

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 6TH DAY OF NOVEMBER 2015/15TH KARTHIKA, 1937

WP(C).No. 32416 of 2015 (B)

PETITIONER:

PRATHAPAN C.M., S/O.C.K.MADHAVAN, AGED 59 YEARS,
RESIDING AT CHAKKAMADATHIL HOUSE,
P.O. VATANAPPALLY, THRISSUR DISTRICT.

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

RESPONDENTS:

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

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 06-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P1. TRUE COPY OF THE TAX RECEIPT ISSUED TO THE PETITIONER
DATED 26/5/2015.
- EXT.P2. TRUE COPY OF THE APPLICATION FOR BUILDING PERMIT
SUBMITTED BY THE PETITIONER DATED 2/7/2015.
- EXT.P3. TRUE COPY OF THE ORDER PASSED BY THE 2ND RESPONDENT
TO THE PETITIONER DATED 5/10/2015.
- EXT.P4. TRUE COPY OF FEW PHOTOGRAPHS DEPICTING THE
FACTUAL SITUATION DATED NIL.
- EXT.P5. TRUE COPY OF THE JUDGMENT IN W.A No.1731/2008 ON THE
FILE OF THIS HONOURABLE COURT DTD. 14/6/2011.
- EXT.P6. TRUE COPY OF THE JUDGMENT IN WP(C) NO.14858/2015 ON
THE FILE OF THIS HONOURABLE COURT DATED 16/6/2015.

RESPONDENTS' EXHIBITS: NIL

// True Copy //

P.A to Judge.

smp

P.BHAVADASAN, J.

Writ Petition (Civil) No.32416 OF 2015

Dated this the 6th day of November, 2015.

J U D G M E N T

The limited prayer in this writ petition when it was taken up for hearing was to set aside Ext.P3 order and to direct the respondent-Corporation to re-consider the application filed by the petitioner for building permit for construction of a commercial structure after inspecting the property and in accordance with the principles laid down by this Court in various decisions.

2. The petitioner holds 0.0817 hectares of land in survey No.187/5P of Thrissur Village. According to the petitioner, he is in absolute possession and enjoyment of the said property. He wanted to put up a commercial structure in the property and for that purpose, he applied for building permit. To the utter shock of the petitioner, the 2nd respondent rejected the application holding that the land in question, according to possession certificate, is classified as 'nilam' and further, that area has been included in the master plan as residential zone.

3. The petitioner points out that though the area is set apart as residential area, since several commercial buildings have come in the locality, it is no longer a residential area as envisaged by the respondent and there is no reason as to why the application for building permit has been rejected on that ground.

4. As far as the DTP scheme is concerned, the petitioner points out that the said scheme has become obsolete and the mere fact that there was a DTP scheme cannot preclude the petitioner from constructing building in the property.

5. In support of the above contention, petitioner relies on the decisions in **Gopalakrishnan vs. State of Kerala** (2011 (3) KHC 162), **Raju S.Jetmalani vs. State of Maharashtra and others** ((2005) 11 SCC 222), **Padmini vs. State of Kerala** (1999 (3) KLT 465), **Nazar vs. Malappuram Municipality** (2009 (3) KLT 92), **Praveen vs. Land Revenue Commissioner** (2010 (2) KLT 617 (DB)), **Muhammed Abdul Basheer C.P vs. State of Kerala and another** (2012 (3) KLT 86) and in **Sunil vs. Killimangalam Panjal 5th Ward Nellulpadaka Samootham**

(2012 (4) KLT 511). The petitioner has produced materials to show that in and around the area where he is intended to put up commercial structures, other commercial structures have already been put up. Therefore, the ground taken that as the land is categorized as residential area, building permit cannot be granted may not survive. As far as the DTP scheme is concerned, this Court has considered in several decisions the impact of such a scheme and its consequences. It is unnecessary to refer to the said decisions especially in the light of the decisions in **Gopalakrishnan vs. State of Kerala** (2011 (3) KHC 162) and in **Raju S.Jetmalani vs. State of Maharashtra and others** ((2005) 11 SCC 222).

6. The two contentions taken by the learned counsel for the petitioner are not seen controverted.

7. Learned Standing Counsel appearing for the Corporation pointed out that the local authority may be allowed to conduct a local inspection and ascertain the true facts and then act in accordance with law.

In the result, this writ petition is allowed. The impugned order is set aside and the respondent-Corporation is directed to conduct local inspection of the area and then dispose of the application filed by the petitioner for building permit for putting up a commercial structure in accordance with law and in the light of the decisions cited in the writ petition, within a period of 30 days from today.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

// True Copy //

P.A to Judge.