

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 3RD DAY OF AUGUST 2015/12TH SRAVANA, 1937

WP(C).No. 24627 of 2009 (W)

PETITIONER(S):

**JENSON MAVEETIL,
FREDDY VILLA, PUTHIYANGADI P.O.,
KOZHIKODE.**

BY ADV. SRI.R.PARTHASARATHY.

RESPONDENT(S):

- 1. KOZHIKODE CORPORATION,
REPRESENTED BY THE SECRETARY,
KOZHIKODE.**
- 2. THE SECRETARY,
KOZHIKODE CORPORATION,
KOZHIKODE.**

**BY ADVS. SRI.P.V.SURENDRANATH, SC,
SRI.K.D.BABU, SC.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 03-08-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 COPY OF THE ORDER BEARING NO.E6/3109/09 PASSED IN THE NAME OF SECRETARY, KOZHIKODE CORPORATION.
- EXT.P2 COPY OF THE COMMUNICATION RECEIVED UNDER THE RIGHT TO INFORMATION ACT FROM THE CO-ORDINATOR, KOZHIKODE CORPORATION ROADS DEVELOPMENT PROJECT, UNDER THE PWD.
- EXT.P3 COPY OF THE ORDER PASSED BY THE TRIBUNAL FO LOCAL SELF GOVERNMENT INSTITUTIONS, TRIVANDRUM.
- EXT.P4 COPY OF THE ORDER DATED 14/08/2009 PASSED BY THE 2ND RESPONDENT.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

PA. TO JUDGE

rs.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No.24627 of 2009

Dated this the 3rd day of August, 2015.

JUDGMENT

Ext.P4, by which the petitioners' application for building permit was rejected, is under challenge.

2. The petitioner alleges that he approached the 2nd respondent for building permit to construct a residential building. The application was rejected by the 2nd respondent by Ext.P1 order stating that the property falls in the alignment of proposed Canal road as per the Master Plan. Against the said order of the 2nd respondent, the petitioner filed appeal before the Tribunal for Local Self-Government Institutions. The Tribunal set aside the order passed by the 2nd respondent on the ground that Ext.P1 order is not passed by secretary but by someone on behalf of secretary. The Tribunal has also

in Ext.P3 order held that rejection of the building permit on the ground of proposed Master plan is also not sustainable. The Tribunal directed the 2nd respondent to pass fresh orders. The 2nd respondent however without considering any of the aspects passed Ext.P4 order in the same line as in Ext.P1 and rejected petitioners application for building permit. The petitioner further alleges that the proposed alignment for Canal Road was included in the Master plan in 1994. So far the respondents has not taken any step to acquire the land. The land has been under freeze for about 15 years on the ground that the land is required for Canal Road. The corporation has not so far taken any step to acquire the Land. In fact the proposal has been practically abandoned by subsequent developments and by formation of other parallel roads. The Petitioner understands that it has been decided to cancel the alignment passing through the petitioner's

property from the 1994 Master Plan. The 2nd respondent has rejected the application only because the proposal is still in the Master Plan, fully knowing that there is no intention or requirement to acquire the land on the basis of the proposal made in 1994 Master Plan. Ext.P4 order is passed against the provisions of the Kerala Municipality Act. The Honourable Supreme Court in *Raju S. Jetmalan Vs. State of Maharashtra* reported in 2005(11) SCC 222 and this Court in 1999 (3) KLT 456 & 2009 (3) KLT 92 has held that authorities cannot deprive the owner of land to utilize the land on the basis of Town Planning Scheme without notifying under the Land Acquisition Act; it is alleged. It is with this background, the petitioner has come up before this Court.

3. Arguments have been heard.

4. The learned counsel for the petitioner submitted that on the basis of the interim order already passed by this

Court, the petitioner has completed the construction. The building permit was rejected on the ground that there was a proposal for a road as per the DTP Scheme.

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.

Therefore, as the rejection itself is illegal, the writ petition is disposed of making the interim order already absolute. The respondent corporation shall number the building

and issue occupancy certificate within a period of one month from the date of receipt of a copy of this judgment on a proper application made by the petitioner.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.