

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. 24474 of 2015 (H)

PETITIONER:

**PADMAKUMAR S, AGED 54,
S/O.N.SREEDHARAN NAIR, T.C.25/2224,
MANJALIKULAM ROAD, THAMPANOOR,
THIRUVANANTHAPURAM, PIN-695001.**

**BY ADVS.SRI.K.C.ELDHIO
SRI.JIJO THOMAS
SRI.MALLENATHAN.M.
SRI.ANEESH JAMES
SRI.ANIL R.NATH**

RESPONDENTS:

- 1. CORPORATION OF THIRUVANANTHAPURAM,
VIKAS BHAVAN.P.O, THIRUVANANTHAPURAM-695033.
REPRESENTED BY ITS SECRETARY.**
- 2. THE SECRETARY,
CORPORATION OF THIRUVANANTHAPURAM,
VIKAS BHAVAN.P.O, THIRUVANANTHAPURAM-695033.**
- 3. THE ASSISTANT ENGINEER,
CORPORATION OF THIRUVANANTHAPURAM,
VIKAS BHAVAN.P.O, THIRUVANANTHAPURAM-695033.**

**BY SRI.N.NANDAKUMARA MENON (SENIOR ADVOCATE)
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 : A TRUE COPY OF THE SETTLEMENT DEED NO.1657 OF 2014 OF THIRUVANANTHAPURAM SRO.
- P2 : PHOTOGRAPH SHOWING THE EXISTING BUILDING IN THE PROPERTY OF THE PETITIONER.
- P3 : A TRUE COPY OF THE APPLICATION FOR PERMIT DATED 04.05.2015 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.
- P4 : A TRUE COPY OF PLAN OF THE PROPOSED BUILDING ANNEXED ALONG WITH EXHIBIT P3 APPLICATION.
- P5 : A TRUE COPY OF THE REPORT PREPARED BY THE OVERSEER OF THE 1ST RESPONDENT OBTAINED BY THE PETITIONER UNDER THE RIGHT TO INFORMATION ACT.
- P6 : A TRUE COPY OF THE ORDER NO.E6/BA/8/15 DATED 16.07.2015 OF THE 3RD RESPONDENT.
- P7 : PHOTOGRAPHS OF SOME OF THE BUILDINGS CONSTRUCTED RECENTLY ON THE SIDE OF MANJALIKULAM ROAD.
- P8 : A TRUE COPY OF THE RELEVANT PAGES OF THE DRAFT MASTER PLAN FOR TRIVANDRUM CITY PUBLISHED IN THE YEAR 2013.

RESPONDENTS' EXHIBITS: **NIL.**

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No.24474 of 2015

Dated this the 19th day of August, 2015.

JUDGMENT

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

2. The petitioner is staying along with his family in the building bearing door No.T.C.25/2224 situated in the property covered by Ext.P1. The petitioner alleges that as the said building is old and in a dilapidated condition, he submitted Ext.P4 application to construct a residential shop room after demolishing the existing building. Ext.P4 application was rejected vide Ext.P6 order issued by the third respondent. The third respondent has no authority to issue Ext.P6 order as the sole person competent to consider and take decisions of application for building permit as per the provisions of the Kerala Municipality Act and Rules is the second respondent who is the secretary. The petitioner further alleges that the only reason stated in Ext.P6 for rejecting Ext.P4 application is

that as per the sanctioned master plan for Trivandrum city, there is a proposal for widening the Manjalikulam road situated on the eastern side of the property of the petitioner and that the said road widening proposal has not been indicated in the application for permit. The sanctioned master plan for Trivandrum city was published in the year 1971 and in the past 44 years, no steps has been initiated by the respondents for widening the said road. Moreover, Ext.P8 would reveal that in the revised draft master plan published in the year 2013, the said road is not included in the list of road proposed for widening. Ext.P7 makes it clear that the respondents has as recently as in July 2015 issued building permits to similarly situated persons without insisting on leaving space for road widening. The petitioner alone is discriminated. Ext.P6 is a clear infraction of the property rights of the petitioner under Article 300 A and the right to equality as guaranteed under the Article 14 of the Constitution of India; it is alleged.

3. Arguments have been heard.

4. The Regional Town Planner, Thiruvananthapuram is suo motu impleaded as the additional fourth 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.P6 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 (R4), if the same is required as per law. The Regional Town Planner, on the basis of the observation made above, shall consider the request of the petitioner and grant clearance if the same is otherwise in order. On receipt of clearance as above, the respondent corporation shall consider the petitioner's application within a period of three weeks from the date of clearance.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.