

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

WP(C).No. 10376 of 2015 (V)

PETITIONER(S):

**ALAVI, AGED 48 YEARS,
S/O.MOHAMMED, MANCHERI HOUSE,
NELLIKUTH P.O., MANJERI, MALAPPURAM DISTRICT.**

**BY ADVS.SRI.P.VENUGOPAL,
SMT.T.J.MARIA GORETTI.**

RESPONDENT(S):

- 1. MANJERI MUNICIPALITY,
MANJERI, MALAPPURAM DISTRICT,
REPRESENTED BY ITS SECRETARY, PIN -676 121.**
- 2. SECRETARY,
MANJERI MUNICIPALITY, MANJERI,
MALAPPURAM DISTRICT, PIN- 676 121.**
- 3. STATE OF KERALA,
REPRESENTED BY THE DISTRICT COLLECTOR,
MALAPPURAM, PIN -676 505.**

**R1 & R2 BY ADV. SRI.K.SHIBILI NAHA.
R3 BY GOVT. PLEADER SMT.K.T. LILLY.**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 29-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

EXHIBIT-P1: TRUE COPY OF THE POSSESSION CERTIFICATE ISSUED BY THE VILLAGE OFFICER, MANJERI IN FAVOUR OF THE PETITIONER.

EXHIBIT-P2: TRUE COPY OF THE SITE PLAN SHOWING THE LIE OF THE PROPERTY OF THE PETITIONER.

EXHIBIT-P3: TRUE COPY OF THE NOTICE/ORDER VIDE NO.B-A-666/14-15 DATED 24.12.2014 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER ALONG WITH ITS TRUE ENGLISH TRANSLATION.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

PA. TO JUDGE

rs.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 10376 of 2015

Dated this the 29th day of June, 2015.

JUDGMENT

Ext.P3, by which the petitioners' application for building permit was rejected, is under challenge.

2. The petitioner is in absolute ownership and possession of a property having an extent of 8.60 cents comprised in old Sy.No.146/3 (Re-Sy.No.29/14) of Manjeri Village in Ernad Taluk. The petitioner alleges that he applied for building permit before the second respondent for constructing a residential building in the said property along with all necessary documents. Indisputably, various commercial/residential and other buildings are already in existence in the area in which the petitioner intends to construct the building. The property is situated on the northern side of NSS College Municipal road at Manjeri. However, the second respondent has rejected the application for building permit on the ground that the area where the

petitioner intended to construct the building is earmarked for public and semi-public uses under the Central Area DTP Scheme. It is with this background, the petitioner has come up before this Court.

3. Arguments have been heard.

4. The petitioner alleges that there is no proposal or proceedings either initiated or pending for acquisition of the property for the purpose of implementing the proposed DTP scheme. As such it is manifest that the said DTP scheme has not become operational in spite of the lapse of considerable time. Therefore, the municipality is bound to reconsider his application ignoring the DTP Scheme as done in the other cases.

5. 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 to 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. 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.P3 is set aside and the respondent municipality is directed to reconsider petitioner's application for building permit within a period of one month from the date of receipt of a copy of this judgment.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.