IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 28TH DAY OF JULY 2015/6TH SRAVANA, 1937

WP(C).No. 21922 of 2015 (M)

PETITIONER(S):

1. **DR.V.AHAMMED MISWAR, AGED 43 YEARS,**
   S/O. LATE DR. M.K. MOHAMMED KOYA, RESIDING AT 19/1830,
   FATHIMA MANZIL, M.N.ROAD, POST: CHALAPPURAM,
   KOZHIKODE - 673 002.

2. **V. FATHIMA, AGED 70 YEARS,**
   W/O. LATE DR. M.K. MOHAMMED KOYA,
   RESIDING AT 19/1830, FATHIMA MANZIL, M.N.ROAD,
   POST: CHALAPPURAM, KOZHIKODE - 673 002.

BY ADVS.SRI.SHYAM PADMAN
SRI.P.N.HARISH BABU
SRI.A.RANJITH NARAYANAN
SRI.S.K.SAJU
SRI.JOHN THITHEEMOS

RESPONDENT(S):

1. **THE SECRETARY, CORPORATION OF KOZHIKODE,**
   REPRESENTED BY ITS SECRETARY,
   OFFICE OF THE CORPORATION OF KOZHIKODE, BEACH ROAD,
   KOZHIKODE - 673 032.

2. **STATE OF KERALA,**
   REPRESENTED BY SECRETARY,
   DEPARTMENT OF LOCAL SELF GOVERNMENT, SECRETARIAT,
   THIRUVANANTHAPURAM - 695 001.

R1 BY ADV. SRI.K.D.BABU, SC
R2 BY GOVERNMENT PLEADER SMT.K.A.SANJEETHA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 21922 of 2015 (M)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: TRUE COPY OF THE COMMUNICATION DT. 8/11/11 ISSUED BY THE 1ST RESPONDENT THE DIVISIONAL RAILWAY MANAGER, SOTHERN RAILWAY,

EXT.P2: TRUE COPY OF THE ORDER REFUSING PERMISSION ISSUED BY THE 1ST RESPONDENT DT. 7/5/13.

EXT.P3: TRUE COPY OF THE ORDER DT. 30/9/14 IN A.NO. 1080/13 OF THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS.

EXT.P4: TRUE COPY OF THE REPRESENTATION DT. 22/1/15 SUBMITED BY THE PETITIONER ALONG WITH ACKNOWLEDGMENT RECEIPT DT. 23/1/15 ISSUED BY THE 1ST RESPONDENT.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 21922 of 2015

Dated this the 28th day of July, 2015

J U D G M E N T

Aggrieved by the delay in considering the application for building permit submitted by the petitioners, the petitioners have come up before this Court.

2. The petitioners submitted a plan for approval before the 1st respondent for constructing a commercial and residential complex, which was rejected vide Ext.P2 stating that the railway authorities have objected to the same as there is some proposal for acquisition of land. Challenging the same, the petitioners approached the Tribunal for Local Self Government Institutions; and as per Ext.P3 order, Ext.P2 was set aside and the 1st respondent was directed to reconsider the application for building permit and issue building permit if the application is otherwise in order. As there was delay in granting approval and permit in spite of the specific

direction in Ext.P3 order, the petitioners submitted Ext.P4 representation highlighting the difficulties caused to them on account of the delay, default and indifference on the part of the 1st respondent. According to the petitioners, any further delay would only augment the loss, damage and hardship and more so, because of the escalation in the cost of labour and materials day by day. Hence, this writ petition.

3. In the statement filed by the respondent corporation, it is stated that there is no legal bar for rejecting the application for building permit if it is in violation of the provisions of the Kerala Municipality Building Rules. According to them, the application for building permit offends Rule 3(A) of the KMBR as the site is included in residential zone. It is further stated that since the application for building permit is against 3(A) and 5(6) of the KMBR, the respondent corporation is not in a position to issue permit for the construction. It was also pointed out that no other violations are reported.

4. Heard the learned counsel for the petitioner, the learned Standing Counsel for the respondent corporation and the learned Government Pleader in the matter.

5. The learned Standing Counsel for the respondent corporation submitted that the site is included in the residential zone.

6. On a specific query put by this Court as to whether any acquisition proceedings have been initiated so far, the learned Government Pleader answered in the negative.

7. 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 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. 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 disposed of directing the respondent corporation to reconsider petitioners' application for building permit and to pass positive orders within a period of two weeks from the date of receipt of a copy of this judgment.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-