

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 10TH DAY OF JULY 2015/19TH ASHADHA, 1937

WP(C).No. 16773 of 2015 (V)

PETITIONER :

**V.K.PREMA KUMARI, AGED 67 YEARS,
'PREM GOVIND', T.C27/251(1), THARA-250(A),
KODOOR LANE, KUNUKUZH, THIRUVANANTHAPURAM**

**BY ADVS.SRI.V.G.ARUN
SRI.T.R.HARIKUMAR**

RESPONDENTS :

- 1. THE CORPORATION OF THIRUVANANTHAPURAM
REPRESENTED BY IT SECRETARY,
THIRUVANANTHAPURAM - 695 027**
- 2. THE TOWN PLANNING OFFICER,
TOWN PLANNING OFFICER,
CORPORATION OF THIRUVANANTHAPURAM
THIRUVANANTHAPURAM - 695 027**

BY SRI.P.K.MANOJKUMAR,SC,

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 10-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: TRUE COPY OF THE LAND TAX RECEIPT 02/5/12 ISSUED FROM THE
PATTOM VILLAGE OFFICER.
- EXT.P2: TRUE COPY OF THE PHOTOGRAPHS SHOWING DIFFERENT
COMMERCIAL BUILDING IN THE NEIGHBOURHOOD OF THE
PETITIONER'S PROPERTY.
- EXT.P3: TRUE COPY OF THE APPLICATION FOR BUILDING PERMIT
SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT
24/7/2012.
- EXT.P4: TRUE COPY OF THE RECEIPT ISSUED BY THE 1ST RESPONDENT
DATED 26/7/2012.
- EXT.P5: TRUE COPY OF THE BUILDING PLAN SUBMITTED ALONG WITH
EXT.P3 APPLICATION.
- EXT.P6: TRUE COPY OF THE NOTICE DATED 7/3/14 ISSUED BY THE 1ST
RESPONDENT.
- EXT.P7: TRUE COPY OF THE NEWS ITEM PUBLISHED IN THE METRO
MANORAMA DATED 08/2/14.
- EXT.P8: TRUE COPY OF THE NEWS ITEM PUBLISHED IN THE MATHRUBHOOMI
DAILY DATED 8/2/14

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 16773 of 2015

Dated this the 10th day of July, 2015

J U D G M E N T

Ext.P6, by which the petitioner's application for building permit was rejected, is under challenge.

2. The petitioner is the owner in possession of an extent of 15.411 cents of land comprised in Sy. No.1801 of Pattom Village, Thiruvananthapuram Taluk in Ward No.2 within the local limits of the respondent corporation. The petitioner submitted Ext.P3 application seeking permit for constructing a commercial building, which was rejected by Ext.P6 stating that as per the detailed town planning scheme, Plamoodu area is demarcated as residential zone; and therefore, it is not possible to grant permission for construction of a four storied commercial building. On receipt of Ext.P6 notice, the petitioner approached the 1st respondent pointing out that innumerable commercial buildings had come up in Plamoodu area in spite of the so called DTP scheme and therefore, rejection of the petitioner's application alone is illegal and discriminatory.

..2..

Thereupon, the officials of the 1st respondent offered to reconsider the application. However, no action has been taken by the respondents so far; it is alleged. According to the petitioner, the master plan for Thiruvananthapuram published by the Government of Kerala contained many provisions, which are detrimental to the interest of the public and this had lead to large scale public agitation, as a result of which, the Cabinet was forced to keep the master plan in abeyance. Therefore, according to the petitioner, the rejection of the petitioner's application for building permit and plan on the basis of the master plan has no relevance now. She further alleges that the objection has been raised without taking into consideration of the fact that the entire area has now become a commercial area; and therefore, inclusion of the area as residential zone is impractical and unworkable. It is with this background, the petitioner has approached this Court.

3. Arguments have been heard.

4. The learned counsel for the petitioner invited

..3..

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.P6 is quashed and the respondent Corporation is directed to reconsider petitioner's application for building permit within a period of one month from the date of receipt of a copy of this judgment.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-