

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA,
1937

WP(C).No. 30154 of 2015 (T)

PETITIONER(S):

1. SAJEEB K.S., S/O.SULAIMAN, AGED 33 YEARS,
RESIDING AT KURIKKAPEEDIKA HOUSE,
OLLUKKARA VILLAGE, THRISSUR DISTRICT.
2. SANDEEP KUMAR, S/O.GOUTHAM CHAND LUNKAR,
AGED 32 YEARS, RESIDING AT SREE BHAGAVATHY
APARTMENT, B-BLOCK, NO.XXX/17,
PUNKUNNAM DESOM, THRISSUR DISTRICT.

BY ADVS.SRI.T.C.SURESH MENON
SRI.P.S.APPU

RESPONDENT(S):

1. THRISSUR CORPORATION,
REPRESENTED BY ITS SECRETARY, CORPORATION OFFICE,
THRISSUR-680 001.
2. THE EXECUTIVE ENGINEER,
LSGD THRISSUR CORPORATION, CORPORATION OFFICE,
THRISSUR-1.

BY ADV. SRI.K.P.VIJAYAN,SC,THRISSUR CORPORATION
ADV. SRI.V.N.HARIDAS

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 19-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C).No. 30154 of 2015 (T)

APPENDIX

PETITIONER(S)' EXHIBITS

P1- TRUE COPY OF THE POSSESSION CERTIFICATE ISSUED BY THE VILLAGE OFFICE, THRISSUR TO THE PETITIONERS AND OTHERS DATED 16.3.2015.

P2- TRUE COPY OF THE APPLICATION FOR BUILDING PERMIT SUBMITTED BY THE PETITIONERS AND OTHERS DATED 20.4.2015.

P3- TRUE COPY OF A PHOTOGRAPH DEPICTING THE ENCROACHMENT MADE AT THE TIP OF THE CORPORATION ROAD BY VARIOUS SHOP OWNERS DATED NIL.

P4- TRUE COPY OF A PHOTOGRAPH, THE ROAD IT HAS A WIDTH OF MORE THAN 5 METERS DATED NIL.

P5- TRUE COPY OF PHOTOGRAPH WHICH SHOWS THE LIE OF THE PETITIONERS' PROPERTY AND THE ROAD THAT PASSES IN FRONT OF IT DATED NIL.

P6- TRUE COPY OF A PHOTOGRAPH WHICH SHOWS THERE ALREADY EXISTS COMMERCIAL BUILDINGS COMPRISING OF 4 FLOORS ON EITHER SIDE OF THE PETITIONERS' PROPERTY DATED NIL.

P7- TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONERS AND OTHERS DATED 24.7.2015.

P8- TRUE COPY OF THE ORDER PASSED BY THE 2ND RESPONDENT TO THE PETITIONERS AND OTHERS DATED 4.8.2015.

RESPONDENT(S)' EXHIBITS

P. BHAVADASAN, J.

W.P.(C). No. 30154 of 2015

Dated this the 19th day of November, 2015.

JUDGMENT

The petitioners along with another person are the absolute owners and in possession of 0.0282 hectares in Sy. No.1200/P of Thrissur Village. Desirous of putting up a commercial structure in their property, they approached the first respondent. That application was rejected on the ground that the plan submitted by the petitioners violates Rule 33 of the Kerala Building Rules, 1999 apart from violation of Rules 40A(1) and 40A(4) .

2. The petitioners point out that their property is situated at the end of the road in question which has a length of 150 meters from the main road and it belongs to the Corporation. While the petitioners have no objection regarding the reference to Rules 40A(1) and 40A(4) of the

Rules which are curable according to them, they took objection to the applicability of Rule 33 for granting the permit in question. That relates to the width of the road that passes in front of the proposed structure. The Corporation is of the view that since there is shortage of width, permit could not be granted.

3. Objection is taken by the petitioners to the effect that in front of the plot in relation to which permit is sought for, the road has the requisite width. The width narrows at 150 meters away from their plot at its mouth. So, the mere fact that at one point, there is a lesser width is not a ground to reject their application. In short, the contention is that, the road has requisite width for the purpose of putting up the structure.

4. The petitioners have produced several photographs of the structures on either side of the road which

show that permissions have been granted to put up structures.

5. It is evident from the above facts that there is lack of application of mind in passing Ext.P8 order. It was without adverting to the relevant facts, the nature of the property etc. If as a matter of fact, the road has the requisite width in front of the plot in relation to which permission is sought for, it is difficult to understand how permission could be refused. Obviously, it is a matter for the Corporation to decide in accordance with the Rules.

6. The petitioners undertake to cure the defects as per Rules 40A(1) and 40A(4) of the Rules.

In the result, Ext.P8 stands quashed and the first respondent is directed to conduct local inspection of the property and ensure that the Rules are complied with for granting permission as per the plan submitted by the petitioners in accordance with the Building Rules. The

petitioners shall cure the defects pointed out under Rules 40A (1) and 40A(4) of the Rules within one week from today or if required, file a fresh application. Appropriate orders shall be passed within one month from the date of receipt of a copy of this judgment.

sb.

P. BHAVADASAN,
JUDGE