

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

WP(C).No. 20146 of 2010 (P)

PETITIONER(S):

**P.C. RAVI VARMA RAJA,
S/O.NARAYANAN NAMBOOTHIRI,
AGED 86 YEARS, RESIDING AT PUTHIYA KOVILAKAM,
BEYPORE, KOZHIKODE.**

**BY ADVS.SRI.V.V.SURENDRAN,
SRI.P.A.HARISH,
SMT.RESMI NANDANAN.**

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
DEPARTMENT OF PORTS, SECRETARIAT,
THIRUVANANTHAPURAM-1.**
- 2. THE PORT OFFICER,
BEYPORE PORT, KOZHIKODE-673 015.**
- 3. THE TAHSILDAR, LAND ACQUISITION,
CIVIL STATION, KOZHIKODE-20.**
- 4. THE VILLAGE OFFICER,
BEYPORE, KOZHIKODE-673 015.**
- 5. THE BEYPORE PANCHAYATH,
REPRESENTED BY ITS SECRETARY,
BEYPORE, KOZHIKODE-673 015.**

WP(C).No. 20146 of 2010 (P)

*** ADDL. R6 IMPEADED**

**6. THE KOZHIKODE CORPORATION,
REPRESENTED BY ITS SECRETARY,
CORPORATION OFFICE, BEACH ROAD,
CALICUT-673 032.**

*** IS IMPEADED AS ADDL. R6 AS PER ORDER DATED 15/06/2011
IN I.A. NO.9078/2011.**

**R1 TO R4 BY SR. GOVT. PLEADER SRI.K.K. SAIDALAVI.
R5 BY ADV. SRI.P.VKUNHIKRISHNAN.
ADDL. R6 BY ADV. SRI.K.D. BABU, SC.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 01-09-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 COPY OF THE APPLICATION UNDER THE RIGHT TO INFORMATION ACT.
EXT.P2 COPY OF THE APPLICATION UNDER THE RIGHT TO INFORMATION ACT.
EXT.P3 COPY OF THE ANSWERS SUPPLIED BY RESPONDENT 2.
EXT.P4 COPY OF THE ANSWERS SUPPLIED BY RESPONDENT 5.
EXT.P5 COPY OF THE LETTER.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.20146 of 2010

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Dated this the 1st day of September, 2015

JUDGMENT

The writ petition is filed for a direction to the 5th respondent not to insist for a no objection certificate before granting development permit to lands lying near the Beypore port and also for a direction to the 2nd respondent not to acquire further land without effectively utilising the lands which are already in their possession.

2. The petitioner is aggrieved by the decision of respondents 2 and 5 not to give development permits to any land situated near the Beypore port without obtaining a no objection certificate from the 2nd respondent. Respondents 2 and 5 seem to be insisting for a no objection certificate under the guise that those lands may be required for future development of the port.

3. The petitioner alleges that the 2nd respondent had acquired vast extent of land more than 40 years ago for the development of the Beypore port and the same is lying vacant.

The petitioner further alleges that a further extent of land so acquired has been leased out to M/s.Steel Industries Kerala Ltd., and the lease had already expired. However, it has not been renewed. The petitioner further alleges that the insistence of a no objection certificate without effectively using the land in their possession is unjustifiable. The petitioner points out that for several years, the lands near the port is lying without any development due to the stand of the respondents 2 and 5. According to him, such a stand is illegal and unreasonable. It is with this background, the petitioner has approached this Court.

4. In the counter affidavit filed by the 2nd respondent, it was contended that the petitioner is having a large extent of land in Beypore village and out of this, a portion of land was acquired for developing Beypore port in the year 1996. According to the 2nd respondent this acquired land is not sufficient for the development proposal putforth and, therefore, among other lands adjacent to the land already acquired was proposed to be taken. As such, the land in R.S No.85 was also to be acquired for the said purpose. They further contended that the Government is under active consideration to develop

Bey pore port into a major port under public and private participation.

5. It was further contended that the land now available with the department would not be sufficient for developing the Bey pore port proposed by the Government. The Department of Ports would have to acquire land adjacent to the already acquired land if the development proposal materialises. At this juncture, the office of the second respondent is not issuing no objection certificate for any construction activities in the land identified for the development. They stated that if the proposal for developing Bey pore port was fully approved, the whole area around the port, including the petitioner's property and other adjacent lands, would have to be acquired and for this, proposals have already been forwarded to the Government. Therefore, they prayed for a dismissal of the writ petition.

6. Arguments have been heard.

7. The petitioner points out that originally acquisition for the purpose of the port was made more than 40 years ago and now by insisting for a no objection certificate by the respondents has virtually stalled the development activities in this area. The

petitioner further points out that there is no justification in not permitting development activities in the area for more than 40 years under the guise that the area is required for future development.

8. There cannot be any quarrel against the proposition that the respondents are free to acquire any property if they need property for development. As it appears that no steps have been initiated for acquisition proceedings, the rights of the petitioner cannot be held at bay for the reason that the property may be needed for the port at one point of time.

9. It was pointed out by the learned counsel for the petitioner that the development of the port has so far remained as a mere proposal and it 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.

10. 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.

Therefore, the writ petition is disposed of directing the respondents to grant no objection certificate to the petitioner if the same is otherwise in order. However, the grant of the no objection certificate will not stand in the way of the respondents in acquiring the property if it is required in future.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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