

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

MONDAY, THE 19TH DAY OF OCTOBER 2015/27TH ASWINA, 1937

WP(C).No. 33335 of 2014 (N)

PETITIONER :-

K.DAKSHAYANI AMMA,
MAMMIYOOR MANGAT HOUSE, GURUVAYOOR-680 101,
REPRESENTED BY HER AUTHORISED ATTORNEY K.RUGMANI.

BY ADVS.SRI.MOHAN PULIKKAL
SRI.R.SUDHIR
SMT.MANJU RAJAN
SRI.P.P.NARAYANAN

RESPONDENTS :

1. GURUVAYUR MUNICIPALITY,
MUNICIPAL OFFICE, GURUVAYUR-680 101,
REPRESENTED BY ITS SECRETARY.
2. THE SECRETARY,
GURUVAYUR MUNICIPALITY, MUNICIPAL OFFICE,
GURUVAYUR-680 101.
3. THE DISTRICT TOWN PLANNER,
DISTRICT TOWN PLANNING OFFICE, CIVIL STATION,
AYYANTHOLE, THRISSUR-680 003.

R1 & 2 BY ADV. SRI.P.A.AHAMMED
R1 & 2 BY ADV. SRI.M.SREEKUMAR
R3 BY GOVERNMENT PLEADER SRI.V.K.RAFEEK

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29-9-2015,
THE COURT ON 19.10.2015 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS :-

- EXT.P1. TRUE COPY OF THE LETTER AND APPLICATION SUBMITTED BY THE PETITIONER.
- EXT.P2. TRUE COPY OF THE SURVEY SKETCH SUBMITTED BY THE PETITIONER ON 1/4/2011.
- EXT.P3. TRUE COPY OF THE POSSESSION CERTIFICATE SUBMITTED BY THE PETITIONER DATED 22/2/2011.
- EXT.P4. TRUE COPY OF THE LETTER DATED 26/4/2011 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.
- EXT.P5. TRUE COPY OF THE BUILDING PERMIT ISSUED TO BINDU MADHUSOODANA MENON.
- EXT.P6. TRUE COPY OF THE BUILDING PERMIT ISSUED TO SURENDRANATH.
- EXT.P7. TRUE COPY OF THE ORDER DATED 15/11/2011 ISSUED BY THE 2ND RESPONDENT.
- EXT.P8. TRUE COPY OF THE JUDGMENT DATED 21/12/2011 IN WPC NO.33323/2011.
- EXT.P9. TRUE COPY OF THE LETTER DATED 3/5/2012 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.
- EXT.P10. TRUE COPY OF THE LAWYER NOTICE DATED 15/7/2014 SENT TO THE 2ND RESPONDENT.
- EXT.P11. TRUE COPY OF THE LETTER DATED 31/7/2014 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

RESPONDENTS' EXHIBITS :-

- EXT.R3(a) COPY OF THE COMMUNICATION No.C/2075/2013 DTD.12.9.2013 SENT TO THE 1ST RESPONDENT.
- EXT.R3(b) COPY OF THE DESPATCH REGISTER.

True copy

P.A to Judge

ANIL K.NARENDRA, J.

W.P.(C)No.33335 of 2014

Dated this the 19th day of October, 2015

JUDGMENT

The petitioner is stated to be the absolute owner in possession of an extent of 53 cents of land in Survey No.84/1A of Guruvayur Village in Chavakkad Taluk in Thrissur District. She acquired title over the said property under Sale Deed No.313/1965 of the Sub Registrar's Office, Kottappadi. For constructing a multi-storied residential complex in the said property, the petitioner submitted Ext.P1 application for building permit dated 22.2.2011 before the 1st respondent Municipality, along with a covering letter dated 21.3.2011 addressed to its Secretary, the 2nd respondent herein. As requested by the 2nd respondent, the petitioner submitted Ext.P2 survey sketch and Ext.P3 possession certificate dated 22.2.2011. The 2nd respondent by Ext.P4 letter dated 26.4.2011 informed the petitioner that, the proposed site is within the area set apart for park and open space in the Master Plan for Guruvayur Township and as such no construction could be permitted. On enquiry, the petitioner came to know that, though the master plan for

