

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 15TH DAY OF JULY 2015/24TH ASHADHA, 1937

WP(C).No. 18579 of 2015 (V)

PETITIONER(S):

1. MR. SHERIF A.,
S/O. AHAMMED, DARAL FATHAR HOUSE, MASJID ROAD,
KALOOR, KOCHI-682 017.
2. MR. A.S. UVAS,
S/O. SHERIF A., DARAL FATHAR HOUSE, MASJID ROAD,
KALOOR, KOCHI-682 017.
3. MR. ABDULLA,
S/O. HASSANKUTTY, KAIPADATH VEETIL, MUTTANNOOR P.O.,
MALAPPURAM DISTRICT,
REPRESENTED BY HIS SON AND POWER OF
ATTORNEY HOLDER DR. JISHAD KAIPADATH ,
MUTTANNOR P.O., MALAPPURAM DISTRICT.
4. M/S. OLIVE BUILDERS,
OLIVE HOUSE, HOUSE NO. 50/1932 A,
DEVANKULANGAR JUNCTION, KOCHI - 682 024,
REPRESENTED BY ITS DIRECTOR A.O. THOMAS.

BY ADVS.SRI.DEVAN RAMACHANDRAN
SRI.K.M.ANEESH
SRI.K.SANTHOSH KUMAR (KALIYANAM)
SRI.ADARSH KUMAR
SRI.BIJU VARGHESE ABRAHAM
SRI.DILEEP CHANDRAN

RESPONDENT(S):

1. CORPORATION OF COCHIN,
REPRESENTED BY SECRETARY, CORPORATION OF COCHIN,
COCHIN -682 011.
2. ASSISTANT EXECUTIVE ENGINEER,
CORPORATION OF COCHIN, EDAPPALLY AREA OFFICE,
KOCHI - 682 024.
3. EXECUTIVE ENGINEER,
P.W.D ROADS AND BRIDGES DIVISION, THRIKKAKARA P.O.,
ERNAKULAM -682 021.

R1-R2 BY ADVS. SRI.E.D.GEORGE
SRI.P.K.SOYUZ, SC,
R3 BY GOVERNMENT PLEADER SMT.K.A.SANJEETHA

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
15-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 18579 of 2015 (V)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT-P1-TRUE COPY OF THE APPLICATION FOR BUILDING PERMIT MADE TO THE
1ST RESPONDENT.**

EXHIBIT-P2-TRUE COPY OF THE LETTER ISSUED BY THE PWD.

EXHIBIT-P3-TRUE COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.18579 of 2015

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Dated this the 15th day of July, 2015

JUDGMENT

The petitioners have approached this Court aggrieved by the rejection of their application for building permit on the ground that as per the Detailed Town Planning (DTP) Scheme, the property of the petitioners is earmarked for widening the road.

2. Petitioners are the owners in possession of 22202 sq.metres of land comprised in Sy. No.39/7A1 in the Edappally North village in kanayannur Taluk. The petitioners allege that the above property is situated adjacent to the Old NH-17 Edappally-Cheranallore road. It is alleged that there was a proposal to widen the old NH-17 while the same was continuing as the National Highway-17.

3. Subsequently, the National Highway Authority has decided to change the alignment and a new route has been approved. The newly widened NH 17 has now been constructed through the new route and the old NH-17 has been handed over to the State Public Works Department.

The National Highway Authority has no further interest, authority or right over the erstwhile Old NH 17 and the same is now under the exclusive control of the State PWD; it is alleged. The third respondent, Executive Engineer, PWD roads and Bridges, Ernakulam by Ext.P2 dated 21.4.2015 has given a no-objection letter in favour of the respondent corporation stating that there is no proposal for widening the road at present and there is enough space from road boundary.

4. It is alleged that the first respondent accepted Ext.P2 letter. However, the second respondent by Ext.P3 rejected the application of the petitioners for building permit stating the scheme with regard to the widening of the old NH-17 has not been varied and, therefore, they cannot consider the application. It is with this background, the petitioner has approached this Court.

5. Heard the learned counsel for the petitioners and the learned standing counsel for the respondent corporation.

6. The learned standing counsel for the respondent corporation opposed the petition on the ground that as per the DTP scheme the corporation has earmarked the area for widening the National Highway.

7. In answer to the said submission, the learned counsel for the petitioners would submit that though the property of the petitioners is situated by the side of the old NH-17, the alignment of the highway was shifted to some other place and there is no scope of keeping the road for widening. It was also submitted that the DTP Scheme now proposed for opposing the application remained only in papers and no acquisition proceedings have been taken by them so far.

8. 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 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.

9. 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.P3 is quashed and the respondent corporation is directed to reconsider petitioners' application for building permit *de hors* Ext.P3 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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