

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. 25916 of 2015 (L)

PETITIONER(S):

1. M/S.DAMAC HOLDINGS PVT. LTD. 32/2241A,
CIVIL LANE ROAD, PALARIVATTOM, ERNAKULAM-682 025,
REPRESENTED BY ITS DIRECTOR-SRI.BALASUBRAMONIAM,
AGED 54 YEARS, S/O.LATE K.H.CITHAMBARA IYER,
RESIDING AT OLD H.NO.235 (NEW H.NO.315), MOUNT ROAD,
TEYNAMPET, CHENNAI-600 006.
2. NOOR MOHAMMED NOORISHA, AGED 58 YEARS,
S/O.KALLIATH KHALID HAJI, KALLIATH HOUSE, MAMANGALAM,
PALARIVATTOM, ERNAKULAM.

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

RESPONDENT(S):

1. THE THRIKKAKARA MUNICIPALITY,
REPRESENTED BY ITS SECRETARY,
THRIKKAKARA-682 030
2. THE SECRETARY, THRIKKAKARA MUNICIPALITY,
THRIKKAKARA-682 030
3. STATE OF KERALA, REPRESENTED BY ITS SECRETARY,
LOCAL ADMINISTRATION (M) DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695 001
4. THE SENIOR TOWN PLANNER,
REGIONAL TOWN PLANNING OFFICE, CIVIL STATION,
KAKKANAD, KOCHI.
5. THE CHIEF TOWN PLANNER, OFFICE OF THE CHIEF TOWN PLANNER,
SWARAJ BHAVAN, NANDANCODE, THIRUVANANTHAPURAM.

**R1 & R2 BY SRI.S.SHANAVAS KHAN
R3 TO R5 BY GOVERNMENT PLEADER SMT. K.A.SANJEETHA**

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

sts

WP(C).NO.25916/2015

APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE JUDGMENT IN WP(C).NO.14530/2013.**
- P2 COPY OF THE BUILDING PERMIT DATED 11/10/2013.**
- P3 COPY OF THE APPLICATION DATED 29/01/2014.**
- P4 COPY OF THE LETTER DATED 01/07/2014 ISSUED BY THE 5TH RESPONDENT TO THE 2ND RESPONDENT**
- P5 COPY OF THE LETTER DATED 29/05/2015 ISSUED BY THE 2ND RESPONDENT**

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.S.TO JUDGE

sts

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No.25916 of 2015

Dated this the 21st day of August, 2015.

JUDGMENT

The petitioners are aggrieved by the rejection of the petitioners' application for revised building permit.

2. The petitioners are the owners in possession of property having an extent of 117 cents in Sy.Nos. 303/1, 2, 3, 6 and 9 of Kakkanad Village. The petitioners allege that they applied for building permit for the construction of two Towers with mult-storied buildings. The application was initially rejected saying that it is an agricultural zone. However, as per Ext.P1 judgment, this Court directed the second respondent to consider and issue building permit despite the same being designated as an agricultural zone. Accordingly, the second respondent issued building permit for the construction of two towers. The petitioners thereafter completed the structure of both the towers. However, Ext.P3 application was thereafter submitted for permission to construct additional three floors in the

Tower No.1, as permitted in the Building Rules. Though the application was submitted as early as on 29.1.2014, no effective action is taken by the respondents till now. The fifth respondent is still attempting to drag the proceedings alleging agricultural zone irrespective of Ext.P1 judgment which has become final. It is with this background the petitioners have come up before this Court.

3. I have heard the learned counsel for the petitioners, 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 fourth 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 fourth respondent.

6. The petitioners' request has been rejected for the reason that the property of the petitioners 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 petitioners are entitled to get the reliefs prayed for.

Therefore, the writ petition is allowed. The respondent Municipality shall forward the petitioner's application to the fifth respondent for clearance within two weeks from the date of receipt of a copy of this judgment.

The fifth respondent is directed to grant clearance, if the application is otherwise in order in the light of what has been stated above, within a period of three weeks thereafter. The respondent Municipality is directed to reconsider the petitioners' application for building permit within a period of one month from the date of receipt of clearance from the fifth 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

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true copy

P.S.TO JUDGE