

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

WP(C).No. 31684 of 2015 (I)

PETITIONER:

ABDUL NASEER K., AGED 40 YEARS,
S/O.MUHAMMED KOYA, KOTTACKAL HOUSE,
KAKKODI P.O., KOZHIKODE - 673 611.

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

RESPONDENTS:

1. KOZHIKODE MUNICIPAL CORPORATION,
REP. BY ITS SECRETARY, BEACH ROAD, KOZHIKODE-673 001.
2. SECRETARY
KOZHIKODE MUNICIPAL CORPORATION, BEACH ROAD,
KOZHIKODE - 673 001.

R1 & R2 BY SRI.K.D.BABU, SC, KOZHIKODE CORPORATION.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
02-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 31684 of 2015 (I)

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P-1: TRUE COPY OF THE TAX RECEIPT DATED 13.4.2015 ISSUED BY
THE VILLAGE OFFICER, KASABA.

EXT.P-2: TRUE COPY OF THE POSSESSION CERTIFICATE DATED
20.4.2015 ISSUED BY THE VILLAGE OFFICER, KASABA.

EXT.P-3: TRUE COPY OF THE ORDER DATED 18.9.2015 ISSUED BY THE
2ND RESPONDENT.

RESPONDENTS' EXHIBITS: NIL.

// True Copy //

P.A to Judge.

smp

P.BHAVADASAN, J.

Writ Petition (Civil) No.31684 OF 2015

Dated this the 2nd day of November, 2015.

J U D G M E N T

The petitioner owns an extent of 18.42 cents in Survey No.5-19-938 in Kasaba village of Kozhikode Corporation. The petitioner has been in absolute possession of the said property and he has produced possession certificate and other documents in respect of the same. The petitioner, intending to put up a commercial structure therein, preferred an application for building permit on 26.05.2015 before the 2nd respondent. The 2nd respondent, by virtue of Ext.P3 order, dismissed the application holding that as per the DTP scheme, the proposed area falls within the residential area and therefore it violates Rule 3(A) of Kerala Municipality Building Rules.

2. The petitioner brings to the notice of this Court the decision in **Gopalakrishnan T.V vs. State of Kerala and others** (2011 (3) KHC 162) wherein it has been held that merely because a DTP scheme is framed long ago, that does not

preclude the Corporation from considering the application. The petitioner has specifically pointed out that in pursuance to the DTP scheme, no further steps have been taken and that remained on papers.

3. Learned Standing Counsel appearing for the Corporation pointed out that in the light of the fact that the land is included in the DTP scheme, the Corporation is precluded from considering the application.

4. The issue no longer survives in the view of the decision in **Gopalakrishnan T.V vs. State of Kerala and others** (2011 (3) KHC 162) wherein an identical question was considered and it was held that in the light of the fact that there are other structures already put up in the area in question, there is no reason for rejecting the application in the said case.

5. The principle laid down in the above case applies to the facts of the present case. There is no reason as to why the benefit of the said decision should not be given to the petitioner.

In the result, this writ petition is allowed. Ext.P3 order is quashed. The respondent-Corporation is directed to consider the

application in accordance with law and in the light of 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

// True Copy //

P.A to Judge.