Guruvayoor Municipality was published in the year 1976 no attempt was ever made for acquisition of the lands required for implementation of the scheme. In Ext.P3 possession certificate it has been certified that no land acquisition proceedings are there on the land in question. The Public Information Officer of the respondent Municipality vide letters dated 23.5.2011, 10.6.2011 and 6.8.2011 informed the petitioner that, though the master plan was announced in the year 1976, there is no proposal to acquire lands in the area indicated therein and the Municipal Council has also decided to cancel the draft master plan and to prepare a new one. Relying on Exts.P5 and P6 building permits the petitioner would point out that, similar applications for building permit submitted by others in Sy.No.84/1A have already been allowed and they were issued with building permits. Pointing out the above facts, the petitioner submitted a representation dated 25.10.2011 before the 2nd respondent for reconsideration of Ext.P1 application for building permit. However, the 2nd respondent by Ext.P7 order dated 15.11.2011 rejected her application stating the very same reason.

2. Aggrieved by Exts.P4 and P7 orders, the petitioner filed W.P.(C).No.33323 of 2011 and this Court by Ext.P8 judgment

allowed that writ petition quashing the said orders and directing the 2nd respondent to reconsider her application for building permit and pass appropriate orders thereon, within a period of one month from the date of receipt of a copy of the judgment. On receipt of a copy of Ext.P8 judgment, the 2nd respondent by Ext.P9 letter dated 3.5.2012 informed the petitioner that, her application for building permit contain certain discrepancies, and she was asked to resubmit after rectifying those discrepancies. When the petitioner made enquiry as to the status of her application for building permit, the 2nd respondent used to inform her that the file has already been forwarded to the District Town Planner, Thrissur, the 3rd respondent herein. Due to non-disposal of the application for building permit, the petitioner caused to issue Ext.P10 lawyer notice dated 15.7.2014 to the 2nd respondent. On receipt of the said notice, the 2nd respondent issued Ext.P11 intimation dated 31.7.2014 stating that, Ext.P1 application for building permit has already been forwarded to the 3rd respondent for lay out approval since the total plinth area of the building is more than 400 sq.mts. The petitioner was also informed that, consent from the Pollution Control Board and Initial Fire NOC from the Fire and Safety Department are necessary for the

proposed construction and on production of the same building permit can be issued. The petitioner would contend that, the 2nd and 3rd respondents are unnecessarily harassing her by deliberately delaying the matter inasmuch as consent from the Pollution Control Board and No Objection from the Fire and Safety Department will be issued only based on the lay out approval granted by the 3rd respondent. Due to the inaction on the part of the 2nd and 3rd respondents, the petitioner is before this Court in this writ petition seeking a writ of mandamus commanding the 3rd respondent to give lay out approval forthwith and seeking a writ of mandamus commanding respondents 1 and 2 to issue building permit as per Ext.P1 application without further delay.

3. A counter affidavit dated 24.2.2015 has been filed on behalf of respondents 1 and 2. The 1st and 2nd respondents would contend that the application submitted by the petitioner for building permit was originally rejected by Exts.P4 and P7 orders since the property in question is falling within the area set apart for park and open space in the Master Plan of Guruvayoor Municipality. No question of land acquisition arises for implementation of the master plan. When zoning regulation is prescribed in the master plan, the

owners of the property can use it only in accordance with the uses permitted by the master plan and not otherwise. The master plan of the year 1976 has been varied in the year 2010 and certain additional uses are permitted vide G.O.(Ms.)No.02/2010/LSGD. Regarding Exts.P5 and P6 building permits relied by the petitioner, the 1st and 2nd respondents would contend that, those permits have been issued to the respective land owners on the strength of individual exemptions obtained from the Government, which is not permissible after the decision of this Court in **Sayeesh Kumar and others Vs. State of Kerala and others (2005 (4) KLT 1027)**. On receipt of rectified plan submitted by the petitioner, the same was forwarded to the 3rd respondent for lay out approval. Only after lay out approval is granted by the 3rd respondent, the Municipality can proceed further in the matter. The petitioner has also to produce the No Objection Certificate from the Pollution Control Board and the Fire and Safety Department, which was intimated to her vide Ext.P11 letter.

