

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 13TH DAY OF MARCH 2015/22ND PHALGUNA, 1936

WP(C).No. 20015 of 2013 (B)

PETITIONER:

**THOMAS
AGED 56 YEARS, S/O. THOMAS, PARANILAM HOUSE
GOLDEN NAGAR, CHALAKUDY.**

**BY ADVS.SRI.RENJITH THAMPAN (SR.)
SMT.P.R.REENA**

RESPONDENT:

- 1. CHALAKUDY MUNICIPALITY
MUNICIPAL OFFICE, CHALAKUDY P.O, THRISSUR - 680 307
REPRESENTED BY ITS SECRETARY.**
- 2. SECRETARY
CHALAKUDY MUNICIPALITY, MUNICIPAL OFFICE
CHALAKUDY P.O., THRISSUR - 680 307.**

R1-R2 BY ADV. SRI.SHEEJO CHACKO, SC, CHALAKUDY MUNICIPALITY

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1-TRUE COPY OF THE BASIC TAX RECEIPT DATED 04/07/2013 REGARDING THE PETITIONER'S PROPERTY.

EXHIBIT-P1(A)-TRUE COPY OF THE BASIC TAX RECEIPT DATED 04/07/2013 REGARDING THE PETITIONER'S PROPERTY

EXHIBIT-P2-TRUE COPY OF THE COMMUNICATION DATED 24/06/2013 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER

EXHIBIT-P3-TRUE COPY OF THE JUDGMENT IN W.P(C) 31370/2009 DATED 24/08/2011.

EXHIBIT-P4-TRUE COPY OF THE JUDGMENT IN W.P(F) 27577/2009 DATED 17/11/2012.

EXHIBIT-P5-TRUE COPY OF THE JUDGMENT IN W.P(C) 17322/2012 DATED 17/09/2012.

RESPONDENTS' EXHIBITS

EXHIBIT-R1(a) : TRUE COPY OF THE JUDGMENT IN W.P.(C) NO.8740/97 REPORTED IN 2005(4) KLT 1027.

EXHIBIT-R1(b) : TRUE COPY OF THE DECISION REPORTED IN 2014(2) KHC 220.

EXHIBIT-R1(c) : TRUE COPY OF THE RELEVANT PAGE OF G.O.(MS) NO.192/83.

EXHIBIT-R1(d) : TRUE COPY OF THE ORDER IN G.O.(MS) NO.201/2007 DATED 01.09.2007.

EXHIBIT-R1(e) : TRUE COPY OF THE LETTER DATED 17.05.2007.

EXHIBIT-R1(f) : TRUE COPY OF THE LETTER DATED 14.01.2008.

//TRUE COPY//

P.A. TO JUDGE

smv

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No.20015 of 2013

Dated this the 13th day of March, 2015

JUDGMENT

The petitioner approached this Court aggrieved by the rejection of the application submitted by him for building permit before the 2nd respondent on the ground that the area where the construction is proposed is covered by a town planning scheme. As the petitioner's application was for the construction of a commercial building, the respondent - Municipality took the stand that as per the town planning scheme the land comes under a residential zone.

2. The petitioner is the co-owner of 14.33 cents of land comprising Survey No.502/1 of East Chalakkudy Village. The property is situated on the side of the Church Road, Chalakkudy Town. The petitioner points out that on the eastern and western side of the aforesaid property, commercial buildings have come up and the area is a commercially important area. He further points out that just adjacent to the property, there is a shopping

complex in the Mechery tower. According to the petitioner, he along with his wife and others purchased the property for construction of the shopping complex. He filed an application for building permit before the 2nd respondent who by notice dated 24.06.2013 informed him and other co-owners that the permit cannot be granted in view of the town planning scheme the specified area is a residential zone. The petitioner further points out that the respondent - Municipality has not taken any steps for implementing the town planning scheme. He also alleges that the areas earmarked under different zones in the erstwhile town planning scheme have not been strictly made such zones resulting in the entire town planning scheme being rendered in operational. It is with this background the petitioner has come up before this Court.

3. In the counter affidavit filed by the respondent - Municipality they maintained the stand taken in Ext.P2 notice dated 24.06.2013.

4. I have heard the learned Senior Counsel for the petitioner and the learned Standing Counsel for the respondent - Municipality.

5. The argument of the respondent - Municipality is that the property of the petitioner is included in the town planning scheme and it is earmarked as a residential zone. According to the learned Senior Counsel for the petitioner, the scheme was notified 40 years back and it has never been implemented. He would further point out that a commercial building has come up in the same locality. This is not at all denied by the respondents.

6. The learned Standing Counsel for the respondent - Municipality inviting my attention to Section 42 of the Kerala Town and Country Planning Ordinance, 2013 argued that any plan submitted after the date of promulgation of the aforesaid ordinance has to comply with the provisions of draft master plan already published which shall be deemed to be notified under Section 38(1) of the said Ordinance. In support of the argument, the learned Standing Counsel invited my attention to the decision of a Full bench of this Court in **Francis v. Chalakudy Municipality** [1999 (3) KLT 560]. However, in that case, this Court observed that the respondent - Municipality was not in a position to submit that the scheme would be implemented immediately so that the land concerned would be acquired for

the purpose envisaged by the scheme within a specified time limit, though it was submitted that steps were being taken to implement the scheme.

7. Even now the respondent - Municipality is not sure as to when the aforesaid scheme would be implemented. The respondents have no case that any step has been initiated in that direction.

8. In **Francis's** case the Full Bench further observed that in the context of indefiniteness in the implementation of the scheme and the stand adopted by the Municipality, it may not be open to the petitioner to challenge the scheme itself as having become arbitrary and unconstitutional since the restrictions imposed by the scheme have become oppressive and unreasonable.

9. It is crucial to note that the petitioner would get an opportunity to challenge the scheme only when the proceedings for acquisition are initiated. The question whether the proceedings for acquisition, if any, initiated would be constitutionally valid would arise only when the land in possession of the petitioner is ought to be acquired invoking

provisions of the Land Acquisition Act.

10. The Division Bench of this Court in **Kalpetta Municipality v. M. Mohandas and others** [2011(4) KHC 844] held that merely because of a land is proposed to be acquired under the town planning scheme, the building permit cannot be rejected.

11. The learned Senior Counsel for the petitioner also invited my attention to the decision of this Court in **Padmini v. State of Kerala** wherein it is 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 upon 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.

12. On a consideration of the entire materials on record, this Court is of the definite view that the petitioner is entitled to succeed.

In the result, the writ petition is allowed. Ext.P2 is quashed. The matter is remitted back to the respondent -

Municipality to re-consider the application of the petitioner in the light of what has been stated above and pass orders on the same after affording the petitioner an opportunity of being heard, within a period of one month from the date of receipt of a copy of this judgment.

**A.V.RAMAKRISHNA PILLAI,
JUDGE**

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