

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

WP(C).No. 30559 of 2015 (T)  
-----

PETITIONER:  
-----

A.V.JOSE, S/O. ALICE VARGHESE, AGED 70 YEARS,  
RESIDING AT PUTHUSSERY HOUSE,  
EAST FORT, THRISSUR - 680 001.

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

RESPONDENTS:  
-----

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

R1 & R2 BY SRI.K.P.VIJAYAN, SC, THRISSUR CORPORATION.  
R1 & R2 BY ADV. SRI.V.N.HARIDAS

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 15-10-2015, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:  
-----

- P1 - TRUE COPY OF THE TAX RECEIPT ISSUED TO THE PETITIONER  
DTD. 23.6.2015.
- P2 - TRUE COPY OF FEW PHOTOGRAPHS DEPICTING THE FACTUAL  
SITUATION PREVAILING DATED NIL.
- P3 - TRUE COPY OF THE ORDER PASSED BY THE 2ND RESPONDENT TO  
THE PETITIONER DT. 25.7.2015.
- P4 - TRUE COPY OF THE JUDGMENT IN WA NO.1731/2008 ON THE FILE OF  
THIS HONOURABLE COURT DT. 14.6.2011.
- P5 - TRUE COPY OF THE JUDGMENT IN WPC NO.25252/2015 ON THE FILE  
OF THIS HONOURABLE COURT DT. 19.8.2015.

RESPONDENTS' EXHIBITS: NIL.  
-----

// True Copy //

P.A to Judge.

smp

**P.BHAVADASAN, J.**

-----  
**Writ Petition (Civil) No.30559 OF 2015**  
-----

**Dated this the 15<sup>th</sup> day of October, 2015.**

**J U D G M E N T**

Aggrieved by Ext.P3 order whereby permission sought for by the petitioner to put up commercial building revising the permit granted for putting up residential building was declined, the petitioner has come up before this Court with this writ petition.

2. The petitioner is the absolute owner and in possession of 0.1538 hectares of land in Survey Nos.726/5 and 726/4 of Chembukkavu Village in Thrissur Taluk. According to the petitioner, the locality has become a commercial hot spot and it is not possible to reside there. Previously, petitioner had applied for putting up a residential house comprising of two basement floors and permission was granted. Later, on finding that it is no longer feasible to reside in that locality, petitioner sought change of the nature of the building to one commercial type and applied

accordingly. That application of the petitioner was rejected by Ext.P3 order stating that as per the DTP scheme, the locality is shown as residential area.

3. The petitioner assails Ext.P3 order on the ground that several commercial buildings have come up in the locality in spite of the claim now made by the local authority that it is a residential area. The petitioner says that he cannot be isolated and treated differently. The petitioner relies on a decision of this Court in **Gopalakrishnan T.V vs. State of Kerala and others** (2011 (3) KHC 162) wherein an identical question was considered. It was held in the said decision as follows:

“In our view, it would not be healthy for the people to live in such a busy commercial area surrounded by shops, hotels and where massive number of vehicles are running on the road. If in an area earmarked as a residential zone large number of constructions for commercial purposes were permitted whether under orders issued by the Government or not, then the only sensible thing for the Corporation to do is to take a realistic approach by not regarding the area any longer as a residential zone and request the Government to make suitable change in the Master Plan to make it in conformity

with ground reality. We therefore feel that the appellant should not be denied his right to develop his land and to construct a hotel. We therefore dispose of the Writ Appeal by vacating the judgment of the learned Single Judge with a direction to the Secretary of the Corporation to conduct inspection of the site and if he notices that the buildings that are constructed in and around the appellant's property and the nearby area are more commercial buildings than residential, then the Secretary will permit the appellant to construct hotel building in his premises subject to the approval of building plan”.

4. The principles laid down in the above decision apply to this case and there is no reason as to why the benefit of the decision should not be given to the petitioner.

5. Learned counsel appearing for the local authority pointed out that the local authority may be directed to reconsider the issue in the light of the principles laid down in the decision cited above.

For the above reasons, Ext.P3 order is quashed and the local authority is directed to conduct an inspection of the site and satisfy itself regarding the nature of the land and thereafter act in accordance with law in the light of the principles laid down in the

decision referred to above, within a period of one month from the date of receipt of a copy of this judgment.

Sd/-

**P.BHAVADASAN**  
**JUDGE**

smp