

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 19TH DAY OF AUGUST 2015/28TH SRAVANA, 1937

WP(C).No. 24437 of 2015 (D)

PETITIONER:

**ABDUL NIZAR, AGED 48 YEARS,
S/O. MUHAMMED SALI @ MUHAMMED ALI,
MAMPOZHIL HOUSE, KATTIL KADAVU P.O.,
AADINAD, KARUNAGAPPALLY,
KOLLAM DISTRICT.**

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

RESPONDENT(S):

- 1. THE STATE OF KERALA, REPRESENTED BY
PRINCIPAL SECRETARY TO GOVERNMENT
LOCAL SELF GOVERNMENT DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 2. THE THIRUVANANTHAPURAM CORPORATION,
REPRESENTED BY ITS SECRETARY,
CORPORATION OFFICE, PALAYAM,
THIRUVANANTHAPURAM - 695 001.**
- 3. THE SECRETARY,
THIRUVANANTHAPURAM CORPORATION,
CORPORATION OFFICE, PALAYAM,
THIRUVANANTHAPURAM - 695 001.**

**R1 BY GOVERNMENT PLEADER SMT.K.A.SANJEETHA
R2 & R3 BY SRI.P.K.MANOJKUMAR,SC**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 19-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

mbr/

APPENDIX

PETITIONER(S)' EXHIBITS:

- P1 - TRUE COPY OF THE TAX RECEIPT DT. 15.6.2015 ISSUED FROM THIRUMALA VILLAGE FOR THE YEAR 2015-2016.
- P2 - TRUE COPY OF THE THANDAPER EXTRACTS IN RESPECT OF THE PROPERTY ISSUED BY THIRUMALA VILLAGE.
- P3 - TRUE COPY OF THE LOCATION SKETCH ISSUED BY THE VILLAGE OFFICER, THIRUMALA.
- P4 - TRUE COPY OF THE LOCATION CERTIFICATE ISSUED VILLAGE OFFICER, THIRUMALA.
- P5 - TRUE COPY OF THE POSSESSION CERTIFICATE ISSUED BY VILLAGE OFFICER, THIRUMALA.
- P6 - TRUE COPY OF THE BUILDING PERMIT APPLICATION SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
- P7 - TRUE COPY OF THE LETTER DT. 29.6.2015 ISSUED BY THE STRUCTURAL ENGINEER.
- P8 - TRUE COPY OF THE RECEIPT DT. 13.7.2-15 ISSUED BY 2ND RESPONDENT.
- P9 - TRUE COPY OF THE COMMUNICATION DT. 06.8.2015 ISSUED BY THE 3RD RESPONDENT.
- P10 - TRUE COPIES OF THE PHOTOGRAPHS EVIDENCING THE NATURE AND LIE OF SURROUNDING PROPERTIES.
- P11 - TRUE COPIES OF THE PHOTOGRAPHS EVIDENCING THE NATURE AND LIE OF PROPERTY OF PETITIONER.
- P12 - TRUE COPY OF THE MINUTES OF THE MEETING DT. 24.6.2014 OBTAINED UNDER RIGHT TO INFORMATION ACT.

RESPONDENTS' EXHIBITS: **NIL.**

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No.24437 of 2015

Dated this the 19th day of August, 2015.

JUDGMENT

By this writ petition, the petitioner seeks to challenge Ext.P9 proceedings of the third respondent by which the petitioner's application for building permit for constructing a residential apartment has been rejected on the ground that as per the master plan of the second respondent, the subject land falls/earmarked as 'green strip area' and therefore, no permission can be accorded for construction of apartment complex.

2. The petitioner alleges that several multi-storied commercial as well as residential apartments are constructed in the neighbouring properties and these constructions are effected as per the building permits issued by respondents 2 and 3. Apart from that, the master plan for the second respondent was cancelled and the first respondent is now following 1971 master which has become obsolete and

inoperative. The petitioner further alleges that his property is a pucca garden land as revealed from Exts.P1 and P2 and the nature of land is revealed from Exts.P10 and P11 photographs.

3. Arguments have been heard.

4. The Regional Town Planner, Thiruvananthapuram is suo motu impleaded as the additional third respondent.

5. 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 petitioners are entitled to get the reliefs prayed for.

Therefore, the writ petition is allowed.

Ext.P9 is set aside and the respondent corporation is directed to reconsider the petitioner's application for building permit within a period of one month from the date of receipt of a copy of this judgment on condition that the petitioner shall obtain clearance from the Regional Town Planner (R3), if such a clearance is required as per law. The Regional Town Planner shall consider the request of the petitioner and grant clearance if the same is otherwise in order in the light of what has been stated above and in grant of clearance, the respondent corporation shall consider the petitioner's application within a period of three weeks from the date of such clearance.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.