4. Respondents 1 and 2 has also filed an additional counter affidavit dated 31.5.2015 stating that after curing the defects the petitioner submitted a revised plan on 30.4.2013, which was

forwarded to the 3rd respondent on 15.5.2013. But it was returned along with a letter dated 20.6.2013 of the 3rd respondent noticing certain defects. Thereupon, the petitioner re-submitted the plan after curing the defects and the same was forwarded to the 2nd respondent on 12.8.2013 along with Ext.R1(a) forwarding letter. Thereafter, by Ext.R1(b) letter dated 11.12.2013, the 3rd respondent has requested the 2nd respondent to ascertain whether an appeal has been preferred against Ext.P8 judgment of this Court.

5. A counter affidavit has been filed on behalf of the 3rd respondent contending that Ext.P1 application submitted by the petitioner was originally rejected by the 1st respondent as the said land lies in the area zoned as park and open space as per the Town Planning Scheme for the Guruvayoor Township. The said order was set aside by this Court in Ext.P8 judgment by which the 2nd respondent was directed to reconsider the application and pass appropriate orders thereon. As directed by this Court, the 2nd respondent reconsidered the application and forwarded the same to the 3rd respondent for lay out of approval. Since the application is against the zoning regulations of the sanctioned town planning scheme, the 3rd respondent has not issued lay out approval and

intimated the reason to the 1st respondent. The 3rd respondent would contend that, the Town Planning Scheme for Guruvayoor Township (Interim Development Plan) sanctioned vide G.O.(Ms.)No.25/76/(LA&S) dated 2.2.1976 covers an important part including the central business area of the present Municipal Town. The total extent of land brought under the Scheme is about 7.476 sq.kms. and the proposal within the scheme is being implemented. The zoning regulations of the scheme was varied by G.O.(Ms.) No.02/2010/LSGD dated 1.1.2010 to make the zoning compatible with the present developments. Going by Section 42 of the Kerala Town and Country Plan Ordinance, 2013, the Town Planning Scheme for Guruvayoor sanctioned under the Madras Town Planning Act, 1920 is deemed to be sanctioned under the Ordinance. The 3rd respondent would also contend that, though a revised master plan was prepared at the request of the Municipal Council and was published by the Municipal Council, the same still pending before the Government and the sanctioned scheme will be in force until a revised scheme is sanctioned by the Government.

6. The 3rd respondent would contend further that, after the judgment of this Court in Sayeesh's Kumar's case (supra) the

Government have no power to give individual exemption from the sanctioned development schemes. Thereafter, the Government have issued Circular No.7668/RB2/07/LSGD dated 17.5.2007 stopping the issue of orders for exemption from the zoning regulations of approved schemes. Since the construction proposed by the petitioner contravenes the provisions of the General Town Planning Scheme for Guruvayoor Township, the application was rejected. Thereafter, by Ext.R3(a) communication dated 12.9.2013 the 1st respondent Municipality was informed that the application cannot be considered since it violates some of the provisions of the Kerala Municipality Building Rules including violation of zoning regulations. Ext.R3(a) communication was despatched to the 1st respondent Municipality on 24.9.2013. The 3rd respondent would also point out that, after Ext.R3(a) communication sent on 24.9.2013, neither the petitioner nor the 1st respondent Municipality contacted the said respondent or submitted fresh application after curing the defects pointed out in the said letter.

7. I heard the arguments of the learned counsel for the petitioner, the learned Standing Counsel for respondents 1 and 2 and also the learned Government Pleader appearing for the 3rd

respondent.

