPORATION.
- EXT.P6: A COPY OF JUDGMENT DATED 16.07.2014 IN WP(C).NO.969/2014.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 6157 of 2015

Dated this the 4th day of November, 2015

J U D G M E N T

Aggrieved by the delay in granting clearance to the petitioner's marine diesel outlet, the petitioner has come up before this Court.

2. The petitioner is an applicant for a Kisan Seva Kendra Dealership on the bank of Ashtamudi Lake. She has produced Ext.P2 NOC from the Collector and Ext.P3 CRZ clearance from the Kerala Coastal Zone Management Authority, which were forwarded by the Secretary of the panchayath to the Indian Oil Corporation. The Indian Oil Corporation, in turn, requested the Chief Town Planner to grant approval for the installation of the unit as per Ext.P5 letter. The grievance of the petitioner is that the matter is unnecessarily held up in spite of the recommendations from the concerned authorities.

3. In the counter affidavit filed by respondents 2 & 3, it was contended that the proposed construction comes

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under Group I - Hazardous Occupancy categorized under Rule 34(3) of the Kerala Panchayath Building Rules, 2011. On inspection, it was found that the approach road leading to the above mentioned property is only having a minimum width of 3.30 meters. While considering the layout application in respect of the construction under Group I - Hazardous Occupancy, it was found that the approach road is not suitable for permitting the marine diesel outlet. Even though the marine diesel outlet is intended for supplying fuel to the fishing boats, the fuel has to be brought to the outlet through road by using tanker lorries. Two line roads having minimum width of 7 metres is essential and the minimum width of 7 metre is prescribed as per Kerala Panchayath Building Rules, 2011. In the event of an emergency, higher road width is required for evacuation as well as for the transportation of ambulance, fire engines etc. According to them, considering the insufficient width of the approach road, the 2nd respondent decided to reject the application and the communication would be issued to the 5th respondent.

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4. Arguments have been heard.

5. The petitioner has the eligibility to get permission for construction of a marine fuel pump of the Indian Oil Company in the property comprised in Sy.Nos.4/8-2, 4/8-3, 20/4, 20/4-2, 20/4-3 in Thrikkadavur Village. The objection from the Town Planner is due to the fact that the width of the nearby road is less than 7 metres. What is required vide Clause 4 of Rule 59 of the Kerala Municipality Building Rules is that the access to the plot from the main street should have a width of 7 metres and should be motorable. The nearby street may have a lesser width only. According to the petitioner, it is a motorable street, along which, even tanker lorries, fire engines etc. are moving freely. Apart from all these aspects, it is pointed out that in the adjacent plot, a fuel outlet is already functioning. This Court considered this aspect and a favourable decision was rendered vide Ext.P6 judgment in a similar matter. However, the matter is unnecessarily being held up in the office of the Chief Town Planer despite all favourable recommendations from all

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concerned in the matter. The usual objection to open the marine fuel station is that the road leading to that place does not have a width of 7 metres. As could be seen from Ext.P2 plan itself, there is 7 metres access to the plot. However, the Town Planner is refusing consent. On a consideration of the entire materials now placed on board, this Court is of the view that the the petitioner is entitled to succeed.

Therefore, the writ petition is allowed. The 2nd respondent is directed to accord consent to the new Kesan Seva Kendra at Kavanad immediately granting permission for construction of marine fuel pump of Indian Oil Corporation Ltd. in the property comprised in Sy.Nos.4/8-2, 4/8-3, 20/4, 20/4-2, 20/4-3 in Thrikkadavur Village.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-