

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 12TH DAY OF AUGUST 2015/21ST SRAVANA, 1937

WP(C).No. 20258 of 2015 (F)

PETITIONER :

**P.J. ANDREWS, AGED 67 YEARS,
S/O.P.V.VARGHESE, BYTHNAFA, KALOOR ROAD
KOZHIKODE - 673 007.**

**BY ADVS.SRI.K.P.SUDHEER
SRI.ARUN MATHEW VADAKKAN**

RESPONDENTS :

- 1. CORPORATION OF KOZHIKODE
KOZHIKODE - 673 011, REPRESENTED BY ITS SECRETARY**
- 2. THE EXECUTIVE ENGINEER
CORPORATION OF KOZHIKODE, KOZHIKODE - 673 011.**

BY SRI.K.D.BABU,SC,

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 12-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: TRUE COPY OF THE BUILDING PERMIT NO. TP10/108219/11 DATED 17/2/2012
ISSUED BY THE 1ST RESPONDENT.
- P2: TRUE COPY OF NO OBJECTION CERTIFICATE (SITE) ISSUED BY THE FIRE &
RESCUE SERVICES, DIVISIONAL OFFICE, KOZHIKODE DATED 22/01/2015.
- P3: TRUE COPY OF SITE PLAN ISSUED BY FIRE & RESCUE SERVICES,
DIVISIONAL OFFICE, KOZHIKODE DATED 22/1/2015.
- P4: TRUE COPY OF NOTICE NO.TP3.67238/12 DATED 31/03/2015 ISSUED BY THE
2ND RESPONDENT.
- P5: TRUE COPY OF THE NO OBJECTION SUBMITTED BY THE PETITIONER TO
EXHIBIT P4 NOTICE DATED 27/4/2015.
- P6: TRUE COPY OF THE ACKNOWLEDGMENT RECEIPT ISSUED BY THE
RESPONDENTS DATED 27/4/2015.
- P7: TRUE COPY OF THE RELEVANT CLAUSE OF NATIONAL BUILDING CODE

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.V.RAMAKRISHNA PILLAI, J.

W.P.(C)No.20258 of 2015

Dated this the 12th day of August, 2015.

J U D G M E N T

The petitioner is aggrieved by the rejection of the petitioner's application for building permit for additional construction in the existing building.

2. By virtue of sale deed registered as Document No.2980/2014 of Kakkodi SRO, the petitioner acquired 30.40 cents of land in re-survey Nos.2.24, 914/1, 916 of Chevayoor village in Kozhikode Taluk. Ext.P1 building permit was issued by the respondents for constructing a residential flat having a ground floor and two floors in that parcel of land. While so, the petitioner submitted an application for revised building permit for constructing an additional floor. By Ext.P4, the 2nd respondent rejected it on three grounds. The petitioner submitted Ext.P5 objection to Ext.P4 notice and Ext.P6 is the receipt issued by the respondents. One among

the objection is that in view of the DTP Scheme for Civil Station area Scheme-3, Kozhikode Corporation, the property is earmarked for residential zone and as per the zoning regulation, only three floors can be constructed as the access to the road which is less than 7 meter. The DTP Scheme was issued under Section 14(3) of the Madras Town Planning Act, 1920. The petitioner points out that in view of the dictum laid down in the decision reported in ILR 2011(1) Kerala 697, DTP Scheme has become inoperative and in the decision reported in 2011(3) KHC 162, this Court has considered the impact of zoning regulations. The petitioner has approached this Court seeking a direction to the respondents to reconsider Ext.P5 objection and issue revised building permit.

3. I have heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent Corporation.

4. The learned Standing Counsel for the respondent

opposed the writ petition mainly for two reasons. The 1st respondent has pointed out that as per Ext.P4, the property of the petitioner is covered by DTP Scheme. It comes under the DTP Scheme which insisted that the adjacent roads should be having a width of 7 mtrs. The learned counsel has also invited my attention to Ext.P4 rejection letter and submitted that though in the NOC, the fire lift is mandated, in the Plan submitted by the petitioner the same is not included. It is also pointed out that as per Clause 40 A of the Kerala Municipality Building Rules 1999, lift is essential for the building.

5. In answer to the said submission, the learned counsel for the petitioner pointed out that no concrete steps have been adopted by the respondent Corporation for implementing DTP Scheme and it remained only in the papers. It is also submitted that he has forwarded Ext.P5 objection against the inadequacy made in Ext.P4. According to the learned counsel, as per Ext.P7, the buildings having a

height of 15m. or above need be provided with fire lifts.

6. 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 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 result, this writ petition is disposed of as follows :

- (1) Directing the respondent Corporation to consider Ext.P5 objection, after affording the petitioner an opportunity of being heard, within 2 weeks of receipt of copy of this judgment.

(2) The respondent is directed to consider his application for building permit without sticking on to the DTP Scheme in the light of the reasons stated above.

Sd/-

A.V.RAMAKRISHNA PILLAI,
Judge.

ami/

//True copy//

P.A. to Judge