8. It is for constructing a multi-storied residential complex in the land having an extent of 53 cents in Sy.No.84/1A of Guruvayoor Village, the petitioner has submitted Ext.P1 application for building permit. The said application was originally rejected by Ext.P4 order passed by the 2nd respondent stating that the site fall within the area set apart for park and open space in the General Town Planning Scheme for Guruvayoor Township. Thereafter, based on a request made by the petitioner, the 2nd respondent reconsidered the matter, but issued Ext.P7 order rejecting Ext.P1 application reiterating the very same reason. Exts.P4 and P7 orders passed by the 2nd respondent were under challenge before this Court in W.P.(C). No.33323 of 2011. It was contended before this Court that, the rejection of Ext.P1 application for building permit on the ground of unimplemented scheme is unjust, arbitrary and illegal. The petitioner has also relied on the judgment of the Apex Court in **Raju S Jesmalani and others v. State of Maharashtra and others (2005 (11) SCC 222)** and also the decision of this Court **Nazar P.K. And others v. Malappuram Municipality (2009 (3) KLT 92)** and **Padmini v. State of Kerala (1999 (2) KLT 465)**. In the

light of the principle laid down in the aforesaid judgments, this Court in P8 judgment held that, Exts.P4 and P7 orders (produced as Exts.P6 and P13 in that writ petition) cannot be sustained and as such those orders were quashed. The 2nd respondent was directed to reconsider the application for building permit submitted by the petitioner and pass appropriate orders thereon, as expeditiously as possible, at any rate, within a period of one month from the date of receipt of a copy of the judgment. Ext.P8 judgment of this Court has attained finality, in the absence of any challenge made by the respondent Municipality. Though the 3rd respondent is not a party to Ext.P8 judgment, as evident from Ext.R1(a) letter dated 12.8.2013 and Ext.R1(b) letter dated 11.12.2013, the 3rd respondent was well aware of the said judgment.

9. In **Raju S. Jesmalani and others v. State of Maharashtra and others (2005 (11) SCC 222)** the question that came up for consideration before the Apex Court was whether without acquiring the land the Government can deprive a person of his use of the land. The Apex Court laid down in categorical terms that it cannot be done. The Apex Court observed that, there is no prohibition for preparing the development plan comprising of private

land but that plan cannot be implemented unless the said private land is acquired by the Government for development purpose. The Apex Court has also observed that, it would have been possible for the Municipal Corporation and the Government to acquire the land in order to provide civic amenities. But the land in question has not been acquired. The open park and garden are necessary for the residents of the area. At the same time a citizen cannot be deprived of his rights without following proper procedure of law. Paras.3 and 4 of the judgment read thus;

3. In the case of Bangalore Medical Trust (1991 (4) SCC 54) the open space reserved for park under the development scheme was converted into a hospital in favour of a private body by the Development Authority at the instance of the Chief Minister of the State. Therefore, this Court examined the provisions of the Bangalore Development Authority Act, 1976 and after considering all those provisions, this Court held that this unilateral act of the Bangalore Development Authority at the instance of the Chief Minister of the State cannot be countenanced. In that case, the area was reserved for park and playground. Section 38A of the Bangalore Development Authority Act, 1976 specifically prohibited that the authority shall not sell or otherwise dispose of any area reserved for public parks and playgrounds and civic amenities for any other purpose and any disposition so made shall be null and void.

Firstly, there is no such provision under the Maharashtra Regional and Town Planning Act, 1966 and secondly, the area which is earmarked for the purpose of park and playground was not owned by a private person. In the present case, though the development plan has been prepared in the year 1966 and the area has been earmarked for the purpose of garden but no proceeding for acquisition of the present plot was ever initiated by the respondent Municipal Corporation or by the State Government. There is no prohibition for preparing the development plan comprising of private land but that plan cannot be implemented unless the said private land is acquired by the Government for development purpose. In the present case, the area comprising in Plot No. 438 belonged to the appellants and that no steps were taken to acquire the said land by the State Government or by the Municipal Corporation of Pune and the Municipal Corporation had already expressed their inability to acquire that land and therefore, the said land has been dereserved by the State Government. Therefore, the present case has no semblance to that of Bangalore Medical Trust case (1991 (4) SCC 54). The question is whether without acquiring the land the Government can deprive a person of his use of the land. This in our opinion, cannot be done. It would have been possible for the Municipal Corporation and the Government of Maharashtra to acquire the land in order to provide civic amenities. But the land in question has not been acquired. We are quite conscious of the fact that the open park and garden are necessary for the residents of the area. But at the same time we cannot lose sight of the fact that a citizen is

