

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 17TH DAY OF JULY 2015/26TH ASHADHA, 1937

WP(C).No. 14913 of 2015 (L)

PETITIONER:

**V. K. KUNJALI,
AGED 47 YEARS, VALIYAVEEDU, NORTH EDAPPALLY
KOCHI-682024
REPRESENTED BY HIS POWER OF ATTORNEY HOLDER
MOHAMMED NISSAR P.A., AGED 49 YEARS, S/O.LATE P.V.ABDU
CC 53/584, ARATHI, CHERUPUZHAPAM LANE
KADAVANTHRA, COCHIN-682020.**

**BY ADVS.SMT.M.A.VAHEEDA BABU
SRI.K.A.NOUSHAD
SRI.P.U.VINOD KUMAR
SRI.KANDAMPULLY RAHUL
SRI.MITHUN BABY JOHN
SRI.J.RAMKUMAR**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, LOCAL SELF GOVERNMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.**
- 2. THE CHIEF TOWN PLANNER,
OFFICE OF THE CHIEF TOWN PLANNER
TOWN AND RURAL PLANNING DEPARTMENT
THIRUVANANTHAPURAM-33.**
- 3. THE REGIONAL TOWN PLANNER/SENIOR TOWN PLANNER,
REGIONAL TOWN PLANNING OFFICE, CIVIL STATION
ERNAKULAM-682030.**
- 4. CORPORATION OF COCHIN,
REPRESENTED BY ITS SECRETARY, COCHIN, PIN-682011.**

**R1 TO R3 BY GOVERNMENT PLEADER SMT.ANITHA RAVEENDRAN
R4 BY ADV. SRI.RAAJESH S.SUBRAHMANIAN,SC,COCHIN CO
R4 BY SRI.P.K.SOYUZ,SC,COCHIN CORPORATION**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 17-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

vmr.

APPENDIX

PETITIONER(S)' EXHIBITS

P1 : A TRUE COPY OF THE APPLICATION FOR BUILDING PERMIT SUBMITTED BEFORE THE EDAPPALLY ZONAL OFFICE OF THE 3RD RESPONDENT WITH 3 METER BUILDING LINE.

P2 : A TRUE COPY OF THE APPLICATION FOR BUILDING PERMIT SHOWING 6 METER BUILDING LINE FROM THE ROAD, SUBMITTED BY THE PETITIONER BEFORE THE 4TH RESPONDENT.

P3 : A TRUE COPY OF THE LETTER DATED 2-4-2014, REQUESTING FOR A DECISION WITH RESPECT TO THE APPLICATION SUBMITTED BY THE PETITIONER FOR BUILDING PERMIT, SEND BY THE 4TH RESPONDENT TO THE 3RD RESPONDENT.

P4 : A TRUE COPY OF THE REPRESENTATION DATED 26-6-2014 SUBMITTED BY THE PETITIONER BEFORE THE CHIEF MINISTERS PUBLIC GRIEVANCE CELL.

P5 : A TRUE COPY OF THE EXPLANATION DATED 22-7-2014 SUBMITTED BY THE 4TH RESPONDENT BEFORE THE CHIEF MINISTER'S PUBLIC GRIEVANCE CELL.

P6 : A TRUE COPY OF THE JUDGMENT DATED 30-10-2014 OF THIS HON'BLE COURT IN WPC.28497/2014.

P7 : A TRUE COPY OF THE LETTER DATED 14-8-2014 OF THE 2ND RESPONDENT.

P8 : A TRUE COPY OF THE LETTER DATED 21-10-2014 OF THE 4TH RESPONDENT.

P9 : A TRUE COPY OF THE ORDER DATED 27-12-2014 OF THE 4TH RESPONDENT, REJECTING THE APPLICATION OF THE PETITIONER.

RESPONDENT(S)' EXHIBITS : NIL.

/TRUE COPY/

vmr.

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No. 14913 of 2015

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Dated this the 17th day of July, 2015

JUDGMENT

The petitioners have approached this Court aggrieved by the rejection of his application for building permit by the fourth respondent as per Ext.P9 on the basis of the reports from respondents 2 and 3.

2. The petitioner is the owner of 9.41 cents of land situated on the left hand side of the old National Highway-17 (Old Edappally-Cheranelloor road having 6 metres width) and he has decided to construct a residential building. Accordingly, he submitted Ext.P1 application by on line with three metre building lane from the road as provided under Section 383 A of the Kerala Municipality Act r/w. Rules 25 and 26 of the Building Rules.

3. The petitioner alleges that the fourth respondent had insisted for showing 6 metres building lane from the road stating that the old structural plan still holds good for the proposed area. It is further alleged that as per the existing plan of Kochi (varied latest in 2007), there is a proposal for road widening with a width

of 45 metres and 6 metres building lane. However, after the revision of the structural plan in 2007, the National Highway-17 (NH-17) was shifted to the eastern side of the old Edappally-Cheranelloor road by constructing a new railway over bridge and bye pass road and the new NH-17 is having approximately 16 metres width. Therefore, the old NH-17 road has lost its importance and the same ends at the old railway gate which now stands permanently closed.

4. The petitioner states that his plot is abutting the old NH-17 road which now ends on the side of the railway gate and the plot is now away from the new NH for about 63 metre; it is alleged. According to him, in view of the shifting of the National Highway-17 by constructing new railway over bridge and bye-pass road on the eastern side of the old Edappally-Cheranalloor road, necessarily the structural plan of Kochi has to be varied, which has not till now, done by the first respondent.

5. Exts.P7 and P8 are the orders of respondents 2 and 3 instructing not to grant building permit and pursuant to the same as per Ext.P9, the 4th respondent had rejected the application of the petitioner for building permit. It is alleged that the stand of the

respondents in Exts.P7 to P9 is absolutely baseless since even going by their own statement in Exts.P3, P7, P8 and P9, the building site is situated on the side of the old NH-17 which stands now shifted to a different place by construction of a new railway over bridge and bye pass.

6. Heard the learned counsel for the petitioner, the learned Government Pleader and the learned standing counsel for the respondent corporation.

7. The learned standing counsel for the respondent corporation opposed the petition on the ground that as per the DTP scheme the corporation has earmarked the area for widening the National Highway.

8. In answer to the said submission, the learned counsel for the petitioner would submit that though the property of the petitioner is situated by the side of the old NH-17, the alignment of the highway was shifted to some other place and there is no scope of keeping the road for widening. It was also submitted that the Town Planning Scheme now proposed for opposing the application remained only in papers and no acquisition proceedings have been taken by them so far.

9. 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 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.

10. Viewed in that profile, this Court is of the view that the petitioners are entitled to get the reliefs prayed for.

Therefore, the writ petition is allowed. Exts.P7 to P9 are quashed and the respondent corporation is directed to reconsider petitioner's application for building permit *de hors* Exts.P7 to P9 within a period of one month from the date of receipt of a copy of this judgment.

Sd/-
A.V.RAMAKRISHNA PILLAI
JUDGE

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