

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 1937

WP(C).No. 30485 of 2013 (I)

PETITIONER :

**THE SECRETARY
VADAKARA MUNICIPALITY, VADAKARA, KOZHIKODE DISTRICT**

BY ADV. SRI.NAVEEN.T

RESPONDENTS :

- 1. KUNHI PARAMBATH BASHEER,
S/O.MOOSA HAJI, KUNHI PARAMBATH HOUSE,
KURIKLKILAD AMSOM DESOM, VADAKARA
KOZHIKODE PIN - 673 101**
- 2. KUNHI PARAMBATH HASHIM
S/O.MOOSA HAJI, DO DO**
- 3. KUNHI PARAMBATH USMAN,
DO DO**
- 4. KUNHI PARAMBATH HAKEEM
DO DO**
- 5. KUNHI PARAMBATH KUNHABDULLA HAJI
S/O.MOOSA HAJI DO DO**

**R1 TO R5 BY ADV. SRI.RAJESH VIJAYENDRAN
BY ADV. SMT.SHAMEENA SALAHUDHEEN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 10-03-2015, THE COURT ON 26-05-2015 DELIVERED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1:** TRUE COPY OF THE ORDER DATED 1-2-2013 ISSUED BY THE SECRETARY,VADAKARA MUNICIPALITY REJECTING THE APPLICATION FOR BUILDING PERMIT SUBMITTED BY THE RESPONDENTS.
- EXHIBIT P2:** TRUE COPY OF THE ORDER,DATED 27-2-1997 ISSUED BY THE GOVERNMENT.
- EXHIBIT P3:** TRUE COPY OF THE ORDER DATED 26-06-2013 IN APPEAL NO 290/2013 PASSED BY THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS

RESPONDENT(S)' EXHIBITS

- EXT.R5(a):** COPY OF THE COMMUNICATION DT 16/3/2013 BEARING NO. 5999/RC-1/2013/LSGD ISSUED BY THE PRINCIPLE SECRETARY TO GOVERNMENT TO CHAIRPERSON OF THE VADAKARA MUNICIPALITY.

//TRUE COPY//

P.A. TO JUDGE

bp

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 30485 of 2013

Dated this the 26th day of May, 2015

J U D G M E N T

The Vadakara Municipality, who is the respondent in Appeal No.290/2013 on the file of the Tribunal for Local Self Government Institutions, Thiruvananthapuram, has approached this Court challenging Ext.P3 order passed by the Tribunal in the aforesaid appeal.

2. The respondents have applied for a building permit to construct a commercial building in the property owned by them within the local limits of the petitioner municipality. The petitioner municipality, vide Ext.P1, rejected the application on the ground that the property in question was included in the Narayana Nagaram Housing Colony. The respondents took the matter in appeal before the Tribunal. The grievance of the petitioner is that the Tribunal, without considering the fact that the said property is one included in the project,

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allowed the appeal vide Ext.P3 and directed the petitioner municipality to consider the matter afresh. The petitioner alleges that the acquisition of the land in the above project was sanctioned by the Government as early as in the year 1997 vide Ext.P2. It was further pointed out that the master plans and other schemes, which were already introduced and in existence, are having legal force in the light of the Kerala Town and Country Planning Ordinance, 2013, issued by the State Government in the year 2013. Therefore, according to the petitioner, the aforesaid scheme exists in the light of the operation of the aforesaid ordinance and the finalization of the land acquisition proceedings is not a requirement at all. It is with this background, the petitioner has come up before this Court.

3. In the counter affidavit filed by respondents 1 to 5, they would contend that the project was only a proposal and there is no notification so far under the Land Acquisition Act. No procedure, as contemplated

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under the Land Acquisition Act, has been initiated by the municipality even after a long span of 17 years; and therefore, the rejection of building permit based on the aforesaid proposal is not legally sustainable. They contended that the Tribunal has rightly come to the conclusion of setting aside Ext.P1 impugned order. It is also pointed out that it has been recommended by the Government as per Ext.R-5(a) dated 16.03.2013 to cancel the Government Order dated 27.02.1997 and to abandon the land acquisition proceedings initiated in this regard.

4. Arguments have been heard.

5. Ext.P1 rejection order was subject to challenge in the appeal before the Tribunal for Local Self Government Institutions, which culminated in Ext.P3 impugned order. The Tribunal found that a mere proposal for acquisition of land cannot be a ground to reject building permit. This was based on the legal principles settled in a series of decisions of this Court. It was observed by the Tribunal that building permits have

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been granted to other persons, who own properties in the same survey number. Thus, the Tribunal directed the Secretary of the municipality to consider the application for building permit. It is crucial to note that by Ext.R-5(a), the Government had abandoned the project; and therefore, the petitioner's claim that the property is set apart for a project no longer survives. Therefore, this Court is of the definite view that Ext.P3 does not require interference.

In the result, the writ petition fails and, accordingly, dismissed. The Secretary of the petitioner municipality shall consider the application for building permit as directed in Ext.P3 order without much delay.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-