deprived of his rights without following proper procedure of law. The period of deferring the quashing of the dereservation notification for two years by the High Court was perhaps to allow the Government or the Municipal Corporation of Pune to muster up funds so as to acquire the same. But earnest hope was frustrated when no step was taken by the Municipal Corporation. The direction given by the High Court of Bombay that within this period if the respondents (the present appellants) provide necessary area, approximate in size, suitable for the purposes of garden and park as envisaged in the development plan to the satisfaction of the Planning Authority, quashing and setting aside of the impugned notification will not be operative. We fail to understand how the burden can be placed on the appellants that they should provide suitable area in the present locality for using the same as garden or park. Rather, the burden should have been placed on the Municipal Corporation or the State Government instead of putting it on the appellants that they must provide some space for garden and park. This direction, in our opinion, appears to be wholly misconceived and we set aside the impugned order of the Division Bench. Unfortunately, this direction was reaffirmed by subsequent order passed on the clarification application dated 8.9.1999 by the Division Bench and the Division Bench has observed that since the period of two years has already expired, therefore, the notification stood quashed and the Municipal Corporation can proceed in the matter. Since we felt persuaded to set aside the direction given on 4.9.1997 by the High Court putting the burden on the appellants, therefore, the

subsequent order passed by the Division Bench on 8.9.1999 also cannot be sustained. In this connection, our attention was invited to a recent decision of this Court in the case of Balakrishna H. Sawant v. Sangli, Miraj and Kupwad City Municipal Corpn. (2005 (3) SCC 61) wherein under an identical situation under the Maharashtra Regional and Town Planning Act, 1966, this Court quashed the reservation in respect of the land owned by a private person. In that case final development plan was published reserving land for a high school and playground owned by the private person. The grievance of the appellant was that the State had not taken any steps to acquire the land within the stipulated statutory period, therefore, the reservation had lapsed. The State Government also admitted that the reservation had lapsed and it had no power to condone the delay. However, the High Court took the view that since the Corporation has taken appropriate steps to acquire the land in question so as to give effect to the reservation, the same cannot be said to have lapsed. The matter came up before this Court by way of special leave petition. The respondent Corporation took the stand that the Corporation has no money for the construction of the high school and playground and therefore, the Corporation does not need the subject land. In this background, this Court set aside the order of the High Court and quashed the reservation in respect of the land in question owned by the appellant and allowed the appeal. Similar is the position in this case also. Since the Government and the Municipal Corporation expressed their inability to acquire the land because of lack of funds, the appellants cannot

be deprived of the use of the land. Therefore, the view taken by the High Court by the orders dated 4.9.1997 and 8.9.1999 cannot be sustained and both are liable to be set aside.

4. However, before parting with the case we may observe that we tried to explore the possibility if the Municipal Corporation is still prepared to acquire the land then even at this point of time we can permit them to acquire the land keeping in view the larger interest of ecology and for the amenities to the public of that locality. But learned counsel for the Municipal Corporation expressed inability of the Corporation and likewise learned counsel for the State of Maharashtra. We also asked the counsel for the private respondents if they can muster sufficient funds so as to enable the Municipal Corporation to acquire the land in question but learned counsel for the respondents expressed their inability to do so. Be that as it may, still we keep it open. In case within six months if the residents of the locality can raise funds for acquisition of the land by the Government, then, it will be open for them to keep this land as garden for the benefit of the locality. But we cannot sustain the present order passed by the High Court of Bombay. In case, the respondents cannot muster sufficient funds to acquire the land within six months from today, in that case, it will be open to the appellants to utilise the land for residential/other purpose in accordance with law."

