

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 28TH DAY OF SEPTEMBER 2015/6TH ASWINA, 1937

WP(C).No. 27528 of 2015 (M)

PETITIONER(S):

- 1. ABDUL SALAM K.P AGED 35 YEARS
S/O.MUHAMMED, KATTAYATTU PARAMBATH HOUSE, MOOZHICKAL
CHELAVUR.P.O., KOZHIKODE-71.**
- 2. FAISAL T.K AGED 37 YEARS
S/O.THAYIDAKANDY ABDO RAHIMAN, NARIKKUNI VAYAL HOUSE
CHELAVUR.P.O., KOZHIKODE-71.**
- 3. K.P.ASHARAF AGED 47 YEARS
S/O.KUNIYEDATH KOYATTI, KATTAYATTU PARAMBATH HOUSE
CHELAVUR.P.O., KOZHIKODE-71.**

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

RESPONDENT(S):

- 1. KOZHIKODE MUNICIPAL CORPORATION
REP. BY ITS SECRETARY, BEACH ROAD, KOZHIKODE - 670001**
- 2. SECRETARY
KOZHIKODE MUNICIPAL CORPORATION, BEACH ROAD
KOZHIKODE. 670001**

BY SRI.K.D.BABU,SC,KOZHIKODE CORPORATION

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
28-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- P1- TRUE COPY OF THE RECEIPT DATED 24.06.2015 ISSUED BY THE VILLAGE OFFICER, NELLIKODE.
- P2- TRUE COPY OF THE POSSESSION CERTIFICATE DATED 24.06.2015 ISSUED BY THE VILLAGE OFFICER, NELLIKODE.
- P3- TRUE COPY OF THE ORDER DATED 04.09.2015 ISSUED BY THE 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS: NIL

//True copy//

P.A. to Judge

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P.BHAVADASAN, J.

W.P.(C) No. 27528 of 2015

Dated this the 28th day of September, 2015

J U D G M E N T

Unfortunate is the position in which the petitioners are now placed with regard to their application for permission to put up a structure in survey number 23/13 in Nellikode Village of Kozhikode Corporation. Petitioners purchased the property by virtue of sale deed No.2745/03 of S.R.O. Kozhikode and have been paying tax. They are in absolute possession and enjoyment of the property. Petitioners preferred an application on 12.08.2015 for putting up a commercial structure with necessary records. That was rejected by Ext.P3 order pointing out that there is a proposal to widen the Kozhikode-Mavoor road and the property may be required for the same. It is also pointed out that there is a difference in the survey number shown between the possession certificate and the location sketch also.

2. Petitioners, relying on the decision reported in **Giri P.K. v. State of Kerala and others** (2013 (2) KLT 443), submit that a mere proposal to acquire the property cannot be taken as a ground to reject the application for putting up a construction in the property owned and possessed by the petitioners. Such freezing of property has been deprecated even by the Apex Court in the decision reported in **Raju S. Jethmalani and Others v. State of Maharashtra and others** ((2005) 11 SCC 222). As regards the error pointed out with regard to survey number, petitioners request that they may be allowed to correct the same and submit a fresh application, if necessary.

3. The learned counsel appearing for the Municipal Corporation submits that the matter may be allowed to be reconsidered by the Corporation.

4. After having heard the learned counsel on the both sides and after having given anxious consideration to the principles laid down in the decisions referred to by the

petitioners, it is felt that there is considerable force in the submission made by the learned counsel for the petitioners. A mere proposal to acquire cannot be taken as a ground to reject an application for putting up a structure, if it is otherwise in accordance with law.

For the above reasons, in the light of the decisions referred to in this petition, Ext.P3 is set aside and the first respondent is directed to reconsider the application on merits in accordance with law, provided, the petitioners rectify the survey number in their application.

Sd/-
P.BHAVADASAN
JUDGE

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//True copy//

P.A. to Judge