

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

WP(C).No. 22463 of 2015 (G)

PETITIONER :

**M/S.DESAI HOMES,
40/7669/C 40, DD VASTRA MAHAL, MARKET ROAD,
KOCHI-682 011,
REPRESENTED BY ITS MANAGING PARTNER SRI.V.R.DESAI,
AGED 62 YEARS, RESIDING AT 31/1772Q, DD VILLAGE,
MAY 1ST ROAD, THAMMANAM, ERNAKULAM.**

**BY ADVS.SRI.S.SHANAVAS KHAN
SMT.S.INDU**

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REPRESENTED BY ITS PRINCIPAL SECRETARY,
LOCAL SELF GOVERNMENT DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM. PIN-695 001.**
- 2. THE CORPORATION OF COCHIN,
REPRESENTED BY ITS SECRETARY, CORPORATION OFFICE,
ERNAKULAM. PIN-682 011.**
- 3. THE SECRETARY,
CORPORATION OF COCHIN, CORPORATION OFFICE,
ERNAKULAM.PIN-682 011.**
- 4. THE ASSISTANT EXECUTIVE ENGINEER, EAST ZONAL OFFICE,
CORPORATION OF COCHIN, VYTILA, KOCHI-682 019**

**R1 BY GOVERNMENT PLEADER SMT. K.A.SANJEETHA
R2 TO R4 BY SRI.P.K.SOYUZ,SC,COCHIN CORPORATION
ADV. SRI.K.J.MANU RAJ**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 05-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- P1- TRUE COPY OF THE POSSESSION CERTIFICATE DATED 25.04.2015 ISSUED BY THE VILLAGE OFFICER, ELAMKULAM.
- P2- TRUE COPY OF THE BUILDING PERMIT NO.KRP2 519/2006 DATED 23.4.2008 OF THE FOURTH RESPONDENT.
- P3- TRUE COPY OF THE APPLICATION DATED 16.4.2014 SUBMITTED BY THE PETITIONER FOR RENEWAL OF PERMIT.
- P4- TRUE COPY OF THE BUILDING PERMIT APPLICATION FOR CHANGE OF OCCUPANCY FROM SPECIAL RESIDENTIAL TO COMMERCIAL (GROUP F).
- P5- TRUE COPY OF ORDER NO.KRP 2-519/08 DATED 22.7.2015 OF THE 4TH RESPONDENT.
- P6- TRUE COPY OF THE PHOTOGRAPHS OF THE BUILDINGS SITUATED IN AND AROUND THE PETITIONER'S PROPERTY.
- P7- TRUE COPY OF THE JUDGMENT DATED 25.06.2015 IN W.P[C]NO.19054 OF 2015 OF THIS HON'BLE COURT.
- P8- TRUE COPY OF THE JUDGMENT DATED 27.5.2015 IN W.P[C]NO.15551 OF 2015 OF THIS HON'BLE COURT.
- P9- TRUE COPY OF THE JUDGMENT DATED 9.04.2015 IN W.P[C]NO.10780 OF 2015 OF THIS HON'BLE COURT.

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.A.TO JUDGE

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 22463 of 2015

Dated this the 5th day of August, 2015

J U D G M E N T

Ext.P5, by which the petitioner's application for building permit was rejected, is under challenge.

2. The petitioner is the owner and in exclusive possession of an extent of 29.56 cents of land comprised in Sy. Nos.394/3, 394/9 & 400/3 of Elamkuam Village in Kanayannur Taluk within the local limits of the respondent Corporation. The petitioner submitted an application for building permit, which was rejected as per Ext.P5 on the ground that as per the DTP scheme for Kochi, the said land falls/earmarked as residential zone; and therefore, no permission can be accorded for construction of commercial buildings. According to the petitioner, several multi-storied commercial apartments are constructed in the neighbouring properties and these constructions are effected as per the building permits

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issued by respondents 2 to 4. It is further alleged that the DTP scheme for Kochi has become obsolete and inoperative. It is with this background, the petitioner has approached this Court.

3. Arguments have been heard.

4. The writ petition was opposed by the learned Standing Counsel for the respondent corporation that the change of occupancy cannot be permitted as the area is earmarked as residential zone.

5. In answer to the said submission, the learned counsel for the petitioner invited my attention to Ext.P6 photo series, which would reveal that commercial buildings have come up in the said area.

6. 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

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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.

Therefore, the writ petition is allowed.

Ext.P5 is quashed and respondents 2 to 4 are directed to reconsider petitioner's application for building permit as sought for by the petitioner if the application is otherwise in order within a period of one month from the date of receipt of a copy of this judgment.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-