

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

WP(C).No. 17189 of 2015 (W)

PETITIONERS :

- 1. ABDUL AZEEZ, AGED 48 YEARS,
S/O HAMZA HAJI, THACHARAKUNNUMMAL HOUSE,
KOTTUPATTA, MANJERI, MALAPPURAM DISTRICT**
- 2. ABDUL KABEER
S/O ALI, PARAKKODAN HOUSE, UMMATHOOR,
KODUR, MALAPPURAM DIST**
- 3. AFSAL, S/O ABOOBACKER,
NEDUNGATTU HOUSE, KEEZHMURI,
MALAPPURAM DIST**
- 4. ASMA, W/O MUHAMMED BASHEER,
PULLIKKATHODI HOUSE, NEDIYIRIPPU,
KONDOTTY, MALAPPURAM DIST**

BY ADV. SRI.BABU S. NAIR

RESPONDENTS :

- 1. THE MANJERI MUNICIPALITY
REPRESENTED BY ITS SECRETARY, MANJERI,
MALAPPURAM DIST 676 121**
- 2. THE SECRETARY
MANJERI MUNICIPALITY, MANJERI, MALAPPURAM DIST 676 121**

BY ADV. SRI.K.SHIBILI NAHA, SC, MANJERI MUNICIPALITY

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 24-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

**EXT.P1: THE TRUE COPY OF THE COMMUNICATION ISSUED TO THE
PETITIONER BY THE 2ND RESPONDENT DATED, 13/5/15.**

**EXT.P2: TRUE COPIES OF THE PHOTOGRAPHS OF THE PROPERTIES OF THE
PETITIONER AND THE ADJACENT BUILDINGS**

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.17189 of 2015

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Dated this the 24th day of June, 2015

JUDGMENT

Ext.P1 by which petitioners' application for building permit was rejected is under challenge.

2. The petitioners are the joint owners of a parcel of property comprised in R.S No.154/4 within the local limits of respondent municipality. The petitioners submitted an application for a permit, for construction of a commercial building before the respondent municipality, which was rejected by Ext.P1 stating that as per the Central Area DTP Scheme of the Manjeri Municipality, the area is earmarked as a residential area and, therefore, the building permit cannot be issued. It is with this background, the petitioners have approached this Court.

3. The respondent municipality has filed a statement justifying the stand taken in Ext.P1 rejecting the petitioners' application for building permit.

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

5. It was pointed out by the learned counsel for the petitioner that the land belonging to the petitioner is in Manjeri town itself and surrounded by several commercial buildings which were constructed after obtaining building permit from the municipality. Ext.P2 is the photograph showing the present nature of the properties. The learned counsel for the petitioners would submit that the DTP Scheme under the Town Planning Act remained as a mere proposal and it has not been implemented.

6. 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. 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.

Viewed in that profile, this Court is of the view that the petitioners are entitled to get the reliefs prayed for. Therefore, the writ petition is allowed. Ext.P1 is quashed and the respondent

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-:3:-

Municipality is directed to reconsider petitioners' application for building permit *de hors* Ext.P1 within a period of one month from the date of receipt of a copy of this judgment.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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