

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

WP(C).No. 6456 of 2015 (F)

PETITIONER(S):

**SMT. MERCY,
W/O.SHRI.LIXON XAVIER, BETHEL, KUREEPUZHA P.O.,
KOLLAM-691 604.**

**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, THRIKKADAVUR,
PERINAD P.O.-691 601, KOLLAM.**
- 5. THE SECRETARY,
THRIKKADAVUR GRAMA PANCHAYAT, PERINAD P.O.,
PIN-691 601, KOLLAM DISTRICT.**

**R1-R3 BY GOVERNMENT PLEADER SMT.ANITHA RAVEENDRAN
R4 & R5 BY ADVS. SRI.V.V.RAJA
SRI.M.T.SURESHKUMAR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
30-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 6456 of 2015 (F)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 : TRUE COPY OF SITE PLAN.

**EXT.P2 : TRUE COPY OF THE RECOMMENDATION DT.12-7-12 FROM THE INLAND
NAVIGATION DIVISION, ASRAMAM.**

EXT.P3 : TRUE COPY OF THE OBJECTION FROM FIRE SERVICE DT.13-6-12.

EXT.P4 : TRUE COPY OF THE OBJECTION FROM POLICE DT.

**EXT.P5 : TRUE COPY OF THE NO OBJECTION CERTIFICATE IS ISSUED FROM THE
COLLECTORATE, KOLLAM BY LETTER DT.16-10-2014.**

EXT.P6 : TRUE COPY OF THE LETTER DT.23-4-14 FROM KCZMA.

**EXT.P7 : TRUE COPY OF THE LETTER DT.21-1-15 FROM THE CHIEF TOWN PLANNER
ADDRESSED TO THE SECRETARY, THRIKKADAVUR GRAMA PANCHAYAT.**

EXT.P8 : TRUE COPY OF THE LETTER DT.4-2-15 FROM IOC.

EXT.P9 : TRUE COPY OF THE JUDGMENT DT.16-7-2014 IN WPC 989/14.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msv/

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.6456 of 2015

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Dated this the 30th day of July, 2015

JUDGMENT

Aggrieved by Ext.P7 order passed by the second respondent by which he had declined to approve the layout for a marine petrol pump in Re-Sy. Nos.46/9, 20/115-2 and 46/6 of respondent panchayat owned by the petitioner.

2. The Indian Oil Corporation has invited application for marine diesel outlet in Thrikkadavoor Grama Panchayat. The petitioner is having property comprised in R.S Nos.46/9, 20/115 and 46/6 of Thrikkadavur village. The petitioner submitted application for appointment as Retail Outlet Dealer in the respondent panchayat. As can be seen from Ext.P1 site plan which was submitted by the petitioner before the 4th respondent panchayat, the petitioner has required water frontage of 50 metres; it is alleged. The access to the property is from Kollam to Alappuzha main road.

3. The respondent panchayat forwarded the application to the District Town Planner, who in turn, has forwarded the same to the Chief Town Planner. The petitioner has obtained clearance from all the authorities concerned for establishing the diesel outlet in the said property. He has obtained the CRZ clearance also as per Ext.P6.

4. The petitioner points out that there are at present 5 petrol outlets on the side of the aforesaid road which is having width of 6.30 metres along which heavy vehicles could be carried out. The petitioner would further point out that the request is for a marine outlet pump which are meant for fishing boats as there is a necessity for opening such a pump there. According to the petitioner, as it is a marine diesel outlet, the width of the road is quite immaterial. The grievance of the petitioner is that the Town Planner has rejected his request by Ext.P7 on the ground that the width of the road should be 7 metres and the available width of the access is only 5.5 metres. It is with this background, the petitioner has approached this Court.

5. The respondents 1 and 2 have filed a counter affidavit wherein it was stated that the even though petitioner's application is for marine diesel outlet, raw materials have to be brought along the road in tanker lorries for which two lane roads with 7 metres standard width is required. It was also stated that in case of emergency, higher road width is required for evacuation as well as for the transit of ambulances and fire engines. Therefore, a nominal access width of 7 metres is essential for permitting such hazardous constructions and the requirements stipulated are mainly based on considerations of the occupants, encroachers and public in general.

6. The petitioner has filed a reply affidavit controverting the averments of the respondents 1 and 2.

7. I have heard the learned counsel for the petitioner and the learned Senior Government Pleader in the matter.

8. Though it was contended by the State in their counter affidavit that the available width of the road leading to the

petitioner's property is only 4.5 metres, it is factually incorrect as the Chief Town Planner in Ext.P7 has admitted that the width of the road is 5.5 metres. The petitioner points out that this road is meant for only six or seven users there and the traffic along the road is only nominal. The road is having a length of 200 metres. After a distance of 200 metres, the road is having a width of 7.5 metres which was constructed for Sea Food Exporting Company which is not functioning at present. Therefore, according to the learned counsel for the petitioner, the apprehension of the respondents 1 and 2 that there would be traffic problems is out of place.

9. The main road is PWD road which is having more than 7 metres. The Town Planner while issuing Ext.P7 was mainly carried away by the width shown in the sketch without ascertaining the ground realities. The learned counsel for the petitioner invited my attention to Ext.P9 judgment of this Court which covers a similar situation. Though it is true that the road is not having the width of

7.5 metres at all points, as it appears from record that the aforesaid width of the road is close to the requirements and also taking into account the fact that no other business establishments are there on the side of the road, this Court of the view that the matter requires a re-consideration by the respondents.

In the result, the writ petition is allowed. Ext.P7 is quashed. The respondent panchayat is directed to conduct a local inspection of the property and to ascertain the ground realities regarding the road leading to the petitioner's property and to take a final decision thereafter within one month from the date of receipt of a copy of this judgment. It is also made clear that the petitioner shall be given an opportunity of being heard before final decision is taken by the respondent panchayat.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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