

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

WEDNESDAY, THE 16TH DAY OF DECEMBER 2015/25TH AGRAHAYANA, 1937

WP(C).No. 32713 of 2015 (L)

PETITIONER(S):

- 1. MEENA CHANDRAN, W/O PRAHLADAN
AGED 51YRS, KOPPATTIL HOUSE, 6TH STREET, MUSEUM CROSS LANE
CHEMBUKKAVU THRISSUR.**
- 2. VYSHAKH, S/O.PRAHLADAN
AGED 24 YEARS, KOPPATTIL HOUSE, 6TH STREET
MUSEUM CROSS LANE, CHEMBUKKAVU THRISSUR.**

**BY ADVS.SRI.BINOY VASUDEVAN
SMT.P.G.BABITHA**

RESPONDENT(S):

- 1. THE THRISSUR CORPORATION
REPRESENTED BY ITS SECRETARY, CORPORATION OFFICE
THRISSUR 680 001.**
- 2. THE SECRETARY
THRISSUR CORPORATION, THRISSUR 680 001.**

**R1&2 BY ADVS. SRI.K.P.VIJAYAN,SC,THRISSUR CORPORATION
SRI.V.N.HARIDAS**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 - TRUE COPY OF THE DOCUMENT NO.5226/1/2014 OF SRO THRISSUR.**
- P2 - TRUE COPY OF THE POSSESSION CERTIFICATE ISSUED BY THE VILLAGE OFFICER, THRISSUR.**
- P3 - TRUE COPY OF THE LAND TAX RECEIPT IN RESPECT OF THE PETITIONER'S PROPERTY.**
- P4 - TRUE PHOTOGRAPHS OF THE ADJACENT PROPERTIES OF THE PETITIONER'S.**
- P5 - TRUE COPY OF THE DECISION BEARING NO. DW4/BA/139/15-16 DATED 22.07.2015 ISSUED BY THE SECOND RESPONDENT.**
- P6 - TRUE COPY OF THE JUDGMENT DATED 1.6.2015 IN WPC. 15241/15.**

RESPONDENT(S)' EXHIBITS

- EXT.R1(a): COPY OF THE ORDER BEARING NO.GO(MS)123/08/LSGD DTD 28.04.2008.**

/TRUE COPY/

P.A TO JUDGE

LSN

ANU SIVARAMAN, J.

W.P.(C). No.32713 of 2015

Dated this the 16th day of December, 2015

JUDGMENT

This writ petition is preferred by the petitioner aggrieved by the rejection of his application for construction of commercial building in his property by Ext.P5 order. It is stated in Ext.P5 that the property on which the construction is proposed to be made is paddy land in the revenue records and going by Government order referred to, only single family residential units are permitted to be constructed on such property. It is further stated in Ext.P5 that the property having been purchased by the petitioner only on 15.11.2014, commercial building cannot be allowed to be constructed there. The writ petitioner has produced Ext.P4 series of photographs to show that other buildings have been permitted to be constructed in the areas and that the property in question is incapable of being used as paddy land.

2. The learned counsel for the petitioner also places reliance on Ext.P6 judgment of this Court to

contend that though the land in question is included in the paddy zone according to the master plan, no acquisition proceedings are initiated and therefore building permit cannot be denied in view of the binding judgments of a Division Bench of this Court in **Padmini v. State of Kerala [1999 (3) KLT 465]** and Honourable Supreme Court in **Raju S Jethmalani v. State of Maharashtra [2005 (11)SCC 222]**. It is submitted by the petitioner that the respondents are relying on obsolete Town Planning scheme to deny permit to the petitioner.

3. The respondents have filed counter affidavit stating that the land is shown as 'nilam' in the revenue records and is situated within the paddy zone in the approved master plan of Thrissur Corporation. It is further stated that in view of the provisions contained in Ext.R1(a) General Town Planning Scheme for Thrissur Town, no construction can be permitted in that zone if the property is purchased subsequent to 28.04.2008.

4. Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

5. The specific case of the petitioner is that the land in question is situated in Thrissur town and there is no paddy cultivation at present in the vicinity. It is the further case that the land is surrounded by residential and commercial buildings and cannot be put to use as paddy land in future also. It is further contended that permits have been granted by the Thrissur Corporation itself even during the subsistence of Ext.P1 to neighboring land owners for construction in the vicinity.

In the above circumstances, Ext.P3 is set aside. The respondents are directed to reconsider the application preferred by the petitioner in the light of Ext.P6 judgment after conducting a site inspection. Orders in this regard shall be passed by the respondents within a period of two months from the date of receipt of a copy of this judgment. Petitioner shall produce a copy of judgment along with the copy of writ petition before the respondents for compliance.

**Sd/-ANU SIVARAMAN,
Judge**