

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. 21930 of 2015 (M)

PETITIONER:

PUTHIYEDATH NIRMALA, D/O. KRISHNAN NAIR, AGED 54 YEARS,
RESIDING AT KRISHNA VILASAM, P.O KAVUMBHAGOM,
THALASSERY 670 110, THALASSERY TALUK,
KANNUR DISTRICT.

BY ADV. SRI.R.SURENDRAN

RESPONDENT(S) :

1. THE SECRETARY, THALASSERY MUNICIPALITY,
THALASSERY P.O, KANNUR DISTRICT 670 101
2. THE THALASSERY MUNICIPALITY
REPRESENTED BY THE SECRETARY,
THALASSERY MUNICIPALITY, THALASSERY
KANNUR DISTRICT 670 101
3. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
LOCAL SELF GOVERNMENT DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM 695 001.

R1 BY GOVERNMENT PLEADER SRI.K.K.SAIDALAVI
R1 & R2 BY SRI.I.V.PRAMOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 28-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) .No. 21930 of 2015 (M)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1 TRUE COPY OF BASIC TAX RECEIPT DATED 13-06-2014, IN RESPECT
OF THE PROPERTY OWNED AND POSSESSED BY THE PETITIONER

EXHIBIT P2 TRUE COPY OF REJECTED PLANS WITH THE ENDORSEMENT
"REJECTED", MADE BY THE SECOND RESPONDENT

EXHIBIT P3 TRUE COPY OF ORDER DATED 03-07-2015 REJECTING THE
APPLCIATION FOR APPROVAL OF BUILDING SITE AND GRANT
OF BUILDING CONSTRUCTION PERMIT ISSUED BY THE SECOND
RESPONDENT

EXHIBIT P4 TRUE COPY OF JUDGMENT DATED 29-06-2015
IN WP(C) 15372 OF 2015

RESPONDENT(S) ' EXHIBITS: NIL

/TRUE COPY/

P.A. TO JUDGE

sas

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.21930 of 2015

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Dated this the 28th day of July, 2015

JUDGMENT

Ext.P3 by which petitioner's application for building permit was rejected is under challenge.

2. The petitioner is the owner in possession of 5.06 ares of land in R.S No.21/4A2 of respondent Municipality as per Ext.P1. On 26.6.2015 the petitioner applied before the first respondent for site approval and grant of building permit for construction of a house in her property. However, on 3.7.2015, the application was rejected by the second respondent as per Ext.P3 for the reason that as per the Development Plan of 2007, the property is included in the Public and Semi Public Zone.

3. The petitioner alleges that as per Section 390 of the Municipalities Act, Ext.P3 could be passed only by the Secretary and not by the Executive Engineer. Therefore, the impugned order is

without any authority. It is with this background, the petitioners have approached this Court.

4. I have heard the learned counsel for the petitioner and the learned standing counsel for the respondent Municipality.

5. It was pointed out by the learned counsel for the petitioner that the proposal in Ext.P3 has so far remained as a mere proposal and it has not been implemented. In this Connection, 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. Here, the learned counsel for petitioner submitted that in this case nothing has been done by the respondent municipality to materialise the said proposal for the last several years and there is not even a budget approval for the project. According to him, there is not a preliminary notification for acquisition of land for any public purpose

6. Reliance was also placed to the decision on 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.

7. Viewed in that profile, this Court is of the view that the petitioner is entitled to get the reliefs prayed for.

Therefore, the writ petition is allowed. Ext.P3 is quashed and the respondent Municipality is directed to reconsider petitioner's application for building permit *de hors* Ext.P3 within a period of one month from the date of receipt of a copy of this judgment.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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