

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 1937

WP(C).No. 15516 of 2015 (L)

PETITIONERS :

1. M/S.THREE ARC PROPERTY DEVELOPERS PVT.LTD.
THRIKKANDIYUR AMSOM, KUMARAMANGALAM DESAM, TIRUR P.O.,
MALAPPURAM DISTRICT, REP. BY ITS MANAGING DIRECTOR
MOHAMMED KABEER M., S/O. LATE BAPPUTTY, AGED 44 YEARS,
MANKADAVATH HOUSE, KAAB-AL FORT, P.O.MANGALAM
MALAPPURAM - 676 561.
2. MOHAMMED, AGED 55 YEARS,
S/O. KUNHI KOYA, ORUVIL HOUSE, KURUMBATHOOR P.O.
TIRUR, MALAPPURAM DISTRICT - 676 301.
3. MOHAMMEDKUTTY, AGED 41 YEARS,
S/O. ABDUL RAHMAN, CHATHRAPALLIYALIL HOUSE,
PERASANNUR P.O., MALAPPURAM DISTRICT - 679 588.
4. POOZHICKUNNATH ASHARAF, AGED 44 YEARS,
S/O. MOHAMMED, POOZHICKUNNATH HOUSE, ANANTHAVOOR P.O.
MALAPPURAM DISTRICT - 676 301.

BY ADVS.SRI.T.A.SHAJI (SR.)
SRI.MANUEL VIVERA
SMT.NAMITHA JYOTHISH
SRI.V.VINCENT DIDACOSE

RESPONDENT :

TIRUR MUNICIPALITY, REPRESENTED BY SECRETARY,
TIRUR, MALAPPURAM DISTRICT - 676 101.

BY SRI.K.J.MOHAMMED ANZAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 26-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: TRUE COPY OF THE SALE DEED, DOCUMENT NO. 3776/2014 OF TIRUR SUB
REGISTRY.
- P2: TRUE COPY OF THE LOCATION SKETCH PREPARED BY THE VILLAGE
OFFICER, THRIKKANDIYUR.
- P3: TRUE COPY OF THE AGREEMENT DT. 13.9.14 EXECUTED BETWEEN THE 1ST
PETITIONER AND PETITIONERS 2 TO 4.
- P4: TRUE COPY OF THE ORDER DT. 18.3.15 REJECTING THE APPLICATION FOR
BUILDING PERMIT ISSUED BY THE 2ND RESPONDENT.
- P5: TRUE COPY OF THE RESOLUTION NUMBERED AS P1 - 523/2006.
- P6: TRUE COPY OF THE DRAFT DATA BANK ISSUED BY THE VILLAGE OFFICER
THRIKKANDIYUR VILLAGE.
- P8: TWO PHOTOGRAPHS SHOWING THE LIE OF THE PROPERTY.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 15516 of 2015

Dated this the 26th day of May, 2015.

JUDGMENT

Ext.P4 order, by which the petitioners' application for building permit was rejected, is under challenge in this writ petition.

2. The 1st petitioner is a company incorporated under the Indian Companies Act, which is inter alia engaged in the business of developing properties and construction of buildings. The petitioners 2 to 4 are also individually engaged in the same field of business. With a view to construct a multistoried building in the heart of the city of Tirur, they acquired an extent of 126.5 cents of land in Tirur town, by purchase of different extent of properties from different individuals. The petitioners alleges that they applied for a building permit to make the construction complying with all statutory requirements. However, assigning the reason that the properties come under the mixed, commercial, residential

as well as in public and semi-public zones as per the approved DTP Scheme-II of the Municipality and that the Wet Land Rules are applicable to the properties, the respondent Municipality, by Ext.P4 declined the permit.

3. Arguments have been heard.

4. The learned counsel for the petitioners, inviting my attention to Ext.P7 series photographs, submitted that in the nearby locality buildings were constructed. Ext.P7 photos show the present nature of the land of the petitioners.

5. The decision of this Court in ***Mohammed Abdul Basheer C.P. v State of Kerala and another*** (2012(3) KLT 86) lays down the principle that the present position of the land has to be taken into consideration and on ascertaining these facts, permission can be granted to construct a house.

6. 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 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. In ***Jalaja Dileep v Revenue Divisional Officer*** (2012(3) KLT 333) this Court observed that the description in the title deed or in revenue records will not be crucial if the property is reclaimed already. The aforesaid legal position settled by this Court escaped the attention of the authorities while rejecting the petitioners' application. Therefore, this writ petition is allowed. Ext.P4 is quashed.

The respondent Municipality is directed to conduct a local inspection of the property regarding the present lie as well as the condition of the property of the petitioners and surrounding properties. The respondent is also directed to consider the application and pass appropriate orders, after

affording the petitioners an opportunity of being heard. This shall be done within a period of two months from the date of receipt of a copy of this judgment.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.