

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

FRIDAY, THE 18TH DAY OF DECEMBER 2015/27TH AGRAHAYANA, 1937

WP(C).No. 31509 of 2015 (K)

PETITIONER(S)/PETITIONER:

- 1. P.V. MUHAMMED FAZAL, AGED 45 YEARS,
S/O.SHUHAIB, 'MISRIYAS', P.O. CHOKLI
KANNUR DISTRICT.**
- 2. F.M.FAHIRA
W/O.MUHAMMED FAZAL, 'MISRIYAS', P.O.CHOKLI
KANNUR DISTRICT**

BY ADV. SRI.P.NARAYANAN

RESPONDENT(S)/RESPONDENTS:

- 1. THALASSERY MUNICIPALITY,
REP. BY ITS SECRETARY, PIN -670101.**
- 2. THE SECRETARY,
THALASSERY MUNICIPALITY, PIN- 670101.**
- 3. THE ASSISTANT ENGINEER(NORTH SECTION)
LOCAL SELF GOVERNMENT, THALASSERY MUNICIPALITY,
THALASSERY, PIN - 670101**
- 4. THE CHIEF TOWN PLANNER,
OFFICE OF THE CHIEF TOWN PLANNER,
DEPARTMENT OF TOWN AND COUNTRY PLANNING,
KOTTARATHIL BUILDINGS, PALAYAM,
THIRUVANANTHAPURAM - 695033**

**R1 TO R3 BY SRI.I.V.PRAMOD,SC
R4 BY GOVERNMENT PLEADER SMT.ANITHA RAVEENDRAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18-12-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WP(C).No. 31509 of 2015 (K)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 : COPY OF THE BUILDING PLAN SUBMITTED BY THE PETITIONER
EXT.P2 : COPY OF THE COMMUNICATION NO E3/BA/314/15-16
DTD NIL.9.2015 ISSUED BY THE 3RD RESPONDENT

EXT.P3 : COPY OF THE JUDGMENT DTD 23/1/2013 IN W.P.C.NO.1336/2013

EXT.P4 : COPY OF THE JUDGMENT DTD 23/1/2007 IN W.A.NO 80/2007

EXT.P5 : COPY OF THE JUDGMENT IN W.P.C.NO.21974/2013 DTD 9/7/2014.

RESPONDENT(S)' EXHIBITS

NIL

//True Copy//

P.A. To Judge

Bb

RAJA VIJAYARAGHAVAN V, J.

W.P.(C).No.31509 of 2015

Dated this the 18th day of December, 2015

J U D G M E N T

The instant writ petition is filed challenging Ext.P2 order as per which the application filed by the petitioners for a building permit for construction of residential-cum-commercial building was rejected by the respondents.

2. Heard the learned counsel appearing for the petitioners and also the standing counsel appearing for respondents 1 to 3.

3. The learned counsel for the petitioners would submit that application for building permit was rejected as per Ext.P2 communication on the ground that the site proposed for construction is part of an area where there is a proposal for road widening under the Thalassery Town Development Variation Plan. The learned counsel submits

that as on date, there is no acquisition process for acquiring the land for widening the road as per the Development Plan. The learned counsel would rely on a Division Bench judgment of this Court in **Padmini Vs. State of Kerala [1999 (3) KLT 465]**, and contend that the Municipality cannot reject the application for construction of a residential building on the ground that the land is likely to be acquired. The learned counsel appearing for the petitioners also placed reliance on the judgment dated 23.01.2013 in W.P. (C).No.1336/13 to substantiate his contentions. The learned counsel appearing for respondents 1 to 3 submitted that no notification under the Land Acquisition Act has been issued covering the petitioners property.

4. After having heard the learned counsel and in view of the settled precedents covering the matter, I am of the view that the petitioners are entitled to succeed. The action of the respondents in denying permit to the

petitioners on the ground that the property is included in the development plan for construction of road and widening of existing road without initiating any steps for acquiring the said land cannot be justified.

5. In the result the Writ Petition is allowed and Ext.P2 order of rejection is quashed. The respondent Municipality is directed to re-consider the application filed by the petitioners and to pass orders thereon after affording an opportunity to the petitioners of being heard, within a period of 2 months from the date of receipt of the copy of the judgment.

Sd/-
**RAJA VIJAYARAGHAVAN V,
JUDGE.**

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[True copy]

P.A to Judge