

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

WP(C).No. 33277 of 2010 (H)

PETITIONER:

**C.NANU NAIR, "JAISREE",
NEAR KANKALAYA BANK, WEST HILL,
KOZHIKODE-673 005.**

**BY ADVS.SRI.V.G.ARUN
SRI.T.R.HARIKUMAR**

RESPONDENT(S):

- 1. STATE OF KERALA, REPRESENTED BY THE
PRINCIPAL SECRETARY TO GOVERNMENT,
LOCAL SELF GOVERNMENT DEPARTMENT,
SECRETARIAT ANNEX, 5TH FLOOR,
THIRUVANANTHAPURAM-695 001.**
- 2. THE CHIEF TOWN PLANNER,
O/O CHIEF TOWN PLANNER, KGA COMPLEX,
PALAYAM, THIRUVANANTHAPURAM-695 033.**
- 3. CORPORATION OF KOZHIKODE, REPRESENTED
BY ITS SECRETARY, KOZHIKODE-32.**
- 4. NATIONAL HIGHWAY AUTHORITY OF INDIA,
NATIONAL HIGHWAY-17, (NORTHERN RANGE),
REPRESENTED BY ITS PROJECT DIRECTOR (PIU),
KOZHIKODE-1.**

**R1 & R2 BY GOVERNMENT PLEADER SRI.SOJAN JAMES
R3 BY SRI.K.D.BABU,SC
SRI.P.V.SURENDRANATH,SC
R4 BY ADV. SRI.THOMAS ANTONY**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 01-09-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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APPENDIX

PETITIONERS' EXHIBITS:

- EXT. P1 : A TRUE COPY OF THE SALE DEED DATED 16.3.2001.
- EXT. P2 : A TRUE COPY OF THE GOVERNMENT ORDER, G.O(MS)NO.81/94/LAD.
DATED 15.4.1994.
- EXT. P3 : A TRUE COPY OF THE RELEVANT PAGES OF THE DEVELOPMENT
PLAN FOR CALICUT.
- EXT. P4 : A TRUE COPY OF THE PHOTOGRAPH OF THE FOUR LANE ROAD AND
NEWS ITEM, PUBLISHED IN THE METRO MANORAMA DATED 23.7.2010.
- EXT. P5 : A TRUE COPY OF THE NEWS PAPER REPORT PUBLISHED IN THE
MALAYALA MANORAMA DAILY DATED 7.9.2010.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

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A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.33277 of 2010

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Dated this the 1st day of September, 2015

JUDGMENT

The petitioner is the owner in possession over an extent of 16 cents of land comprised in R.S No.1-7-257/1 of Kacheri village of Kozhikode taluk and district. The petitioner alleges that the eastern boundary of his property is the Kannur road running north-south, connecting Elathur and Ramanattukara, which is officially known as Madras-Calicut-Kannur Trunk road. He further alleges that the property is situated at the West Hill and is lying on the opposite side of the Kozhikode District Collector's, Bungalow.

2. The Chief Town Planner, who is the second respondent, had submitted a detailed Development Plan for Calicut city containing the proposals for widening the existing roads and formation of new roads. The detailed Development Plan was accorded sanction by the Government as per G.O(MS) 81/94/LAD and the plan was later published by the erstwhile Calicut Development Authority.

3. The petitioner alleges that amongst many other proposals, Ext.P3 scheme also proposed to widen the existing Kannur Road. The proposal is to enhance the width from the existing 16 to 17

metres to 25 metres. He points out that more than one and half decades have passed after the formulation of Ext.P3 development plan and there have been drastic changes in the city and its suburbs, particularly with regard to the formation of new roads and bye-passes. The requirement of widening the Kannur road, which was relevant during the late nineties, is no longer relevant due to the introduction of new schemes and formation of several alternate roads within and outside the city. The grievance of the petitioner is that in view of the proposal for widening of the Kannur road, he is prevented from carrying out any construction in his property. It is with this background, the petitioner has approached this Court.

