

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. 22836 of 2015 (D)

PETITIONER(S):

- 1. SIDDHARTH V. DESAI, AGED 23 YEARS,
S/O.V.R. DESAI, 31/1772Q, DD VILLAGE,
MAY IST ROAD, THAMMANAM, ERNAKULAM.**
- 2. PURNIMA V. DESAI, AGED 58 YEARS,
W/O.MR.V.R. DESAI, 31/1772Q, DD VILLAGE,
MAY IST ROAD, THAMMANAM, ERNAKULAM.**

BY ADV. SRI.R.RAJESH

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REPRESENTED BY ITS PRINCIPAL SECRETARY,
LOCAL SELF GOVERNMENT DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 2. THE THRIKKAKARA MUNICIPALITY,
REPRESENTED BY ITS SECRETARY, THRIKKAKARA,
ERNAKULAM - 682 030.**
- 3. THE SECRETARY,
THRIKKAKARA MUNICIPALITY, THRIKKAKARA,
ERNAKULAM - 682 030.**

**R1 BY GOVERNMENT PLEADER SMT. ANITHA RAVEENDRAN
R2 & R3 BY ADV. SRI.S.SHANAVAS KHAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 05-08-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

sts

WP(C).No. 22836 of 2015 (D)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT-P1- TRUE COPY OF THE TAX RECEIPT DATED 24/09/2014 ISSUED BY THE VILLAGE OFFICER, KAKKANAD IN FAVOUR OF FIRST PETITIONER.
- EXHIBIT-P2- TRUE COPY OF THE TAX RECEIPT DATED 24/09/2014 ISSUED BY THE VILLAGE OFFICER, KAKKANAD IN FAVOUR OF SECOND PETITIONER.
- EXHIBIT-P3- TRUE COPY OF THE APPLICATION DATED 31/10/2014 SUBMITTED BY THE PETITIONER'S BEFORE THE SECOND RESPONDENT THROUGH 'SANKETHAM'.
- EXHIBIT-P4- TRUE COPY OF THE RECEIPT DATED 17/11/2014 EVIDENCING THE RECEIPT OF E-FILE APPLICATION.
- EXHIBIT-P5- TRUE COPY OF THE PHOTOGRAPHS OF THE PETITIONER'S PROPERTY AS WELL AS SURROUNDING PROPERTIES.
- EXHIBIT-P6- TRUE COPY OF THE NOTICE DATED 16/06/2015 ISSUED BY THE 3RD RESPONDENT.
- EXHIBIT-P7- TRUE COPY OF THE JUDGMENT DATED 25/06/2015 IN W.P(C) 19054 OF 2015 OF THIS HON'BLE COURT.
- EXHIBIT-P8- TRUE COPY OF THE JUDGMENT DATED 27/05/2015 IN W.P(C) 15551/2015 OF THIS HON'BLE COURT.
- EXHIBIT-P9- TRUE COPY OF THE JUDGMENT DATED 09/04/2015 IN W.P(C).NO. 10780 OF 2015 OF THIS HON'BLE COURT.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

sts

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 22836 of 2015

Dated this the 5th day of August, 2015.

JUDGMENT

Ext.P6 notice, by which the petitioners' application for building permit was rejected, is under challenge.

2. The petitioners alleges that their request for the permission to construct a multi-storied residential apartment building in his property having an extent of 38.44 ares has been rejected on the ground that the subject land is earmarked as agricultural zone as per the approved structural plan for central city of Kochi and hence no construction beyond 300 sq.mt. is permissible. The petitioners further allege that several multi-storied residential apartments have come up in the neighbouring properties and these constructions were effected as per the building permits issued by respondents 2 and 3. apart from that, the structural plan has become obsolete and inoperative. It is with this

background, the petitioners have come up before this Court.

3. Arguments have been heard.

4. The learned counsel for the petitioners inviting my attention to Ext.P5 photographs would submit that the land in which the petitioner proposed to construct the building is suitable and fit for construction of multistoried building as it is a pucca garden land and the surrounding areas of the petitioners properties are fully developed and there are large number of multi-storied buildings there.

5. 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 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.P6 is set aside and the respondent municipality is directed to reconsider petitioners' 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.