

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 27TH DAY OF MAY 2015/6TH JYAISHTA, 1937

WP(C).No. 15551 of 2015 (T)

PETITIONER(S) :

EARTHSPACE BUILDERS AND DEVELOPERS,
41/406 C, 4TH FLOOR, BEEJAY TOWER,
RAJAJI ROAD, KOCHI - 682 035,
REPRESENTED BY ITS PARTNER PRATHEESH VINCENT.

BY ADV. SRI.M.KRISHNAKUMAR.

RESPONDENT(S) :

1. THRIKKAKARA MUNICIPALITY,
REPRESENTED BY ITS SECRETARY, THRIKKAKARA - 682 030.
2. SECRETARY,
THRIKKAKARA MUNICIPALITY, THRIKKAKARA - 682 030.
3. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
LOCAL ADMINISTRATION (M) DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM- 695 001.
4. REGIONAL TOWN PLANNING OFFICER,
ERNAKULAM - 682 030.

BY GOVERNMENT PLEADER SMT.K.A.SANJEETHA &
BY SRI.S.SHANAVAS KHAN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 27-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

EXHIBIT-P1- TRUE COPY OF THE RELEVANT EXTRACT OF THE LAND TAX ASSESSMENT REGISTER IN RESPECT OF THE SUBJECT PROPERTY.

EXHIBIT-P1 (A) - TRUE COPY OF THE BASIC TAX RECEIPT DATED 04/09/2014.

EXHIBIT-P2- TRUE COPY OF THE DRAWING OF THE PROPOSED CONSTRUCTION SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXHIBIT-P2 (A) - TRUE COPY OF THE DRAWING OF THE PROPOSED CONSTRUCTION SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXHIBIT-P3- TRUE COPY OF THE PROCEEDINGS OF THE 2ND RESPONDENT.

EXHIBIT-P4- TRUE COPY OF THE JUDGMENT IN W.P(C) 18312/2008 OF THIS HON'BLE COURT DATED 12/12/2011.

EXHIBIT-P4 (A) - TRUE COPY OF THE JUDGMENT IN W.P(C) 14530/2013 DATED 25/072013.

EXHIBIT-P4 (B) - TRUE COPY OF THE JUDGMENT IN W.P(C) 27457/2012 OF THIS HON'BLE COURT DATED 18/12/2012.

EXHIBIT-P4 (C) - TRUE COPY OF THE JUDGMENT IN W.A 929/2012 OF THIS HON'BLE COURT DATED 28/06/2012.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No.15551 of 2015

Dated this the 27th day of May, 2015.

JUDGMENT

Ext.P3 proceedings, by which the petitioners' application for building permit was rejected by the second respondent, is under challenge.

2. The petitioner purchased 9.05 ares (22.35 cents) of land within the local limits of the respondent municipality. The petitioner alleges that he submitted an application and plans for permission to construct multistoried residential complex in their property. By Ext.P3 proceedings, the respondent Municipality rejected the request of the petitioner for permission to construct a multistoried residential building complex in their property. According to the petitioner, he cannot be prevented from putting his property to any use on the ground that there is an old proposed DTP Scheme. The petitioner has now come to understand that the alleged DTP Scheme of the year 1983 has never been notified by the

Government as required under the Madras Town Planning Act, 1920. The petitioner further pointed out that this aspect was submitted before this Court on behalf of the Government and on that basis, similar writ petitions were allowed by this Court. Therefore, according to the petitioner, the municipality is bound to reconsider his application ignoring the DTP Scheme as done in the other cases. It is in this context, the petitioner has approached this Court.

3. Arguments have been heard.

4. The learned counsel for the petitioner 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. 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.P3 is set aside and the respondent municipality is directed to reconsider petitioner's application for building permit and to pass orders granting permit within a period of one month from the date of receipt of a copy of this judgment in the light of above.

**Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE**

Scl.