

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

WP(C).No. 7682 of 2015 (I)

PETITIONER : -

DR. MOHAMMED SAJI, AGED 42 YEARS,
S/O. K.S. MOHAMMED, "SITHARA",
CHANDIROOR P.O., ALAPPUZHA DISTRICT,
NOW WORKING AT FOCUS MEDICAL CENTRE, P.O. BOX 24784,
DOHA, QATAR, REPRESENTED BY HIS AUTHORIZED POWER OF
ATTORNEY MR. MOHAMMED SHAJI K.M., AGED 48 YEARS,
S/O. MOHAMMED K.S., 1-A, TRINITY CROWN APARTMENTS,
EDAPPALLY P.O., ERNAKULAM DISTRICT,
KERALA STATE 682 024.

BY ADVS. SRI. MOHAMMED SHAH
SRI. SOORAJ T. ELENJICKAL
SMT. MAZNA MANSOOR

RESPONDENTS : -

1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
LOCAL SELF GOVERNMENT DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM, PIN 695 001.
2. THE MUNICIPALITY OF MARADU,
REPRESENTED BY SECRETARY, MARADU MUNICIPALITY,
KUNDANOOR, ERNAKULAM DISTRICT 682 304.
3. THE SECRETARY, MARADU MUNICIPALITY,
MARADU MUNICIPALITY, KUNDANOOR,
ERNAKULAM DISTRICT - 682 304.

R2 & 3 BY ADV. SRI. T.R. RAJAN SC, MARADU MUNICIPALITY
R1 BY Sr. GOVERNMENT PLEADER SMT. C.K. SHERIN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
09-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 7682 of 2015 (I)

APPENDIX

PETITIONER'S EXHIBITS : -

EXHIBIT P1 : POWER OF ATTORNEY DATED 25.1.2015 ATTESTED FROM
EMBASSY OF INDIA, DOHA.

EXHIBIT P2 : PERMIT ISSUED BY THE 3RD RESPONDENT DATED 11.1.11.

EXHIBIT P3 : COMMUNICATION ISSUED BY THE 3RD RESPONDENT TO THE
CHIEF TOWN PLANNER (VIGILANCE) DATED 19.3.2014 AND ITS
TRANSLATION.

EXHIBIT P4 : REPORT FILED BY THE CHIEF TOWN PLANNER (VIGILANCE)
25.9.2014 AND ITS TRANSLATION

RESPONDENTS' EXHIBITS : - NIL.

// TRUE COPY //

P.A. TO JUDGE

DMR/-

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 7682 of 2015

Dated this the 09th day of April, 2015

JUDGMENT

Heard the learned counsel for the petitioner and the learned Government Pleader, as well as the learned Standing Counsel for the respondent Municipality, apart from perusing the record. Since the issue lies in a narrow compass, this Court proposes to dispose of the writ petition at the admission stage itself.

2. Briefly stated, the petitioner, a non resident Indian Doctor, having constructed a building after obtaining the necessary building permit, approached the third respondent for issuance of an occupancy certificate. The third respondent, in turn, seems to have informed the petitioner that the Chief Town Planner, Vigilance, has pointed out certain irregularities. On the said premise, the respondent Municipality rejected the petitioner's application for occupancy certificate. Aggrieved thereby, the petitioner has

approached this Court.

3. The learned counsel for the petitioner has contended that as per the pre-amended provisions of the Municipality Building Rules, any structure with a height below 15 meters cannot be termed as a High rise Building. As per the amendment dated 05.02.2013, only the buildings having the height of 16 meters and above are to be treated as High rise Buildings. Concerning other objections, the learned counsel for the petitioner would contend that the petitioner had already rectified them.

4. The learned Standing Counsel for the respondent Municipality, in tune with the counter affidavit filed by the respondent Municipality, has contended that if the petitioner's construction is in conformity with the Kerala Municipality Building Rules, 1999, the petitioner is at liberty to approach the third respondent in terms of Rule 143 of the said rules by submitting an application in Appendix A. Once such an application is submitted, the third respondent is willing to consider the same in accordance with law.

5. In reply thereto, the learned counsel for the petitioner has submitted that the petitioner is willing to

submit the application, as has been suggested by the learned Standing Counsel for the respondent Municipality, within no time.

6. In the facts and circumstances, having regard to the respective submissions of the learned counsel for the petitioner and the learned Standing Counsel for the respondent Municipality, this Court disposes of the writ petition, making it clear that the petitioner is at liberty to make the necessary application in terms of Rule 143 of the Rules. Once such an application is made, the third respondent shall consider the same in accordance with law, as expeditiously as possible, at any rate, within 45 days from the date of receipt of an application from the petitioner.

With the above observations, this writ petition is disposed of. No order as to costs.

DAMA SESHADRI NAIDU
JUDGE

DMR/-