

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI**

**FRIDAY, THE 10TH DAY OF JULY 2015/19TH ASHADHA, 1937**

**WP(C).No. 9683 of 2015 (I)**  
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**PETITIONER(S):**  
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1. RIAZ HUMAYUN, S/O.HUMAYUN KABIR,  
1/187 M.E. 35, MYTHRI NAGAR EXT. THOTTUNGAL,  
YAKKARA, PALAKKAD - 678 004.
2. HUMAYUN KABIR, 1/187 M.E. 35,  
MYTHRI NAGAR EXT. THOTTUNGAL, YAKKARA,  
PALAKKAD - 678 004.

**BY ADVS.SRI.SANTHEEP ANKARATH  
SRI.YJAFAR KHAN**

**RESPONDENT(S):**  
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1. THE DISTRICT TOWN PLANNER,  
TOWN PLANNING OFFICE, CIVIL STATION,  
PALAKKAD-678001.
2. CHITTOOR THATHAMANGALAM MUNICIPALITY,  
CHITTOOR, PALAKKAD DISTRICT, PIN-678101,  
REPRESENTED BY ITS SECRETARY.

**R1 BY GOVERNMENT PLEADER SMT.K.A.SANJEETHA  
R2 BYSRI.K.P.VIJAYAN, SC  
ADV. SRI.V.N.HARIDAS**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 10-07-2015 ALONG WITH WPC. 16750/2015, THE COURT ON  
THE SAME DAY DELIVERED THE FOLLOWING:**

**mbr/**

APPENDIX

PETITIONER(S)' EXHIBITS:  
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- EXT.P1 - TRUE COPY OF NOTICE NO. BA 260/14-15 DATED 4-3-2015 ISSUED  
BY THE 2ND RESPONDENT ALONG WITH ITS ENGLISH TRANSLATION.
- EXT.P2 - TRUE COPY OF NOTICE NO. C-193/2015 DATED 7-2-2015 ISSUED  
BY THE 1ST RESPONDENT ALONG WITH ITS ENGLISH TRANSLATION.
- EXT.P3 - TRUE COPY OF LOCATION SKETCH ISSUED BY VILLAGE OFFICER,  
THATHAMANGALAM.
- EXT.P4 - TRUE COPY OF THE REPRESENTATION DATED 20-3-2015 SUBMITTED  
BY THE PETITIONER BEFORE THE 1ST AND 2ND RESPONDENTS.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

**A.V.RAMAKRISHNA PILLAI, J**

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WPC No.9683/2015 & 16750/2015  
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Dated this the 10<sup>th</sup> day of July, 2015

**JUDGMENT**

In these writ petitions, the petitioner is challenging the orders of the Town Planner, Palakkad as well as the orders passed by the respondent Municipality which lead to the rejection of the petitioner's application for building permit for constructing an LPG Godown.

2. According to the petitioner, the Town Planner maintained the stand that the minimum required access width to the plot is 7 metres, while the actual available width of the road leading to the plot where the construction is proposed to be made is only 5.6 metres. The other defects pointed out are the absence of documentary evidence regarding the petitioner's right to use the plot as well as the details of existing building in the site plan. The Panchayat refused to grant building permit on the ground of objection of the inhabitants of the

locality.

3. In WPC No.9683/2015, detailed counter affidavits have been filed by the Town Planner and the respondent Municipality. The Town Planner maintained the stand that for the usage of plot for hazardous occupancy where no town planning scheme is in existence, the matter has to be decided by the Chief Town Planner as per Rule 59(2) of Kerala Municipality Building Rules, 1999 and thus, it was forwarded to the Town Planner. According to them, the Kerala Municipality Building Rules is applicable to all Municipalities in the State and as per Rule 59(4), the minimum width of access to the plot is 7 metres where the width of the road leading to the petitioner's property is only 5.6 metres.

4. I have heard the learned counsel for the petitioner, the learned Senior Government Pleader and the learned Standing Counsel for the respondent Municipality.

5. The learned counsel for the petitioner would submit that the road in front of the proposed site is having a width of 7 metres. However, when it leads to the

junction, there is reduction in width on account of certain encroachments by the adjoining owners. It was pointed out that the road covering a distance of 200 metres from the proposed site is maintaining the average width of 7 metres. It was also pointed out that no local inspection was made by any of the authorities to ascertain the situation and it lead to the rejection of the petitioner's application.

6. In WPC No.16750/2015, the petitioner points out that while the petitioner is having all valid documents, the local authority cannot be carried away by the objection from the local inhabitants. It was further submitted by the learned counsel for the petitioner that the petitioner is ready to cure the other defects pointed out by the Town Planner as well as the respondent Municipality.

Considering the submissions made by both sides, this Court is of the view that the matter can be resolved on a local inspection of the site as well as the road in front of the site by the Secretary of the respondent Municipality.

Therefore, this writ petition is disposed of directing

the Secretary of the respondent Municipality to conduct an inspection under due intimation to the petitioner and ascertain whether the road portion lying in front of the proposed site extending up to the nearest junction has an average width of 7 metres, as submitted by the petitioner. If the respondent Municipality is satisfied that such an average width is maintained between the nearest junction and the proposed site and also in the event of curing other formal defects pointed out by the Town Planner or the respondent Municipality by the petitioner, building permit shall be granted to the petitioner. The entire exercise shall be completed within a period of two weeks from the date of receipt of a copy of this judgment.

**SD/- A.V.RAMAKRISHNA PILLAI  
JUDGE**

CSS/

**TRUE COPY**

**p.s.to judge**