

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 20TH DAY OF JULY 2015/29TH ASHADHA, 1937

WP(C).No. 17639 of 2015 (D)

PETITIONER(S) :

1. DR.MAHESH,
AGED 40 YEARS, S/O. SUKUMARAN,
MAHESH BHAVAN, KOLLAYI VILLAGE,
NEYYATTINKARA TALUK, DHANUVACHAPURAM P.O.,
THIRUVANANTHAPURAM
2. DR. JACOB STEPHENSON,
AGED 50 YEARS, S/O. STEPHENSON DENIAL,
VATAVILAKATTUVEEDU, VALIYATHURA, VALLAKADAVU P.O.,
THIRUVANATHAPURAM.

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

RESPONDENT(S) :

1. THIRUVANANTHAPURAM CORPORATION,
REPRESENTED BY ITS SECRETARY, CORPORATION OFFICE,
THIRUVANANTHAPURAM - 695 033.
2. SECRETARY,
THIRUVANANTHAPURAM CORPORATION, CORPORATION OFFICE,
THIRUVANANTHAPURAM - 695 033.
3. REGIONAL TOWN PLANNER,
O/O REGIONAL TOWN PLANNER, HOUSING BOARD BUILDING,
SANTHINAGAR, THIRUVANANTHAPURAM - 695 001.

BY GOVERNMENT PLEADER SMT. K.A.SANJEETHA &
BY SRI.P.K.MANOJKUMAR, SC, TVPM CORPORATION.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
20-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXHIBIT P1: TRUE COPY OF THE BASIC TAX RECEIPT DTD 27/6/2014 ISSUED BY KADAKAMPALLY VILLAGE.
- EXHIBIT P2:- TRUE COPY OF THE BASIC TAX RECEIPT ISSUED TO THE 2ND PETITIONER DTD 7/11/2014.
- EXHIBIT P3:- TRUE COPY OF THE BUILDING PERMIT APPLICATION FILED BY THE 1ST PETITIONER BEFORE THE CORPORATION.
- EXHIBIT P3(A):-TRUE COPY OF RECEIPT ISSUED BY THE CORPORATION DTD 20/11/2014.
- EXHIBIT P4:- TRUE COPY OF BUILDING PERMIT APPLICATION FILED BY THE 2ND PETITIONER BEFORE THE CORPORATION.
- EXHIBIT P4(A):-TRUE COPY OF THE RECEIPT DTD 20/11/2014 ISSUED BY THE CORPORATION.
- EXHIBIT P5:- TRUE COPY OF THE STATEMENT FILED BY THE 1ST RESPONDENT CORPORATION IN WPC NO 33582/2014 DTD 3/2/2015 WITHOUT EXT.
- EXHIBIT P6:- TRUE COPY OF THE PROPOSAL FOR CONCURRENCE FORWARDED BY THE 1ST RESPONDENT TO THE 3RD RESPONDENT DTD 8/12/2014.
- EXHIBIT P7:- TRUE COPY OF JUDGMENT IN WPCNO 33582/2014 DTD 6/3/2015.
- EXHIBIT P8:- PHOTOGRAPH OF RESIDENTIAL BUILDINGS IN THE AREA.
- EXHIBIT P9:- TRUE COPY OF LETTER DTD 30/3/2015 OF THE 3RD RESPONDENT.
- EXHIBIT P10:- TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WPC NO 15104/2011 DTD 27/6/2011.
- EXHIBIT P11:- TRUE COPY OF THE JUDGMENT REPORTED IN 2011(3)KHC 162.
- EXHIBIT P12:- TRUE COPY OF THE NEWSPAPER REPORT PUBLISHED IN HINDU DAILY ON 6/2/2014.
- EXHIBIT P13:- TRUE COPY OF THE NEWS PAPER REPORT PUBLISHED IN HINDU DAILY ON 8/2/2014.
- EXHIBIT P14:- TRUE COPY OF THE CIRCULAR DATED 06/02/2008 OF THE GOVERNMENT.
- EXHIBIT P15:- TRUE COPY OF THE CIRCULAR DATED 10/01/2011 OF THE LOCAL SELF GOVERNMENT DEPARTMENT.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 17639 of 2015

Dated this the 20th day of July, 2015

J U D G M E N T

Aggrieved by the rejection of building permits, the petitioners have come up before this Court.

2. The 1st petitioner, along with his wife, owns 6.59cents of land comprised in Sy.No.1371/1-2-1 of Kadakampilly Village within the local limits of the respondent corporation. The 2nd petitioner is the owner in possession of 6.558 cents of land comprised in Sy.No.1350/4 of the same village within the local limits of the respondent corporation. The petitioners submitted applications for building permits as per Exts.P3 and P4, which were rejected stating that there is a town planning scheme of the year 1976, in which the aforesaid area is mentioned as 'green strip' area and hence, no building permit can be granted. The petitioners point out that on the eastern side of the 1st petitioner's property, there is a

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residential house having building No.TC 95/486, Old No.14/403 of Sri.Sundaram and on the entire eastern side of the property, there are residential houses. It is further pointed out that on the northern boundary of the 2nd petitioner's property, there is Building No.95/451 (Old TC No.14/409/5) owned by Dr.Jayakumar. According to them, they have purchased the property for the purpose of construction of residential house. Aggrieved by the rejection of building permits, they filed WP(C) No.3358/2014 seeking a direction to grant permits, in which a counter affidavit has been filed by the respondent corporation stating that since the plinth area of the proposed buildings of the respective petitioners is less than 3000 square feet, building permits can be granted even if green strip area with the concurrence of the 3rd respondent, the Regional Town Planner. This Court allowed the writ petition directing the 3rd respondent to process the request and on receipt of communication from the 3rd respondent, the corporation was directed to

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grant building permits. The petitioners' grievance is that now, the 3rd respondent, as per Ext.P9, informed the 1st respondent that though the proposed residential buildings are less than 3000 square feet, the area is not found to be legally developed for residential building and hence, no concurrence can be granted. Hence, this writ petition.

3. Heard the learned counsel for the petitioners, the learned Standing Counsel for the respondent corporation and the learned Government Pleader.

4. The learned senior Government Pleader, on instructions, submitted that concurrence has been given by the Regional Town Planner as per order dated 30.06.2015. A copy of the same has been produced at the time of hearing for my perusal. It appears from the said order that concurrence has been granted subject to the following conditions;

1.The construction should be in accordance with Rule 99 of KMBR;

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- 2.The construction should not adversely affect the drainage system in the locality;
- 3.The construction of buildings in the remaining property should be in accordance with valid permits;
- 4.The construction and development should be in accordance with the Kerala Paddy Land and Wet Land Act, 2008;
- 5.The construction of the building should be for residential purpose;
- 6.There should be proper drainage facility in the plot;
- 7.The chance of flooding in the locality has to be ruled out; and
- 8.The concurrence is only as per the master plan and builder has to comply with all other formalities envisaged by law.

5. The learned counsel for the petitioners 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 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 petitioners are entitled to get the reliefs prayed for.

In the light of the above, the writ petition is allowed. The respondent Corporation is directed to reconsider Exts.P3 & P4 within a period of three weeks from the date of receipt of a copy of this judgment in the light of the concurrence given by the Regional Town Planner.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-