

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. 10780 of 2015 (V)

PETITIONER(S):

**JINU JOSEPH, AGED 38 YEARS,
S/O.M.J. JOSEPH, MUKKADAYIL HOUSE,
KARITHALA, ERNAKULAM.**

BY ADV. SRI.R.RAJESH.

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REPRESENTED BY ITS PRINCIPAL SECRETARY,
LOCAL SELF GOVERNMENT DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.**
- 2. THE THRIKKAKARA MUNICIPALITY,
REPRESENTED BY ITS SECRETARY,
THRIKKAKARA-682 030, ERNAKULAM.**
- 3. THE SECRETARY, THRIKKAKARA MUNICIPALITY,
THRIKKAKARA-682 030, ERNAKULAM.**

**R1 BY SR. GOVT. PLEADER SMT.C.K. SHERIN.
R2 & R3 BY ADV. SRI.S.SHANAVASKHAN, SC.**

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

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1: TRUE COPY OF THE TAX RECEIPT DATED 12/06/2014 ISSUED BY THE VILLAGE OFFICER, KAKKANAD.
- EXT.P2: TRUE COPY OF THE BASIC TAX REGISTER ISSUED BY THE VILLAGE OFFICER, KAKKANAD.
- EXT.P3: TRUE COPY OF THE PHOTOGRAPHS OF THE PETITIONER'S PROPERTY.
- EXT.P4: TRUE COPIES OF PHOTOGRAPHS OF SURROUNDING AREAS OF THE PETITIONER'S PROPERTY.
- EXT.P5: TRUE COPY FO THE NOTICE DATED 26/02/2015 ISSUED BY THE 3RD RESPONDENT.
- EXT.P6: TRUE COPY FO THE JUDGMENT DATED 04/03/2015 IN W.P.)(C)NO.6747 OF 2015 OF THIS HON'BLE COURT.
- EXT.P7: TRUE COPY OF THE JUDGMENT DATED 05/02/2015 IN WP(C).3648 OF 2015 OF THIS HON'BLE COURT.
- EXT.P8. TRUE COPY OF THE JUDGMENT DATED 27/01/2015 IN W.P.(C)NO.2512 OF 2015 OF THIS HON'BLE COURT.
- EXT.P9: TRUE COPY OF THE JUDGMENT DATED 22/09/2014 IN W.P.(C)NO.22153 OF 2014 OF THIS HON'BLE COURT.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 10780 of 2015

Dated this the 09th day of April, 2015

JUDGMENT

Briefly stated, when the petitioner sought permit for division of plots in his property to an extent of 17.97 Ares situated within the territorial limits of the second respondent Municipality, the third respondent rejected it through Exhibit P5 proceedings. Aggrieved thereby, the petitioner has filed the present writ petition.

2. The learned counsel for the petitioner has submitted that the approved structural plan for Central City of Kochi ceased to be operational long back. According to him, in the light of the repeal of the principle enactments under which the said structural plan was formulated, Exhibit P5 proceedings issued by the third respondent could not be sustained.

3. The learned Standing Counsel for the respondent Municipality has submitted that the respondent Municipality is willing to reconsider petitioner's application, after conducting physical inspection of the property.

4. 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.

5. As can be seen, in **Shivaprasad v. State of Kerala** [2011 (1) KLT 690] this Court has held that the provisions of Town Planning Act, 1939 and those of Act 1920 (Madras) vary with the schemes under the extant Municipality Act, 1994. Accordingly, this Court has held that Section 51 (4) of the Kerala Municipality Act, 1994, is inconsistent with the provisions of Part 11 A of Constitution and unworkable in the light of conflicting provisions of Town Planning Act and Municipality Act, 1994.

6. Further, in **Abdul Kabeer v. Malappuram Municipality** [2012 (3) KLT 106], this Court once again reiterated the same proposition.

7. In the light of the binding precedents, I am of the considered opinion that Exhibit P5 cannot be sustained and is accordingly set aside. Consequentially, the respondent Municipality is directed to consider petitioner's application for the division of plots afresh. Needless to observe that the respondent Municipality may expedite the process and complete it within one month from the date of receipt of a copy of this judgment.

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

**DAMA SESHADRI NAIDU
JUDGE**

DMR/-