

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. 15372 of 2015 (V)

PETITIONER(S):

**NITHYAN P.K., AGED 42 YEARS,
S/O.LATE NANU, PEEDIKAKANDY, THIRUVANGADU PO,
THALASSERY 670001.**

BY ADV. SMT.I.SHEELA DEVI

RESPONDENT(S):

- 1. THALASSERY MUNICIPALITY,
REPRESENTED BY ITS SECRETARY,
OFFICE OF THE MUNICIPALITY, THALASSERY, PIN 670001.**
- 2. THE DISTRICT COLLECTOR,
COLLECTORATE, KANNUR- 670101.**
- 3. ASSISTANT ENGINEER,
LOCAL SELF GOVERNMENT DEPARTMENT,
THALASSERY MUNICIPALITY, THALASSERY, PIN 670001.**

**R1 & 3 BY ADVS. SRI.I.V.PRAMOD
SRI.K.V.SASIDHARAN
R2 BY GOVERNMENT PLEADER SMT.K.T.LILLY**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: A TRUE COPY OF THE SETTLEMENT DEED NO.780/2012 DATED 23.03.2012 OF
SUB REGISTRY OFFICE, THALASSERY**
- P2: A TRUE COPY OF THE SITE PLAN ISSUED BY THE VILLAGE OFFICER,
THIRUVANGAD TO THE PETITIONER**
- P3: A TRUE COPY OF THE COMMUNICATION NO.E5/BA/626/13-14 DATED
31.03.2014 ISSUED BY THE 3RD RESPONDENT**
- P4: A TRUE COPY OF THE RECEIPT NO.6813093 DATED 03.07.2014 ISSUED BY THE
VILLAGE OFFICER, THIRUVANGAD**
- P5: A TRUE COPY OF THE COMMUNICATION NO.83-E5/BA/626/13-14 DATED
08.10.2014 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER**
- P6: TRUE COPY OF THE REPORT NO.KBT.10/2014-15 DATED 16.03.2015 ISSUED
BY THE AGRICULTURAL FIED OFFICER, THALASSERY**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.15372 of 2015

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Dated this the 29th day of June, 2015

JUDGMENT

Exts.P3 and P5 by which petitioner's application for construction of a residential house was rejected by the third respondent are under challenge.

2. The petitioner is the citizen of India and permanently residing in Thiruvangad, Thalassery. He has approached this Court aggrieved by the denial to grant permission to construct a residence in R.S No.18/2A having an extent of 5.06 ares. The petitioner alleges that the said property was obtained by the petitioner through inheritance. The petitioner further alleges that his mother had executed a settlement deed No.780/2012 dated 23.3.2012 of Sub registry Office, Thalassery in his favour and thereafter he approached the first respondent for constructing a house in the said plot. However, the third respondent has denied the same saying that it is

included in the Agricultural Zone and in the development plan for Thalassery Town Part Variation, 2007 map.

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

4. The petitioner stated that he is regularly paying property tax for the said property and on 3.7.2014 he has remitted an amount of ₹344/- towards the site plan fee. A copy of the receipt dated 3.7.2014 issued by the Village Officer, Thiruvangodu is produced as Ext.P4. The petitioner further stated as he approached the third respondent after curing all the defects noted by the third respondent, the respondent by Ext.P5 communication dated 8.10.2014 rejected his application.

5. It is submitted that when the petitioner approached the Agricultural Officer, Thalassery for getting a certificate whether the property in question is included in the data bank as Paddy Land or Wetland as defined under Act 28 of 2008 of the Kerala Conservation

of Paddy Land and Wetland Act, 2008, the Agricultural Field Officer, Krishi Bhavan, Thalassery inspected the property and by Ext.P6 reported to the district Collector, Kannur that the property has not been used for cultivating paddy for the past several years and that the neighbourhood properties are there and is a residential area.

6. 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.

7. 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. Exts.P3 and P5 are quashed and the respondent Municipality is directed to reconsider petitioner's application for building permit *de hors* Exts.P3 and P5 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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