

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

WP(C).No. 20462 of 2015 (G)

PETITIONER(S):

**ABUBACKER SARAFFUDDIN,
CHEMPAKAPALLIYIL HOUSE, MANJAPATTA P.O.,
MALAPPURAM DISTRICT.**

**BY ADVS.SRI.G.HARIHARAN
SRI.PRAVEEN H.**

RESPONDENT(S):

- 1. THE DISTRICT COLLECTOR, MALAPPURAM,
CIVIL STATION UPHILL, MALAPPURAM - 676 505.**
- 2. THE TOWN PLANNER,
CIVIL STATION, UPHILL, MALAPPURAM - 676 505.**
- 3. THE SECRETARY,
MANJERI MUNICIPALITY, MANJERI,
MALAPPURAM DISTRICT - 676 121.**
- 4. MANJERI MUNICIPALITY,
MANJERI, MALAPPURAM DISTRICT - 676 121.
REPRESENTED BY ITS SECRETARY.**

**R1 & R2 BY GOVERNMENT PLEADER SMT.K.A.SANJEETHA
R3 & R4 BY SRI.K.SHIBILI NAHA, SC**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
14-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 20462 of 2015 (G)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1. TRUE COPY OF THE SALE DEED REGISTERED AS DOCUMENT
NO.1084/2014 OF SRO MANJERI.**

**EXHIBIT P2. TRUE COPY OF THE SALE DEED REGISTERED AS DOCUMENT
NO.1802/2014 OF SRO MANJERI.**

**EXHIBIT P3. TRUE COPY OF THE SALE DEED REGISTERED AS DOCUMENT
NO.1599/2014 OF SRO MANJERI.**

**EXHIBIT P4. TRUE COPY OF THE ORDER NO.B7-37457/2002 DATED 10.2.03 PASSED
BY THE IST RESPONDENT.**

**EXHIBIT P5. TRUE COPY OF THE ORDER NO.E3-7651/15 DATED 18.6.15 REJECTING
THE PETITIONERS APPLICATION FOR GRANT OF BUILDING PERMIT.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 20462 of 2015

Dated this the 14th day of July, 2015.

JUDGMENT

Aggrieved by the rejection of the petitioner's application for building permit on the ground that the area is covered by DTP Scheme, the petitioner has come up before this Court.

2. The petitioner has purchased about 26.55 cents of land as per Exts.P1 to P3 sale deeds. Out of that an extent of 23.5 cents of land is covered by Exts.P1 and P2 sale deeds. The petitioner alleges that the said extent of 23.5 cents of land were reclassified under the provisions of the KLU order by his predecessor as per Ext.P4 order. The District Collector by Ext.P4 order permitted reclassification of lands for construction purposes as early as on 10.2.2003. The petitioner submitted an application for building permit seeking permission to construct a commercial building, which stands rejected by Ext.P5 order. Ext.P5 order is passed on the following two grounds;

a. That the property is covered under the District Town Planning Scheme as 'area has to be acquired for residential purpose'.

b. That as per BTR the properties have been shown as 'nilam' and no documents to prove reclassification of lands have been submitted.

The petitioner alleges that the reason (a) is not tenable any more in view of the decisions rendered by the Supreme Court in [2005 (11) SCC 222] and followed by this Court in 2014 KHC 2517. The reason (b) is also not tenable in view of Ext.P4 order. Had the petitioner been given an opportunity, the petitioner could have raised the above contentions before the third respondent; it is alleged. It is with this background, the petitioner has come up before this Court.

3. I have heard the learned counsel for the petitioner and the learned counsel for the respondent municipality in the matter.

4. The learned counsel for the respondent municipality

opposed the application on the ground that the property of the petitioner is by the District Town Planning Scheme as area to be acquired for residential purpose. However, the learned counsel for the petitioner would submit that no proceedings under the land acquisition act have been initiated against the said property with an intention of implementing the DTP scheme.

5. The learned counsel for the petitioner 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 petitioner is entitled to get the reliefs prayed for.

6. The decision of this Court in ***Mohammed Abdul Basheer C.P. v State of Kerala and another*** (2012(3) KLT 86) lays down the principle that the present position of the land has to be taken into consideration and on ascertaining these facts, permission can be granted to construct a house.

7. 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.

8. In ***Jalaja Dileep v Revenue Divisional Officer*** (2012(3) KLT 333) this Court observed that the description in the title deed or in revenue records will not be crucial if the

property is reclaimed already. The aforesaid legal position settled by this Court escaped the attention of the authorities while rejecting the petitioner's application.

Therefore, the writ petition is allowed. Ext.P5 is quashed. The respondent Municipality is directed to conduct a local inspection of the property regarding the present lie as well as the condition of the property of the petitioner and surrounding properties. The respondents are also directed to consider the application and pass positive orders granting permit, after affording the petitioners an opportunity of being heard, if they have satisfied that the property is not fit for paddy cultivation at present. This shall be done within a period of two months from the date of receipt of a copy of this judgment.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.