

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

WP(C).No. 13311 of 2015 (L)

PETITIONER :

**PADMANABHAN A.,
S/O.PANGU, AGED 63 YEARS
RETIRED HEAD LOAD WORKER, ALAYAR NILAM
WEST HILL P.O., KOZHIKODE, KOZHIKODE DISTRICT
PIN-673 005.**

**BY ADVS.SRI.M.P.RAMNATH
SRI.P.RAJESH (KOTTAKKAL)
SRI.BEPIN PAUL
SRI.SHALU VARGHESE**

RESPONDENT(S) :

- 1. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
LOCAL ADMINISTRATION (M) DEPARTMENT
THIRUVANANTHAPURAM, PIN- 695 001.**
- 2. CALICUT DEVELOPEMENT AUTHORITY
REPRESENTED BY ITS SECRETARY
RAILWAY STATION LINK ROAD, CALICUT,
PIN-673 001.**
- 3. KOZHIKODE MUNICIPAL CORPORATION
REPRESENTED BY ITS SECRETARY, CORPORATION OFFICE
KOZHIKODE, PIN-673 032.**
- 4. ASSISTANT ENGINEER
CORPORATION OF KOZHIKODE, CORPORATION OFFICE
KOZHIKODE, PIN - 673 032.**

**R1 BY GOVT. PLEADER SRI. G. GOPAKUMAR
R2 BY ADV. SRI.G.SANTHOSH KUMAR
R3 & R4 BY ADV. SRI.K.D.BABU, SC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Mn

...2/-

WP(C).No. 13311 of 2015 (L)

APPENDIX

PETITIONERS' EXHIBITS :

- EXHIBIT P1. PHOTOSTAT COPY OF THE TAX PAID RECEIPT DATED 20.10.14 FOR
 THE PERIOD 2014-2015 ISSUED BY THE VILLAGE OFFICER, KACHERI
 VILLAGE IN THE NAME OF THE PETITIONER.
- EXHIBIT P2. PHOTOSTAT COPY OF THE POSSESSION CERTIFICATE DATED 16.07.14
 ISSUED BY THE VILLAGE OFFICER, KACHERI VILLAGE IN THE NAME
 OF THE PETITIONER.
- EXHIBIT P3. PHOTOSTAT COPY OF THE LOCATION SKETCH DATED 20.10.14
 ISSUED BY THE VILLAGE OFFICER, KACHERI VILLAGE, IN THE NAME
 OF THE PETITIONER.
- EXHIBIT P4. PHOTOSTAT COPY OF THE LOCATION CERTIFICATE DATED 16.10.14
 ISSUED BY THE VILLAGE OFFICER, KACHERI VILLAGE, IN THE NAME
 OF THE PETITIONER.
- EXHIBIT P5. PHOTOSTAT COPY OF THE ORDER DATED 28.03.15 ISSUED BY THE
 4TH RESPONDENT REFUSING TO GRANT BUILDING PERMIT ALONG
 WITH THE BUILDING PLANS ANNEXED THERETO.
- EXHIBIT P6. PHOTOSTAT COPY OF THE JUDGMENT OF THE HONOURABLE HIGH
 COURT OF KERALA IN OP 14251/96 DATED 28.10.96.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

Mn

A.V.RAMAKRISHNA PILLAI, J

WPC No.13311 of 2015

Dated this the 30th day of June, 2015

JUDGMENT

Ext.P5 by which the petitioner's application for building permit was rejected is under challenge.

2. The petitioner is the owner in possession of 2.90 cents of land comprised in Re.Sy.No.850/21/1 in Kacheri Village at Kozhikode Taluk. The petitioner submitted an application for a permit on 18.2.2015, for construction of a new building before the respondents, which was rejected by the fourth respondent stating that the property comes within the zonal regulation affective area whereby there are restriction imposed for constructions in such areas. The Zonal Town Planner opined that the petitioner's land is included in the scheme - land to be acquired and developed for residential use. It is also stated that as per the above scheme, a 7 metre wide road is proposed and that the petitioner's proposed house if constructed, would effect

such proposed road alignment in future. It is with this background, the petitioner has approached this Court.

3. I have heard the learned counsel for the petitioner and the learned standing counsel for the respondent Municipality.

4. It was pointed out by the learned counsel for the petitioner that the restriction imposed on the construction of building is as per the DTP Scheme for the West Hill area, which is an age old proposal published in the year 1973, is in fact can be deemed to be abandoned. Since the last 40 years, the proposal has not been implemented. In this Connection, the learned counsel 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 Maharastra** [(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.P5 is quashed and the respondent Corporation is directed to reconsider petitioner's application for building permit and grant permit within a period of one month from the date of receipt of a copy of this judgment.

sd/- A.V.RAMAKRISHNA PILLAI
JUDGE

css/

true copy

P.S.TO JUDGE