

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 16TH DAY OF JUNE 2015/26TH JYAISHTA, 1937

WP(C).No. 17042 of 2015 (E)

PETITIONER(S) :

- 1. SHAMSUDHEEN, AGED 50 YEARS
S/O.MUHAMMED, RAYAMARAKKAR HOUSE, CHIRANELLUR POST
THRISSUR DISTRICT - 680 501.**
- 2. P.K. SHAKEER, AGED 52 YEARS
S/O. KASIM, MADAKKAYIL HOUSE, VENKIDANGU POST
THRISSUR DISTRICT - 680 513.**

BY ADV. SRI.R.SREEHARI

RESPONDENT(S) :

- 1. OTTAPALAM MUNICIPALITY
REPRESENTED BY ITS SECRETARY, MUNICIPAL OFFICE
OTTAPALAM - 679 101.**
- 2. THE SECRETARY,
OTTAPALAM MUNICIPALITY, MUNICIPAL OFFICE
OTTAPALAM - 679 101**

R1 & R2 BY ADV. SRI.P.P.THAJUDHEEN, SC

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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...2/-

WP(C).No. 17042 of 2015 (E)

APPENDIX

PETITIONERS' EXHIBITS :

- EXT.P1 PHOTO COPY OF BASIC TAX RECEIPT DATED 05-05-2014 IN RESPECT
 OF THE PETITIONER'S PROPERTIES.**
- EXT.P2 PHOTO COPY OF POSSESSION CERTIFICATE DT. 19-03-2015 IN
 RESPECT OF THE PETITIONERS PROPERTIES.**
- EXT.P3 PHOTO COPY OF THE APPLICATION FILED BEFORE THE
 RESPONDENT FOR GRANT OF BUILDING PERMIT ALONG WITH PLAN.**
- EXT.P4 PHOTO COPY OF THE NOTICE DATED 13-02-2015 ISSUED BY THE 2ND
 RESPONDENT.**
- EXT.P5 PHOTO COPY OF THE DECISION NO. 26 DATED 30-09-2006 TAKEN BY
 THE MUNICIPAL COUNCIL, OTTAPALAM.**
- EXT.P6 PHOTO COP[Y OF THE JUDGMENT OF THIS HON'BLE COURT IN WP(C)
 NO. 17650/2011 DT.09-08-2011**

RESPONDENT(S)' EXHIBITS : **NIL**

//TRUE COPY//

P.S. TO JUDGE

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A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.17042 of 2015

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Dated this the 16th day of June, 2015

JUDGMENT

This writ petition is filed challenging Objection No.2 in Ext.P4 notice given by the municipality rejecting the petitioners' application for building permit.

2. The petitioners jointly purchased 0.0526 hectare of land in Sy No. 102/1, 0.0648 hectare of land in Sy No. 102/1 and 0.0040 hectare of land in Sy No. 102/3 of Ottapalam II Village as per document no. 3298/2012 of SRO Ottapalam and is in possession and enjoyment of the same paying land tax. For construction a commercial building in the said properties, they submitted necessary application with plan before the respondent municipality for grant of permit, which was rejected by the 2nd respondent for three reasons.

3. The petitioners allege that for rectifying two of the defects, they have take up the matter with the competent authorities. However, the 2nd reason stated is that the land in question is a freezed land as per the orders of the municipal council, for future

development of municipal bus stand. According to the petitioners, it is untenable as the said decision was already quashed by this Court as per Ext.P6 judgement. It is with this background, the petitioner has come up before this Court.

4. I have heard the learned counsel for the petitioners and the learned standing counsel for the respondent municipality.

5. As already stated, three reasons are stated in Ext.P4 notice for rejecting the application for building permit submitted by the petitioners.

6. The learned counsel for the petitioners would submit that the petitioners are ready to rectify the defects 1 and 3 in Ext.P4. The petitioners objected the second reason which states that the land in question is a freezed land. 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.

7. Reliance was also placed on the decision of the Apex Court in **Raju S. Jethmalani v. State of Maharastra** [(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.

8. In the light of what have been stated above, this Court is of the view that the second reason in Ext.P4 shall not be allowed to stand.

In the result, the writ petition is disposed of quashing the second reason in Ext.P4 and permitting the petitioner to rectify the other defects. In the event of the same, the respondent municipality shall reconsider the petitioners' application for building permit and pass orders granting the permit, at the earliest, after affording them an opportunity of being heard.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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