

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937

WP(C).No. 31487 of 2013 (I)

PETITIONER:

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HILL TOP CRUSHER UNIT, MELMURI - 27  
REPRESENTED BY ITS MANAGING PARTNER  
AHAMED @ AYAMUDU PALAKKAN, S/O. KUNHIPOCKER HAJI  
P.O. MELMURI, MALAPPURAM DISTRICT - 676 514.

BY ADV. SRI.K.M.SATHYANATHA MENON

RESPONDENTS:

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1. THE SECRETARY  
MALAPPURAM MUNICIPALITY, MUNICIPAL OFFICE  
MALAPPURAM - 676 505.
2. MALAPPURAM MUNICIPALITY,  
MUNICIPAL OFFICE, MALAPPURAM - 676 505  
REPRESENTED BY ITS SECRETARY.
3. THE CHIEF TOWN PLANNER,  
OFFICE OF THE CHIEF TOWN PLANNER  
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM - 695 001.

R1 & 2 BY ADV. SRI.ESM.KABEER

R3 BY ADV. GOVERNMENT PLEADER SRI.THOMAS JOHN AMBOOKEN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
12-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :  
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EXHIBIT-P1-TRUE COPY OF THE LICENCE DATED 06/05/2011 ISSUED BY THE  
IST RESPONDENT IN FAVOUR OF SRI.P. ABDUL AZEEZ

EXHIBIT-P2-TRUE COPY OF THE AFFIDAVIT DATED 08/11/2010 ISSUED BY  
SRI.P.ABDUL AZEEZ BEFORE THE KERALA STATE POLLUTION  
CONTROL BOARD.

EXHIBIT-P3-TRUE COPY OF THE APPLICATION OF PERMIT DATED 25/01/2011  
SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT MUNICIPALITY.

EXHIBIT-P4-TRUE COPY OF THE ACKNOWLEDGMENT DATED 27/09/2010 ISSUED  
FROM THE DEPARTMENT OF INDUSTRIES IN FAVOUR OF THE  
PETITIONER.

EXHIBIT-P5-TRUE COPY OF THE CONSENT TO ESTABLISH THE BUSINESS OF THE  
METAL CRUSHER UNIT ISSUED BY THE KERALA STATE POLLUTION CONTROL  
BOARD DATED 13/01/2011 IN FAVOUR OF THE PETITIONER. (RELEVANT  
PORTION)

EXHIBIT-P6-TRUE COPY OF THE CERTIFICATE DATED 18/04/2012 ISSUED BY  
THE IST RESPONDENT TO THE PETITIONER.

EXHIBIT-P7-TRUE COPY OF THE COMMUNICATION DATED 31/03/2012 ISSUED BY  
THE IST RESPONDENT TO THE PETITIONER.

EXHIBIT-P8-TRUE COPY OF THE JUDGMENT DATED 01/12/2010 IN W.P(C)8236/2010.

EXHIBIT-P9-TRUE COPY OF THE JUDGMENT DATED 25/06/2012 IN W.P(C)13177/2012.

EXHIBIT-P10-TRUE COPY OF THE JUDGMENT DATED 26/03/2013 IN W.P(C)429/2013

EXHIBIT-P11-TRUE COPY OF THE JUDGMENT DATED 06/09/2013 IN W.P(C)862/2013

EXHIBIT-P12-TRUE COPY OF THE ORDER DATED 30/08/2013 OF THE MALAPPURAM  
MUNICIPALITY.

EXHIBIT-P13-TRUE COPY OF THE REFERENCE CARD ISSUED FROM THE MEDICAL  
COLLEGE HOSPITAL, KOZHIKODE IN FAVOUR OF THE PETITIONER.

EXHIBIT-P14-TRUE COPY OF THE COMMUNICATION DATED 15/11/2013 ISSUED  
BY THE IST RESPONDENT.

EXHIBIT-P15-TRUE COPY OF THE COMMUNICATION DATED 18/10/2013 ISSUED  
BY THE 3RD RESPONDENT.

EXHIBIT-P16-TRUE COPY OF THE JUDGMENT DATED 07/02/2012 IN W.P(C)2273/2013.

RESPONDENT(S) ' EXHIBITS : NIL  
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//TRUE COPY//

**SHAJI P. CHALY, J.**

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**W.P.(C). No.31487of 2013**  
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Dated this the 12<sup>th</sup> day of October, 2015

**JUDGMENT**

This writ petition is filed seeking to quash Exts.P14 and P15, issued by the 1<sup>st</sup> and 3<sup>rd</sup> respondents respectively and also seeking further a writ of mandamus, directing the 3<sup>rd</sup> respondent to approve Ext.P12 building permit granted by the Municipality.

