

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 6TH DAY OF AUGUST 2015/15TH SRAVANA, 1937

WP(C).No. 21555 of 2015 (T)

PETITIONER(S):

1. SIEWERT DAMIEN JOSEPH,
S/O.N.T.JOSEPH, RESIDING AT 16/107,
NEDIYAPARAMBIL HOUSE, P.T.JACOB ROAD,
KOCHI - 682 005, ERNAKULAM DISTRICT.
2. N.T.JOSEPH, S/O.LATE N.P.THOMAS, AGED 73 YEARS,
RESIDING AT 16/107, NEDIYAPARAMBIL HOUSE,
P.T.JACOB ROAD, KOCHI - 682 005, ERNAKULAM DISTRICT.

**BY ADVS.SRI.O.V.MANIPRASAD
SRI.JOSE ANTONY**

RESPONDENT(S):

1. STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT,
URBAN AFFAIRS DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
2. THE SENIOR TOWN PLANNER,
REGIONAL TOWN PLANNING OFFICE,
KAKKANAD, ERNAKULAM - 682 030.
3. THE CORPORATION OF KOCHI,
REPRESENTED BY THE SECRETARY,
CORPORATION OFFICE, PARK AVENUE ROAD,
ERNAKULAM - 682 031.
- 4 THE SECRETARY, CORPORATION OF KOCHI,
PARK AVENUE ROAD, ERNAKULAM - 682 031.
5. THE ASSISTANT EXECUTIVE ENGINEER,
CORPORATION OF KOCHI, FORT KOCHI,
REGIONAL OFFICE, FORT KOCHI.P.O.,
ERNAKULAM - 682 030.

**R1 & R2 BY SENIOR GOVT. PLEADER SMT.ANITHA RAVINDRAN
R3 TO R 5 BY ADV. SRI.RAAJESH S.SUBRAHMANIAN,SC
SRI.P.K.SOYUZ,SC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 06-08-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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APPENDIX

PETITIONERS' EXHIBITS:

- EXT. P1 : A TRUE COPY OF THE ORDER DATED 27.5.2015 OF THE
 5TH RESPONDENT.
- EXT. P2 : A TRUE COPY OF THE LETTER DATED 17.12.2014 OF THE SENIOR
 TOWN PLANNER, ERNAKULAM TO THE CHIEF TOWN PLANNER,
 THIRUVANANTHAPURAM.
- EXT. P3 : A TRUE COPY OF THE REPRESENTATION DATED 30.5.2015 RECEIVED
 IN THE OFFICE OF THE CORPORATION 1.6.2015.
- EXT. P4 : A TRUE COPY OF THE LETTER DATED 12.6.2015.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

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A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 21555 of 2015

Dated this the 6th day of August, 2015

J U D G M E N T

Aggrieved by the rejection of the petitioners' application for building permit by the Assistant Executive Engineer of the respondent corporation for the reason that there is a proposal for road widening in the structural plan, the petitioners have come up before this Court.

2. The petitioners applied for building permit to construct a commercial building in Sy.No.1149/3 of Thoppumpady Village in Kochi Taluk within the local limits of the respondent corporation, which was rejected by the 5th respondent as per Ext.P1 dated 27.05.2015. According to the petitioners, the 5th respondent has no jurisdiction or power to consider the application for building permit and as per the provisions of Act and Rules, the Secretary of the corporation is to consider,

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allow or reject the application for building permit. The petitioners allege that respondents 3 to 5 did not consider the fact that the proposal to widen the road has become unworkable as large number of constructions for commercial purposes and purposes other than residential purposes were permitted in the area. According to them, they alone cannot be discriminated. They point out that going by Section 393, the proposal in the structural plan or in the detailed town planning scheme or the master plan either to widen the road or to acquire the land would not be a reason at all for rejection of the application for building permit. Hence, this writ petition.

3. Arguments have been heard.

4. It was pointed out by the learned counsel for the petitioners that the 5th respondent has no jurisdiction or power to consider the application for building permit as per section 390 of the Act. As per the provisions of the Act, the Secretary of the corporation has to consider or reject the application. Therefore, according to the

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learned counsel for the petitioners, Ext.P1 is without jurisdiction.

5. The learned Standing Counsel for the respondent corporation would point out that there is a proposal for widening the road in front of the petitioners' property. This was seriously opposed by the learned counsel for the petitioners inviting my attention to Ext.P2 letter issued Senior Town Planner, which states that the width of the proposed road is only 15 meters.

6. 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

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Constitution. 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.P1 is quashed and the respondent Corporation is directed to reconsider petitioners' application for building permit and to pass positive orders within a period of one month from the date of receipt of a copy of this judgment.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-