

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 21ST DAY OF AUGUST 2015/30TH SRAVANA, 1937

WP(C).No. 25712 of 2015 (L)

PETITIONER(S):

**K.M. ASHRAF, AGED 51 YEARS,
S/O MAMMUNNI,
RESIDING AT KULANGARA THOPPUPARAMBIL HOUSE,
SOW MILL ROAD, KOORKKANCHERRY, THRISSUR.**

**BY ADVS.SRI.T.C.SURESH MENON
SRI.P.S.APPU**

RESPONDENT(S):

- 1. THE THRISSUR CORPORATION,
REPRESENTED BY ITS SECRETARY, CORPORATION OFFICE,
THRISSUR - 680 001.**
- 2. THE ASSISTANT ENGINEER,
THRISSUR CORPORATION, ZONAL OFFICE, KOORKKANCHERRY,
THRISSUR - 680 007.**

**BY ADVS. SRI.K.P.VIJAYAN
SRI.V.N.HARIDAS**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
21-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 25712 of 2015 (L)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1: TRUE COPY OF THE TAX RECEIPT ISSUED IN FAVOUR OF THE
PETITIONER AND HIS WIFE BY THE VILLAGE OFFICER, CHIYYARAM
VILLAGE OFFICE DATED 5.5.2015.**

**EXHIBIT P2: TRUE COPY OF THE POSSESSION CERTIFICATE ISSUED IN FAVOUR OF
THE PETITIONER AND HIS WIFE DATED 14.5.2015.**

**EXHIBIT P3: TRUE COPY OF THE ORDER PASSED BY THE 2ND RESPONDENT
DATED 11.8.2015.**

**EXHIBIT P4: TRUE COPY OF FEW PHOTOGRAPHS DEPICTING THE LIE OF THE
PROPERTY DATED NIL.**

**EXHIBIT P5: TRUE COPY OF THE JUDGMENT IN WPC NO.18776/2014 ON THE FILE OF
THIS HONOURABLE COURT DATED 22.7.2014.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msv/

A.V.RAMAKRISHNA PILLAI, J.

W.P.(C)No.25712 of 2015

Dated this the 21st day of August, 2015.

J U D G M E N T

The petitioner is aggrieved by the denial of his application for building permit by the respondent solely relying on the zonal regulations of an antiquated D.T.P.Scheme.

2. The petitioner along with his wife hold a parcel of land comprising of 0.0708 hectares in Sy.No.169/1 of Chiyaram village in Thrissur District within the respondent Corporation limits. Adjacent to this property there are commercial buildings. The petitioner and his wife wanted to demolish the building that exists therein to construct a commercial building. Accordingly, they applied for a building permit to construct a small commercial building in the property mentioned above. They were informed by the 2nd respondent that their application for building permit

cannot be considered, since zonal regulations are applicable in the area. According to the petitioner, the stand adopted by the Corporation is in gross violation of the dictum laid down by this Court in Raju S.Jetmalani vs. State of Maharashtra and others [(2005)11 SCC 222], Nazar vs. Malappuram Municipality [2009(3)KLT 92], Padmini Vs. State of Kerala (1999(3) KLT 465), Saidu P. Vs. State of Kerala and others (2010(3) KHC 974) and Gopalakrishnan T.V. Vs. State of Kerala and others (2011(3) KHC 162) that, the building permit cannot be rejected on the basis of zonal regulations under the DTP Scheme which are never implemented. There are commercial buildings in adjacent property. The rejection of building permit on the basis of unworkable zonal regulations ignoring the actual state of affairs is unfair and illegal ; it is alleged. It is with this backdrop, the petitioner has approached this Court.

3. I have heard the learned counsel for the petitioner, the learned Standing counsel for the respondent Corporation

and the learned Government Pleader in the matter.

4. The learned counsel for the respondent would submit that the petitioner's property is included in the DTP Scheme. Opposing the application, the learned counsel invited my attention to Ext.P4 series of photographs to show that there are existing buildings in the property. It is submitted that the intention of the petitioner is to demolish the existing structure to construct a new building. It was pointed out by the learned counsel for the petitioner that the zonal regulations of the D.T.P.Scheme has so far remained as a mere proposal and it has not been implemented. In this Connection, the learned counsel invited my attention to a Division Bench decision of this Court in **Padminiv. 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 Maharastra** [(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.P3 is quashed and the respondent Corporation is directed to reconsider petitioner's application for building permit and grant permit within a period of one month from the date of receipt of a copy of this judgement.

Sd/-
A.V.RAMAKRISHNA PILLAI,
Judge.

ami/

//True copy//

P.A. to Judge