

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 26TH DAY OF JUNE 2015/5TH ASHADHA, 1937

WP(C).No. 9767 of 2015 (U)

PETITIONER:

**KERALA LAND REFORMS AND DEVELOPMENT
CO-OPERATIVE SOCIETY LTD.NO.4482,
NALONKANDY ARCADE, FRANCIS ROAD JUNCTION,
CHALAPPURAM, KOZHIKODE,
REPRESENTED BY ITS GENERAL MANAGER.**

**BY ADVS.SRI.B.S.SWATHY KUMAR
SRI.A.K.RAJESH
SRI.VENKATESH GOPI
SMT.T.RESHMA**

RESPONDENT(S):

**THE CHIEF TOWN PLANNER,
OFFICE OF THE TOWN PLANNER, PALAYAM,
THIRUVANANTHAPURAM, PIN-695 001.**

***ADDL.R2 IMPEADED**

**2. MANJERI MUNICIPALITY,
MANJERI, MALAPPURAM, PIN - 676 121,
REPRESENTED BY ITS SECRETARY.**

**ADDL.R2 IMPEADED AS PER ORDER
DATED 15.06.2015 IN IA 8042/15.**

**R1 BY GOVERNMENT PLEADER SRI.G.GOPAKUMAR
ADDL. R2 BY SRI.K.SHIBILI NAHA, SC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 26-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

mbr/

WP(C).No. 9767 of 2015 (U)

APPENDIX

PETITIONER(S)' EXHIBITS:

- P1- TRUE COPY OF THE JUDGMENT IN W.P(C)NO.33414/2005 DATED 28.1.2015.**
- P2- TRUE COPY OF THE COMMUNICATION BAE5-02/13-14 DATED 16.2.2015.**
- P3- TRUE COPY OF THE COMMUNICATION DATED 10.1.2014 TO THE RESPONDENT.**
- P4- TRUE COPY OF THE COMMUNICATION DATED 20.5.2014 TO THE RESPONDENT.**
- P5- TRUE COPY OF THE ORDER NO.E1/7598/2014 DATED 25.11.2015.**
- P6- TRUE COPY OF THE COMMUNICATION NO.BAE5-02/13-14 DATED 27.5.2015.**
- P7- TRUE COPY OF THE ORDER IN APPEAL NO.595/2013 DATED 27.9.2013 OF THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTION.**
- P8- TRUE COPY OF THE JUDGMENT IN W.P(C)NO.5174/2014 DATED 4.3.2015.**

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.9767 of 2015

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Dated this the 26th day of June, 2015

JUDGMENT

The petitioner along with one Chandramohan applied for a permit to construct a commercial-cum-apartment building in 80 cents of property comprised in R.S No.143/1 of Manjeri village, which was rejected stating that the land comes within the Central Area of District Town Planning (DTP) Scheme stating that 44 metres comes within the commercial zone and 33 metres comes within the residential zone. The petitioner alleges that the application was submitted on 3.4.2013.

2. The petitioner, immediately on receipt of the order, filed Appeal No.595 of 2013 before the Tribunal for Local Self Government Institutions which after hearing all parties passed order directing the first respondent to issue the permit without referring to DTP scheme or master plan. As the respondent was prolonging the

matter, it resulted in C.O.C No.494 of 2014.

3. The petitioner alleges that in order to get away from the contempt, an order was passed pointing out 4 defects and that was challenged in W.P(C) No.18164 of 2014. The above writ petition was disposed of directing that the defects did not exist. After hearing the respondent, it was admitted that there was no defect except the non-submission of the plan of all 14 floors in a single sheet of paper. That was challenged resulting in Ext.P1 wherein it was found that the defect is not sustainable and it was directed that the process be completed within one month. Thereafter the respondent municipality did not issue the permit which resulted in C.O.C No.373 of 2015 which is pending.

4. The grievance of the petitioner is that now the respondent municipality has issued Ext.P2 communication to the first respondent seeking layout approval. It is with this background, the petitioner has come up with this writ petition.

5. The first respondent has filed a counter affidavit refuting the allegations in the writ petition. It was stated that four number of site plans as submitted by the petitioner before this Court were forwarded by the municipality to the first respondent. Instead, only one site plan which was submitted with letter dated 10.1.2014 was seen forwarded by the municipality. According to the respondent, since the setback as per the height of the building is not marked in the site plan, it is not clear whether the plan is in accordance with the provisions of the KMBR, 1999. Therefore, by letter dated 20.5.2015 they informed the respondent municipality to forward the site plans submitted by the petitioner. It was further stated that if the respondent municipality forwards the site plans duly signed by the owner of the building, licensee and the secretary of the municipality, there would not be any delay in processing the application of the petitioner.

6. The petitioner has filed a reply affidavit.

7. Arguments have been heard.

8. When the matter came up on 23.5.2015, the learned counsel for the respondent municipality on instructions submitted that the municipality has forwarded the application to the first respondent. Therefore, according to him, the objection now raised by the respondent seems to be untenable.

9. It was submitted by the learned counsel for the petitioner that the application of the petitioner was rejected on the ground that the land comes within the Central Area of DTP scheme. It is submitted that in view of Ext.P1 it is clear that the application for building permit is in full compliance with the KMB Rules. As per Ext.P3, the Town Planner has recommended the sanctioning of the layout stating that the plan is in full compliance with the KMB Rules, 1999.

10. In this Connection, the learned counsel for the petitioner invited my attention to a Division Bench decision of this Court in **Padmini v. State of Kerala** [1999 (3) KLT 465] wherein it was held

that no building permit can be refused to any person because there is a proposal to acquire the land in future. Reliance was also placed on the decision of the Apex Court in **Raju S. Jethmalani v. State of Maharashtra** [(2005) 11 SCC 222] wherein it was held that refusing to grant permits relying on obsolete DTP schemes is a clear violation of the provisions of the Constitution.

11. 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. It is hereby declared that the first respondent is bound to issue approval as sought for in Ext.P2. The first respondent shall issue layout approval within one month from the date of receipt of a copy of this judgment.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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