

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 10TH DAY OF AUGUST 2015/19TH SRAVANA, 1937

WP(C).No. 23526 of 2015 (M)

PETITIONER(S):

ARTECH REALTORS (P) LTD,
ARTECH HOUSE, TC.24/2014, THYCAUD,
THIRUVANANTHAPURAM, REPRESENTED BY ITS
MANAGING DIRECTOR OF THE COMPANY
T.S. ASHOK, AGED 48 YEARS, S/O.V.T. NAIR.

BY SRI.RENJITH THAMPAN, SENIOR ADVOCATE.
ADV. SMT.P.R.REENA

RESPONDENT(S):

1. THIRUVANANTHAPURAM CORPORATION,
REPRESENTED BY ITS SECRETARY, CORPORATION OFFICE,
THIRUVANANTHAPURAM, PIN - 695 033.

* ADDL. R2 IMPEADED

2. THE CHIEF TOWN PLANNER,
OFFICE OF THE CHIEF TOWN PLANNER,
THIRUVANANTHAPURAM.

* ADDL. R2 IS SUO MOTU IMPEADED AS PER ORDER DATED 10.08.2015.

R1 BY ADV. SRI.P.K.MANOJKUMAR, SC.
ADDL. R2 BY GOVT. PLEADER SMT.ANITHA RAVINDRAN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 10-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- P1 - TRUE COPY OF THE BUILDING PERMIT DATED 15.12.2014 ISSUED BY THE RESPONDENT CORPORATION.
- P2 - TRUE COPY OF THE COMMUNICATION DATED 29.05.2015 ISSUED BY THE RESPONDENT.
- P3 - TRUE COPY OF THE PLAN SHOWING THE EXISTING DEVELOPMENTS AROUND PETITIONER'S PROPERTY.
- P4 - TRUE COPY OF THE JUDGMENT IN WP(C).NO.27577 OF 2009 DATED 17.11.2012.
- P5 - TRUE COPY OF THE DECISION REPORTED IN 2014(1) KLT 188.
- P6 - TRUE COPY OF THE BASIC TAX RECEIPTS AS REGARDS PROPERTY COVERED BY EXT.P2 DATED 07.07.2014.

RESPONDENT'S EXHIBITS:- **NIL.**

//TRUE COPY//

P.S. TO JUDGE

rs.

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.23526 of 2015

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Dated this the 10th day of August, 2015

JUDGMENT

The petitioner is a private limited company engaged in the construction business. The petitioner alleges that as a part of that, the petitioner had engaged into a joint venture agreement with the owners of land having extent of 93.366 cents in Sy. Nos.193, 194, 195/A, 195/B of Kudappanakunnu village in Thiruvananthapuram taluk. Pursuant to the agreement, he had filed an application for building permit for construction of a high-rise building in the aforesaid property. The petitioner alleges that they were given building permit by the Secretary of the respondent corporation.

2. Subsequently, the petitioner had decided to extend the construction to the land in Sy. Nos.193 and 194 also. Therefore, they submitted a revised building plan and requested for revised building permit for construction. The petitioner further alleges that the

proposal was for constructing a total plinth area of 12717.99 M2 (G+17 floors). In the revised plan, the proposal was for an enhanced plinth area and the total plinth area was 19612.98 M2 (G+20 floor); it is alleged.

3. The Secretary of the respondent has informed the petitioner that the request for revised building permit cannot be granted, since the land in Sy. Nos.193 and 194 though is a dry land in the revenue records, in the master plan of 1994 the said land is included as land to be retained as a paddy land. The petitioner points out that the sanctioned master plan of the respondent corporation was prepared and finalised during 60's and the Government sanctioned the master plan on 21.6.1971. The petitioner further alleges that major portions of the land in Sy. Nos.193, 194, 195A and B of Kudappanakkunnu village is included in the master plan as residential area.

4. The petitioner further alleges that what is mentioned as master plan of 1994, is the revised master plan for

Thiruvananthapuram functional urban area which is prepared in 80s and was published as per order dated 23.4.1993. The petitioner alleges that though it was published under the Town Planning Act, the revised plan is not sanctioned by the Government for the last 22 years. Even according to the revised master plan as aforesaid, the plan period was 20 years envisaging development after 2001, which according to the petitioner, is long over. The petitioner further alleges that till date, the revised master plan mentioned in Ext.P2 is not implemented. It is with this background, the petitioner has approached this Court.

5. I have heard the learned counsel for the petitioner and the learned standing counsel for the respondent corporation.

6. Subsequent to the filing of the writ petition, the Chief Town Planner, Thiruvananthapuram was *suo motu* impleaded as additional 2nd respondent.

7. The learned Senior Counsel for the respondent corporation

would submit that the corporation has granted permit to the petitioner only if clearance is obtained from the Town Planner. It was pointed out by the learned counsel for the petitioner that Ext.P2 has so far remained as a mere proposal and it has not been implemented.

8. 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. Reliance was also placed on 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.

9. In the light of the above, the respondent is directed to forward the application submitted by the petitioner to the additional 2nd respondent, who shall consider the same in the light of what has

been stated above, if the application is otherwise in order, without being carried away by the DTP scheme which has not come into force and grant clearance within a period of one month from the date of receipt of a copy of this judgment. On receipt of clearance from the Chief Town Planner, the respondent corporation shall grant building permit to the petitioner, if it is otherwise in order, within one month thereafter.

The writ petition is disposed of as above.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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