4. In the counter affidavit filed by the respondents, it was contended that Madras Calicut trunk or Kannur road in Kozhikode district or NH-17 (average right of way 12m) passes through the urban area in the north south direction connecting Calicut with other urban centres such as Mangalore, Cochin, Madras etc. It is one of the arterial roads in the district facilitating high volume intercity trips and urban development in Kozhikode has taken place mainly along the said road is not just having a local importance. However, it has a regional importance. The Development Plan for Calicut Urban area 2001 sanctioned by the Government of Kerala as per G.O(MS)

81/94/LAD dated 15.4.1994 aims at guiding and controlling the urban development within the urban area delineated for this purpose after careful studies. Proposals for widening of existing roads and formation of new roads is a part of this development plan.

5. It is further contended that the width of right of way for NH-17 in the district is 11 to 12 metres. A road having a carriage way consisting of two lanes 7.2m in which capacity is restricted by waiting vehicles and road junction is about 600 to 750 PCUs. During the plan period the load per hour on the said road during the peak period was about 2070 PCUs. In other words, the road was over utilised by about 307% which was mainly caused by the traffic within the city. This high degree of utilisation was self explanatory of the low efficiency, congestion and the poor level of service existing in this major artery. Therefore, the widening of the road to 24 metres was proposed to provide adequate geometric features to the NH-17 in the district. The plan also mentioned the absence of other corridors for movement in the north south direction.

6. It is further contended that the pattern of accidents in the Calicut urban area in 1976 show that 62.5% of the fatal accidents and 58.3% of the major accidents occur on the main roads, especially NH-17 & 212. Therefore, adequate geometric features

like sight distance etc., are to be provided for road safety, for which road widening have to be done. All the new roads and bypasses formed within and outside the city are envisaged in the development plan for Calicut urban area 2001 and proposals for major schemes have been mentioned in the development plan. Therefore, the widening of Kannur road is relevant even after the introduction of new schemes and formation of alternate roads.

7. It is further contended that the beach road which starts from the Beypore port premises and traverses through the urban area along with coasts to join the Madras Calicut-Kannur road at Vengali, facilitates the movement of the north bound and south bound traffic generated in the eastern and central region of the urban area to bye pass the central area. The right of way proposed in the development plan was 24m. NH mini bye pass road was also a proposal in the development plan with right of way 15m. This road would reduce the traffic congestion in the main road from Puthiyangadi to Meenchanda. The NH bye pass road is proposed to bypass the congested central area and accelerate development in the eastern part of the urban area. All the roads mentioned by the petitioner are the proposals in the development plan. Therefore, widening of NH-17 is relevant and sustainable. It is incorrect to

state that the proposed width of Wayanad road has been reduced to 15 metres and the proposed width of Wayanad road remains as 30 metres as per the sanctioned development plan.

8. Arguments have been heard.

9. The petitioner is prevented from carrying out additional constructions on account of the proposal to widen the road. According to the petitioner, at present the width of the road is only 15 metres and the proposed width is 24 metres. According to the petitioner, no steps have been initiated by the respondents to widen the road and Ext.P3 scheme is 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 **Padmini v. 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.

10. Reliance was also placed on 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. The anxiety expressed by the State is that if the additional constructions are permitted, at this point of time, the

State will have to incur additional burden of paying compensation for the constructions in the event of acquisition.

11. On a specific query put by me during the course of argument as to whether the petitioner is ready to give up the cost of additional constructions in the event of acquisition, the learned counsel for the petitioner answered in the affirmative.

Therefore, the writ petition is disposed of directing the respondents to grant permission to the petitioner to effect additional constructions in his property, if the same is otherwise in order, on condition that the petitioner shall demolish the additional constructions so made without claiming additional compensation in the event of acquisition of the petitioner's property in future, for widening the road.

Sd/-
A.V.RAMAKRISHNA PILLAI
JUDGE

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