

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 11TH DAY OF AUGUST 2015/20TH SRAVANA, 1937

WP(C) .No. 24271 of 2015 (H)

PETITIONER(S) :

ABDUL LATHEEF,
AGED 54 YEARS, S/O. MEERA SAHIB,
PUTHANVILA HOUSE, MANJILA P.O.,
E STREET, JAWAHAR STREET,
THIRUVANANTHAPURAM.

BY ADVS.SRI.RENJITH THAMPAN (SR.)
SMT.P.R.REENA.

RESPONDENT(S) :

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

BY SRI.P.K.MANOJKUMAR, SC, TVPM CORPORATION.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
11-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXT. P1 : COPY OF THE BASIC TAX RECEIPT DTD.26.4.2014 ISSUED BY THE VILLAGE OFFICER, KAWDIAR.
- EXT. P1(A) : COPY OF THE BASIC TAX RECEIPT DTD.28.4.2014 ISSUED BY THE VILLAGE OFFICER, KAWDIAR.
- EXT. P2 : COPY OF THE APPLICATION FOR BUILDING PERMIT DTD.14.7.2014 SUBMITTED BY THE PETITIONER.
- EXT. P2(A) : COPY OF THE RECEIPT DTD.14.7.2014 ISSUED BY THE CORPORATION.
- EXT. P3 : COPY OF THE CHECKLIST REPORT VERSION DTD.13.8.2013.
- EXT. P4 : COPY OF THE JUDGMENT OF THE HON'BLE COURT IN WPC NO.27577/2009 DTD.17.11.2012.
- EXT. P5 : COPY OF THE JUDGMENT REPORTED IN 2014 KHC 2517.
- EXT. P6 : COPY OF THE JUDGMENT REPORTED IN 2011(3) KLT 317.
- EXT. P7 : COPY OF THE JUDGMENT IN WPC NO.8060/2014 DTD3.7.2014.
- EXT. P8 : COPY OF THE NEWSPAPER REPORT PUBLISHESD IN HINDU DAILY ON 6.2.2014.
- EXT. P9 : COPY OF THE NEWS PAPER REPORT PUBLISHED IN HINDU DAILY ON 8.2.2014.
- EXT. P10 : COPY OF THE ORDER DTD.1.8.2015 ISSUED BY THE CORPORATION TO THE PETITIONER.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V.RAMAKRISHNA PILLAI, J.

W.P.(C)No.24271 of 2015

Dated this the 11th day of August, 2015.

J U D G M E N T

Ext.P10, by which petitioner's application for building permit was rejected, is under challenge.

2. The petitioner is the owner in possession of a total extent of 43 cents of land in Sy.No.3016/3, 3-1, 1 of Kawdiar village. The aforesaid property is situated in Kuravankonam which is a pucca residential area. There are large number of commercial and residential buildings including special residential buildings and high rise building situated near the petitioner's property as well as the area in which the petitioner's property is situated. Petitioner submits that, he had also decided to construct a special residential building having 10+1 floor. Petitioner was bonafide hoping that he would be granted building permit. However, when the petitioner enquired about his application, he was told that

there is a town planning scheme of 1976 in Thiruvananthapuram Corporation and the petitioner's property is included as a green strip area and hence the building permit application cannot be granted. When the petitioner's application for building permit was not considered, by the respondent, petitioner had approached this Court by filing W.P.(C)No.19325/14 and this Court has directed the Corporation to consider and pass orders on Ext.P2 within one month from 18.12.2014. When the judgment was not complied with, the petitioner had filed a contempt of court case. The petitioner alleges that when the notice of contempt of court was received, the respondent, without proper enquiry, has rejected the building permit application by order dated 1.8.2015. The main reason for rejection of building permit mentioned in Ext.P10 is that as per the sanctioned master plan, the land is in the green strip area. According to the petitioner, that was not the reason for rejecting the building permit since the

master plan was never implemented and also since the Corporation itself has passed a revised master plan, which was subsequently frozen. In the revised master plan, the petitioner's land is not mentioned in the green strip area. According to him, there are large number of multi storied buildings near the petitioner's property. It is with this background, the petitioner has approached this Court.

3. I have heard the learned counsel for the petitioner and the learned standing counsel for the respondent Corporation.

4. It was pointed out by the learned counsel for the petitioner that Ext.P10 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. 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.P10 is quashed and the respondent Corporation is directed to reconsider petitioner's application for building permit and grant permit within a period of one month from the date of receipt of a copy of this judgment.

Sd/-
A.V.RAMAKRISHNA PILLAI,
Judge.

ami/

//True copy//

P.A. to Judge