

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. 24603 of 2015 (A)

PETITIONER:

S. RAVI SANKAR, 'SWATHI',
SATELLITE TOWNSHIP, PLOT NO.2098,
PADAMUGHAL, KAKKANAD, NOW RESIDING AT
FLAT NO.C8, GALAXY PEACH GARDEN, LINK PARK
CROSS ROAD, 5TH POTTAKUZH, PACHALAM P.O,
KOCHI- 682 016.

BY ADVS.SRI.M.V.BIPIN
SMT.A.S.BEENU
SRI.S.SUDARSANAN

RESPONDENT(S) :

1. THE STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT,
LOCAL SELF GOVERNMENT DEPARTMENT, THIRUVANANTHAPURAM-695 001.
2. THE CHIEF TOWN PLANNER, NEST, T/C NO.14/319,
EXTRA POLICE ROAD, PALAYAM, THIRUVANANTHAPURAM-695 001.
3. THE SECRETARY, CORPORATION OF COCHIN, ERNAKULAM- 682 011.
4. ASST. EXECUTIVE ENGINEER, OFFICE OF THE TOWN PLANNING,
CORPORATION OF COCHIN, ERNAKULAM- 682 011.
5. THE TOWN PLANNING OFFICER, G.C.D.A. KADAVANTHARA,
COCHIN- 682 017.

R3&4 BY ADV. SRI.K.J.MANU RAJ
R BY GOVERNMENT PLEADER SMT. K.A. SANJEETHA
R BY SRI.P.K.SOYUZ,SC,COCHIN CORPORATION
R BY SMT.K.R.KRISHNAKUMARI, SC, GREATER COCHIN DEVELOPMENT

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

APPENDIX

PETITIONER(S) 'S EXHIBITS:

EXHIBIT P1: TRUE COPY OF THE POSSESSION CERTIFICATE ISSUED BY THE VILLAGE OFFICER, ELAMKULAM DATED 19.2.2015.

EXHIBIT P2: TRUE PHOTOGRAPHS OF THE COMMERCIAL BUILDINGS, WHICH ARE IN IMMEDIATE NEAR VICINITY OF THE PETITIONER'S PROPERTY.

EXHIBIT P3: TRUE COPY OF THE LOCATION SKETCH ISSUED FROM THE VILLAGE OFFICE, ELAMKULAM.

EXHIBIT P4: TRUE COPY OF THE COMMUNICATION DATED 10.2.2015 ISSUED FROM THE OFFICE OF THE 3RD RESPONDENT REJECTING THE APPLICATION OF BUILDING PERMIT.

EXHIBIT P5: TRUE COPY OF THE JUDGMENT DATED 3.9.2014 IN W.P.(C) NO.22870/2014 OF THIS HONOURABLE COURT.

RESPONDENT'S EXHIBITS: NIL

TRUE COPY

PA TO JUDGE

Scl.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No.24603 of 2015

Dated this the 19th day of August, 2015.

JUDGMENT

Ext.P4, by which the petitioner's application for building permit was rejected, is under challenge.

2. The petitioner is the owner in possession of 2.23 Ares (1.62 + 0.61 Ares) of property and a building therein comprised in Sy.No.194/1 of Elamkulam Village in Kanayannur Taluk as per document No.2008/14 and 2006/14 of Sub Registry Office, Ernakulam. The said property is situated on the western side of the Kaloore-Kadavanthra road (K.K.Road). The petitioner alleges that after the development of K.K.Road, the area became a busy commercial area having huge commercial complexes and institutions which were built after obtaining permit from the third respondent herein. The petitioner further alleges that Sreedhareeyam Eye Hospital, Well Mart supermarket, The State Bank of India etc. are

situated near the petitioner's property. Also, a new commercial construction is in progress. The petitioner made an application to the third respondent on 6.2.2015 to construct a four storied commercial building with a basement parking. The said application was turned down as per Ext.P4 communication stating that no commercial construction could be granted in K.K.Road as the said area is classified as a residential area as per Elamkulam road DTP scheme. The petitioner alleges that the reasoning stated in Ext.P4 is against the dictum laid down in the decision reported in 2011 (3) KLT 317 which was followed in Ext.P5 judgment also. The petitioner also inviting my attention to Ext.P2 photographs which shows that the petitioner's property is in a pucca commercial area having so many commercial buildings for which permits were granted by the third respondent corporation. It is with this background, the petitioner has come up before this court.

3. Arguments have been heard.

4. 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 petitioner is entitled to get the reliefs prayed for.

Therefore, the writ petition is allowed.

Ext.P4 is set aside and the respondent Corporation is directed to reconsider petitioner's application for building permit in the light of what has been stated above within a period of one month from the date of receipt of a copy of this judgment and to grant permit, if it is otherwise in order.

Sd/-

A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.