

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 12TH DAY OF AUGUST 2015/21ST SRAVANA, 1937

WP(C).No. 22672 of 2015 (H)

PETITIONER:

VINOD KUMAR T.M, AGED 43 YEARS
S/O. P.K NARAYANAN NAIR, WORKING IN MERCHANT NAVY,
RESIDING AT 27/456-A, 503, DALIYA GARDENS APARTMENTS
MANJODI, THALASSERY 670 103, THALASSERY TALUK
KANNUR DISTRICT

BY ADV. SRI.R.SURENDRAN

RESPONDENTS:

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 SRI.I.V.PRAMOD

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
12-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) .No. 22672 of 2015 (H)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1 TRUE COPY OF SALE DEED DATED 18-03-2010 REGISTERED AS
DOCUMENT NO 710 OF 2010 OF SRO THALASSERY

EXHIBIT P2 TRUE COPY OF BASIC TAX RECEIPT DATED 20-05-2015, IN
RESPECT OF THE PROPERTY OWNED AND POSSESSED BY THE PETITIONER

EXHIBIT P3 TRUE COPY OF PROPERTY TAX RECEIPT DATED 20-05-2015 IN
RESPECT OF BUILDING BEARING NUMBER TMC-27/546-A

EXHIBIT P4 TRUE COPY OF PROPERTY TAX RECEIPT DATED 20-05-2015 IN
RESPECT OF BUILDING BEARING NUMBER TMC 27/546-B

EXHIBIT P5 TRUE COPY OF ORDER DATED 21-06-2015 IN BUILDING
APPLICATION NUMBER E5/BA/134/15-16 ISSUED BY THE SECOND RESPONDENT.

EXHIBIT P6 TRUE COPY OF JUDGMENT DATED 11-06-2014 IN IN WP(C) NO
14120 OF 2014

EXHIBIT P7 TRUE COPY OF JUDGMENT DATED 17-08-2011 IN W.P(C) NO 7625
OF 2010

RESPONDENT'S EXHIBITS: NIL

TRUE COPY

PA TO JUDGE

Scl.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 22672 of 2015

Dated this the 12th day of August, 2015.

JUDGMENT

The petitioner is aggrieved by the rejection of the petitioner's application for the construction of a commercial building on the basis of a development plan, which according to the respondent municipality is earmarked as residential zone.

2. The petitioner is the owner in possession of 13.38 ares of land in R.Sy.No.49/1C3 of Thiruvangad amsom Vayalam desom as per Ext.P1 sale deed. The petitioner alleges that on 21.5.2015, the petitioner applied before the first respondent for site approval and grant of building permit for construction of a commercial building in the property described in Ext.P1. On 21.6.2015, the application was rejected by the Executive Engineer of the second respondent as per Ext.P5 order. The reason stated in Ext.P5 is that as per the DTP scheme made in 2007, the property in Re-Sy.No.49/1

C3 is included in 'residential zone' and hence approval for commercial building construction cannot be granted. Further, as per the said scheme, there is a proposal formation of a new road through the said property. Nothing has been done by the municipality to materialise the said proposal for the last several years; it is alleged. There is not even a budget approval or a preliminary notification for acquisition of land for the purpose of the proposed road. The petitioner further alleges that as per Section 390 of the Act, an order like Ext.P4 could be passed only by the secretary and not by the Executive Engineer. Hence the impugned order is without any authority. As per Section 393 of the Act, the reasons for rejecting application for site approval and building permit are limited. Ext.P5 order is illegal as it assigned the reason, that is beyond the limits contained in Section 393 of the Act. It is further pointed out that this Court as per various judgments directed the second respondent to reconsider the building permit applications under similar situations. 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. Opposing the application, the learned counsel for the respondent municipality would submit that there is a specific Town Planning Scheme for the respondent municipality and the area is earmarked for the residential buildings. It is also pointed out that there is a proposal for the formation of a new road also.

5. In answer to the said submission, the learned counsel for the petitioner would submit that the DTP scheme remains in papers only and no action has been initiated to implement the scheme by the respondent municipality. It was also pointed out that in the same area, several commercial buildings have come up and therefore there is no justification against the discriminatory attitude shown by the respondent municipality towards the petitioner.

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 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 set aside and the respondent municipality is directed to reconsider petitioner's application for building permit within a period of one month from the date of receipt of a copy of this judgment in the light of what has been stated above.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.