

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 9TH DAY OF MARCH 2015/18TH PHALGUNA, 1936

WP(C).No.6500 of 2015 (J)

PETITIONER:

**SHAMITHA AMEER,AGED 35 YEARS,
D/O.MAMMU,RESIDING AT BAITHUL ASHRAF,
PANOOR P.O.,KANNUR DISTRICT,PIN-670 692**

**BY ADVS.SRI.K.ABDUL JAWAD
SRI.MATHEW A KUZHALANADAN
SMT.VINEETHA V.KUMAR**

RESPONDENTS:

- 1. THE THALASSERY MUNICIPALITY,
REPRESENTED BY ITS SECRETARY,
THALASSERY,KANNUR DISTRICT- 670 001.**
- 2. THE SECRETARY,THALASSERY MUNICIPALITY,
THALASSERY,KANNUR DISTRICT-670 001**
- 3. THE EXECUTIVE ENGINEER,
THALASSERY MUNICIPALITY,
THALASSERY,KANNUR DISTRICT- 670 001.**

BY SRI.I.V.PRAMOD,S.C. FOR THALASSERY MUNICIPALITY.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 09-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

pk

WP(C).No.6500 of 2015 (J)

APPENDIX

PETITIONER'S EXHIBITS:

**EXT.P1-TRUE COPY OF THE COMMUNICATION DTD.25-02-2015 ISSUED BY THE
3RD RESPONDENT ALONG WITH ENGLISH TRANSLATION.**

EXT.P2-TRUE COPY OF THE SITE PLAN SUBMITTED BY THE PETITIONER.

EXT.P3-TRUE COPY OF THE PARKING PLAN SUBMITTED BY THE PETITIONER.

RESPONDENT'S EXHIBITS: **NIL**

//TRUE COPY//

P.S. TO JUDGE

pk

A.V. RAMAKRISHNA PILLAI, J.

WP(C) No. 6500 of 2015

Dated this the 9th day of March, 2015

J U D G M E N T

Ext.P1, by which the petitioner's application for building permit was rejected, is under challenge.

2. The petitioner and her co-owners own and possess 19.925 cents of land comprised in TS Nos.166/2, 167, 168, 169 & 179 in Block Nos.3 & 4 of Tiruvangad Village within the local limits of the respondent municipality. The petitioner submitted a plan and application for building permit, which was rejected by the 2nd respondent as per Ext.P1 citing the reason of proposal of road widening by the development plan. The petitioner alleges that the rights of the petitioner and others have been denied for the said reason for more than three decades. According to the petitioner, the respondents cannot deny the fundamental and constitutional rights of the petitioner without authority of law. It is with this background, the petitioner has come up before this Court.

3. When the matter came up for hearing, it was pointed out by both sides that even if the proposed

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construction is allowed, the same would not affect widening as the proposed widening is only for car parking.

4. A Division Bench of this Court in **Padmini v. State of Kerala** [1999 (3) KLT 465], has held that no building permit can be refused to any person because there is a proposal to acquire the land in future. It was held by the apex court in **Raju S. Jethmalani v. State of Maharashtra** [(2005) 11 SCC 222] that refusing to grant permits relying on obsolete DTP schemes is a clear violation of the provisions of the Constitution.

Viewed in that profile, this Court is of the view that the petitioner is entitled to get the reliefs prayed for. Therefore, the writ petition is allowed. Ext.P1 is quashed and the respondent Municipality is directed to reconsider petitioner's application for building permit in the light of what has been stated above and to issue formal orders granting building permit if the same is otherwise in order, within a period of one month from the date of receipt of a copy of this judgment.

Sd/-

**A.V. RAMAKRISHNA PILLAI,
JUDGE**

bka/-