

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937

WP(C).No. 25584 of 2015 (W)

PETITIONER :

**VIJAYALAKSHMI MENON, AGED 70 YEARS,
D/O.PANKAJAKSHI AMMA, RESIDING AT: EDAYALI PARAMB HOUSE,
THRIKKANNARVATTAM, COCHIN-18,**

**NOW RESIDING AT: LINK HEIGHTS APARTMENT,
FLAT NO.1-D, PANAMPILLY NAGAR, COCHIN-682 036.**

BY ADV. SRI.PEEYUS A.KOTTAM

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY SECRETARY,
DEPARTMENT OF LOCAL SELF GOVERNMENT INSTITUTIONS,
GOVERNMENT SECRETARIAT, TRIVANDRUM,PINCODE-695 001**
- 2. THRIKKAKKARA MUNICIPALITY, THRIKKAKKARA,
REPRESENTED BY ITS SECRETARY, PINCODE-682 021.**

**R1 BY GOVERNMENT PLEADER SMT. K.A.SANJEETHA
R2 BY SRI.S.SHANAVAS KHAN**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 20-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

sts

WP(C).NO.25584/2015

APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE ORDER OF THE SECRETARY OF 2ND RESPONDENT BEARING
NO.BA 396/2014 DATED 12/08/2015**
- P2 COPY OF THE PHOTOGRAPHS SHOWING PETITIONER'S PROPERTY AND
SURROUNDING PROPERTIES.**

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

sts

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No.25584 of 2015

Dated this the 20th day of August, 2015.

JUDGMENT

Ext.P1, by which the petitioner's application for building permit was rejected, is under challenge.

2. The petitioner is the owner in possession of 9.50 ares of property compared in Sy.No.516/1 of Kakkanad Village. The petitioner alleges that she acquired this property as per registered Sale Deed No.5210/1979 of Edapally Sub Registry. The petitioner submitted an application dated 22.9.2014 seeking building permit for construction of a multi-storied residential apartment in the said property. However, vide Ext.P1 letter bearing No.BA 396/2014 dated 12.8.2015, the second respondent informed the petitioner that building permit sought for by the petitioner cannot be granted since the property is earmarked for industrial zone. It is further alleged that the said property of the petitioner lies amidst a thickly populated area and all the properties surrounding the

petitioner's property are constructed with residential and commercial apartments. No industrial unit is functioning anywhere near to the petitioner's property. The petitioner's application for building permit was rejected by the municipal authority solely on the ground that as per structural plan, the said area is earmarked as industrial zone. It is with this background, the petitioner has come up before this Court.

3. Heard the learned counsel for the petitioner, the learned standing counsel for the respondent municipality and the learned Senior Government Pleader in the matter.

4. It is submitted by the learned standing counsel for the respondent municipality that as per the DTP scheme, the property is included with the industrial zone. In answer to the said submission, the learned counsel for the petitioner would submit that the scheme is remaining in papers and no proceedings has been initiated by the respondent so far.

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.P1 is set aside and the respondent municipality is directed to reconsider petitioner's application for building permit and pass positive orders on the same, within a period of one month from the date of receipt of a copy of this judgment in the light of what has been stated above.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.