Brief facts for the disposal of the writ petition are as follows:

2. Petitioner has submitted Ext.P3 application dated 25.01.2011 before the 1<sup>st</sup> and 2<sup>nd</sup> respondents, seeking permission to establish a crusher unit. In Ext.P3 application, at column No.7, plinth area of the building proposed was shown as 528.25 m<sup>2</sup>. During the pendency of the application, petitioner has secured Ext.P4 order from the District Industries Centre and Ext.P5 consent from the Kerala State Pollution Control Board, District Unit, Malappuram.

3. Anyhow, by Ext.P7 order, dated 31.03.2012, Ext.P5

application was rejected by the 1st respondent stating that as per the zoning regulations of Malappuram Municipality, the area in which the permit was sought for, is earmarked for a different purpose, which the learned counsel submits, 'dry agricultural zone'.

4. Challenging Ext.P7 order of the Municipality, petitioner filed WP(C) 13177/2012, particularly contending that by Ext.P8 judgment in WP(C) 8236/2010, the zoning regulations so far as concerning the nearby Manjeri Municipality was repelled by this Court. By Ext.P9 judgment, dated 25.06.2012, this Court directed the 1<sup>st</sup> respondent to reconsider the application submitted by the petitioner without relying on the zoning regulation of the Malappuram Municipality. Aggrieved by Ext.P9 judgment, Municipality preferred writ appeal No.429/2013 and by judgment dated 26.03.2013, said appeal was dismissed.

5. In spite of the directions contained in Ext.P9 judgment, 1<sup>st</sup> and 2<sup>nd</sup> respondents did not care to issue permit to the petitioner, consequent to which petitioner

preferred Con. Case No.862/2013. When the matter was placed before the Bench on 06.09.2013, it was submitted by the counsel for the Municipality that, by order dated 30.08.2013, directions in the judgment have been complied with and same was conveyed to the petitioner also. Accordingly Contempt petition was closed.

6. It is contended by the petitioner that, in spite of all these efforts, he has not received the permit said to be issued by the Municipality, while considering the Contempt of court case. Accordingly he has submitted an application under the Right to Information Act and secured the order passed by the Municipality, evident from Ext.P12 dated 30.08.2013. As per Ext.P12, Municipality has granted permit to petitioner to establish the Crusher unit but, at the same time, permit was forwarded to the 3<sup>rd</sup> respondent since the proposed building exceeds 500 m<sup>2</sup> and therefore approval of the layout was required, by the 3<sup>rd</sup> respondent.

7. While so, petitioner met with an accident and he was admitted to the Medical College Hospital, Kozhikode.

Circumstances being so, petitioner received Ext.P14 information dated 15.11.2013 from the 1<sup>st</sup> respondent informing the petitioner that the master plan of the Municipality was renewed and therefore, petitioner while submitting fresh application, should submit the same in accordance with terms of new master plan of the Municipality. Anyhow, later, petitioner has received copy of Ext.P15 communication dated 18.10.2013, issued by the 3<sup>rd</sup> respondent to the 1<sup>st</sup> respondent Secretary, intimating that the area of establishment of crusher unit proposed by the petitioner is included in the Disaster prone zone by converting the same from dry agricultural zone and therefore, the permit submitted by the 1<sup>st</sup> respondent in order to approve the layout, cannot be sustained. It is thus challenging Exts.P14 and P15 and also seeking direction to the 3<sup>rd</sup> respondent to grant approval of the layout as per Ext.P12 order, forwarded by the 1<sup>st</sup> respondent, this writ petition is filed.

8. 1<sup>st</sup> respondent has filed a counter affidavit contending that petitioners are not entitled to get any

reliefs sought for in the writ petition, especially in view of the fact that the new zoning regulation was introduced in the Malappuram Municipality, by which the area in which the crusher unit of petitioner was converted from Dry Agricultural zone to Disaster prone zone.

9. The 3<sup>rd</sup> respondent has filed a counter affidavit explaining the factual situations stated by the petitioner in the writ petition and contending that as per the master plan existed when the petitioner submitted application, the proposed area was a Dry Agricultural zone and the metal crusher unit was not a permissible establishment in the said zone. It is also contended that in view of the introduction of new zoning regulation, petitioner is not entitled to get approval of the layout proposed in Ext.P12 by the 1<sup>st</sup> respondent. And therefore, the 3<sup>rd</sup> respondent seeks dismissal of the writ petition.

