

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. 25651 of 2015 (F)

PETITIONER:

ASIANET COMMUNICATION LTD
ASIANET COMPLEX, PULIARAKONAM, THIRUVANANTHAPURAM
REPRESENTED BY ITS SENIOR VICE PRESIDENT (OPERATIONS,
MR REGHU RAMACHANDRAN, S/O.RAMACHANDRA MENON, AGED 46,
R/A.BANK HOUSE, CHITTOOR ROAD, KOCHI 35

BY ADVS.SRI.JOBY JACOB PULICKEKUDY
SRI.ANIL GEORGE

RESPONDENTS:

1. THE THRIKKAKARA MUNICIPALITY
MUNICIPAL OFFICE, THRIKKAKARA, KAKKANAD
KOCHI REP BY ITS SECRETARY
2. THE SECRETARY
THRIKKAKARA MUNICIPALITY, MUNICIPAL OFFICE
THRIKKAKARA, KAKKANAD, KOCHI
3. THE SENIOR TOWN PLANNER
DEPARTMENT OF TOWN PLANNING CIVIL STATION, KAKKANAD
KOCHI
4. THE DISTRICT COLLECTOR,
ERNAKULAM DISTRICT, COLLECTORATE, KAKKANAD

R BY GOVERNMENT PLEADER SMT. K.A.SANJEETHA
R 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:

WP(C) .No. 25651 of 2015 (F)

APPENDIX

PETITIONER(S) ' EXHIBITS

P1:-TRUE PHOTOCOPY OF SALE DEED DTD 8/6/2012

P1(a):-TRUE PHOTOCOPY OF SALE DEED DTD 16/9/2014

P2:-TRUE PHOTOCOPY OF BUILDING PERMIT DTD 21/11/2011 WITH ENDORSEMENT
OF CHANGED OWNERSHIP

P3:-TRUE PHOTOCOPY OF ORDER DTD 7/11/2014 RENEWING THE BUILDING
PERMIT

P4:-TRUE PHOTOCOPY OF ORDER DTD 29/9/2013 ISSUED BY THE 4TH
RESPONDENT

P5:-TRUE PHOTOCOPY OF REVISED APPLICATION DTD 22/12/2014

P6:-TRUE PHOTOCOPY OF LETTER DTD 27/5/2015 ISSUED BY THE 3RD
RESPONDENT

RESPONDENT'S EXHIBITS: NIL

TRUE COPY

PA TO JUDGE

Scl.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No.25651 of 2015

Dated this the 20th day of August, 2015.

JUDGMENT

The petitioner is aggrieved by the rejection of the petitioner's application for revised building permit.

2. The petitioner is the owner in possession of property having an extent of 65.40 ares in Re-Sy.Nos.570/155, 570/156, 570/154 pt, and 570/8 pt. in Kakkanad Village lying as a dry land. In the year 2011, an application for a building permit for the construction of a commercial building was submitted and Ext.P2 building permit was issued by the second respondent permitting construction of a six floor commercial building. It is further pointed out that it was further renewed upto 10.11.2007 as per Ext.P3 and still in force. The fourth respondent after conducting enquiry passed Ext.P4 order permitting all the construction activities in the property. In the meanwhile, the petitioner submitted a revised plan with some modifications in the already sanctioned plan

and as per rules. However, the fourth respondent without considering any of the permissions and building permits issued Ext.P6 informing that this property is in agricultural zone as per Kochi Structure Plan and therefore cannot be permitted; it is alleged.

3. I have heard the learned counsel for the petitioner, the learned Senior Government Pleader and the learned standing counsel for the respondent municipality.

4. Opposing the application, the learned standing counsel for the respondent municipality would submit that since there is increase in the area of the building, it requires clearance from the third respondent who is the senior Town Planner.

5. It appears that the proposed area is more than 4000 sq. metres. Therefore, the matter requires clearance from the third respondent.

6. The petitioner's request has been rejected by Ext.P6 also for the reason that the property of the petitioner comes in

the zoning of sub division regulations. However, it cannot be countenanced in the light of what has been stated below.

7. This Court in **Padmini v. State of Kerala** [1999 (3) KLT 465], has 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.P6 is set aside. The third respondent is directed to grant clearance if the application is otherwise in order within two weeks from the date of receipt of a copy of this judgment. The respondent municipality is directed to reconsider the petitioner's application for building permit within a period of

one month from the date of receipt of clearance from the third respondent in the light of what has been stated above and grant permit, if the same is otherwise in order.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.