10. Along with IA 9214/2015, petitioner has produced Ext.P17 minutes of the 2<sup>nd</sup> respondent, dated 16.10.2014 by which de-zoning of the newly introduced zoning regulation was carried out by the Municipality and

the proposed crusher unit area was reconstituted as commercial zone.

11. I heard learned counsel Sri.Sathyanatha Menon for the petitioner, Sri.ESM.Kabeer for respondents 1 and 2 and Sri.Thomas John Ambookan for respondent no.3.

12. The thrust of the contentions advanced by learned counsel for the petitioner is that pursuant to the direction issued by this Court in Ext.P9, after having found that the zoning regulation is not practically viable, the municipality has issued Ext.P12 permit and the sole issue that was remaining was the approval of the layout by the 3rd respondent, since the proposed building was exceeding 500 m<sup>2</sup> and thereby approval of the 3<sup>rd</sup> respondent was required for the construction. So also, learned counsel contended that by Ext.P8 order passed by this Court, the zoning regulation in the nearby municipal area ie, Manjeri Municipality, this Court has found that the zoning regulation was not carried out even though it was in existence from the year 1990 and therefore same was not practically viable and the owners

of the property cannot be put to difficulties merely because of a non-implemented zoning regulations. Learned counsel also contended that Exts.P14 and P15 cannot be sustained either factually or legally for the reason that permit is already granted by the Municipality to the petitioner but the only thing remaining was approval of the layout plan by the 3<sup>rd</sup> respondent. In that circumstance, the direction of the 1st respondent to submit a new application taking into account the new zoning regulation cannot be sustained. So also, when a permit was already granted by the Municipality and the permit was pending consideration of the Town Planner for approval of the layout alone, the 3<sup>rd</sup> respondent is not at liberty to state that since the new town planning regulation has come into force the municipality should reconsider the issue of granting permit. In my view, the said action of the 3rd respondent is in violation of directions contained in Ext.P9 judgment of this Court.

13. Moreover, learned counsel contended that presently the 2<sup>nd</sup> respondent has decided to alter the

zone of the proposed crusher area to a commercial zone, viewed in that circumstances also the town planner is bound to issue the approval for the layout plan. On the other hand learned Government Pleader contended that in view of the introduction of the new zoning regulation, petitioner is not entitled to the reliefs sought for in the writ petition. Further learned Government Pleader justified the action of Town Planner as contained in Exts.P14 and P15 and contends that they are in order. However, learned counsel for the Municipality submitted that in view of Ext.P17, re-zoning the area in question as a commercial one, Municipality has no objection in the matter.

14. Having considered the rival submissions, I am of the opinion that pursuant to the direction of this Court in Ext.P9 judgment, Municipality has issued permit. The 1st and 2<sup>nd</sup> respondents have no case that there is violation of any building rules so far as the proposed building was concerned. The only formality that was suggested by the Municipality was the approval of layout by the 3<sup>rd</sup>

respondent in view of the provisions of the KMBR rules, since the proposed construction is above 500 m<sup>2</sup>. Taking into account the factual situations narrated by the petitioner, the counter affidavit filed by the respondents and the evidence on record, I am of the considered opinion that the 3<sup>rd</sup> respondent is bound to grant approval since the permit application was in accordance with law even according to the Municipality. Granting of approval for the layout is only a formality followed by the action of the Municipality by granting permit to the petitioner. Therefore the 3<sup>rd</sup> respondent is not at liberty to withhold the approval. Moreover, now by Ext.P17, the 2<sup>nd</sup> respondent has already decided to re-zone the proposed crusher area into a commercial zone also.

15. Considering, totality of the circumstances, I am of the considered opinion that the stipulations contained in Exts.P14 and P15 cannot be applied against petitioner. Therefore, the 3<sup>rd</sup> respondent is duty bound to grant approval to the petitioner as contemplated under Ext.P12 order issued by the 1<sup>st</sup> respondent.

16. Resultantly, I set aside Exts.P14 and P15 and further direct the 3<sup>rd</sup> respondent to grant approval to the petitioner to the layout plan of the building proposed as sought for under Ext.P12, in accordance with law.

Writ petition is allowed accordingly.

Sd/-  
**SHAJI P. CHALY**  
**JUDGE**

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