10. In Raju S. Jesmalani's case (supra), the Apex Court distinguished its earlier judgment in the case of Bangalore Medical Trust's case (1991 (4) SCC 54). In that case, the open space

reserved for park under the development scheme was converted into a hospital in favour of a private body by the Development Authority at the instance of the Chief Minister of the State. The Apex Court examined the provisions of the Bangalore Development Authority Act, 1976 and after considering all those provisions, held that the unilateral act of the Bangalore Development Authority at the instance of the Chief Minister of the State cannot be countenanced. In that case, the area was reserved for park and playground. Section 38A of the Bangalore Development Authority Act, 1976 specifically prohibited that, the authority shall not sell or otherwise dispose of any area reserved for public parks and playgrounds and civic amenities for any other purpose and any disposition so made shall be null and void. Therefore, the Apex Court distinguished the aforesaid judgment stating that, firstly, there is no such provision under the Maharashtra Regional and Town Planning Act, 1966 and secondly, the area which is earmarked for the purpose of park and playground was not owned by a private person.

11. Relying on the judgment of this Court in **Philip George v. State of Kerala (2014 (2) KLT 116)** the learned Government Pleader would contend that while granting lay out approval the 3rd

respondent has to ensure that it does not breach the provisions of Town Planning Scheme applicable to Guruvayur Township and as such the action of the said respondent in declining lay out approval for the building plan submitted by the petitioner is perfectly legal.

Para 17 of the judgment reads thus;

"17. The Town Planning Act-Act IV of 1108 was passed on 31/12/1932 with a view to regulate the development of Towns to secure their present and future inhabitants, sanitary conditions, amenity and convenience. The Town Planning Act underwent three amendments after formation of the State of Kerala and it applies to the erstwhile areas of Travancore and Cochin. The Scheme of the Town Planning Act is discernible from a reading of the relevant provisions thereof, especially Chapter 3. Section 3 of the Town Planning Act envisages the drawing up of a Town Planning Scheme providing for matters enumerated in that Section. Section 5 of the Town Planning Act makes it obligatory for the Municipal Councils to consult the Director of Town Planning on matters relating to Town Planning. It also provides that if there is any difference of opinion between the Director and a Council on any matter, it shall be referred to the Government whose decision shall be final. Section 6 of the Town Planning Act mandates that a Town Planning Scheme shall determine the lines on which the improvement and development of the areas included in the scheme shall proceed. Section 7 of the Town Planning Act enables Municipal Councils to take decisions, through

resolutions, with regard to the preparation of a Scheme in respect of any land within the municipal area or to adopt, with or without modifications, draft schemes proposed by owners of the lands. Section 8 of the Town Planning Act deals with the requirement of publishing the resolutions of the Municipal Council by Notification in the prescribed manner and the requirement of stating in the notification that a copy of the plan is kept in the Municipal Office for inspection of the public. As per S.9 of the Town Planning Act, the Municipal Council has to prepare and publish the draft scheme, after consulting the owners of lands and buildings in the area affected, within 12 months from the date of the notification under Section 8 or within such further period, not exceeding 12 months as the Government may allow. Section 11 deals with the contents of a draft scheme. Section 12 deals with the sanctioning of the Scheme by the Government and enumerates a procedure whereby the Municipal Council has to forward to the Government the draft scheme, together with objections and suggestions, if any received from affected persons. The Government has then to either sanction the scheme, with or without modifications, or refuse to sanction the scheme. If the Government chooses to sanction the scheme with modifications, such sanctioning shall not be done without the consent of the Council. Section 12(5) makes it obligatory on the Government to publish the sanctioned schemes by notification in the Gazette and the notification is to state that the scheme will be open to the inspection of the public. As per Section 12(6), a notification published under Section 5 is conclusive evidence that the

scheme has been duly made and sanctioned and the scheme is to have effect from the date of publication of the notification. The execution of the scheme is then to be commenced forthwith unless the scheme itself provides that the execution of the scheme or any part thereof may be deferred until such time as may be fixed in the scheme. Section 13 deals with variation or revocation of a scheme and makes it clear that the Government may, at any time, vary or revoke a scheme sanctioned under Section 12. A sanctioned scheme can also be revoked or varied by a subsequent scheme sanctioned under Section 12. A Municipal council may also modify a sanctioned scheme by an agreement with the persons interested in the scheme and with the concurrence of the Government. Section 16 of the Town Planning Act obliges all owners of lands and buildings in the area affected by the scheme, and who propose to construct or reconstruct or in any way alter or add to buildings, to conform in every particular with the requirements of the scheme. It further provides that no building shall be constructed or reconstructed in any area in which building is expressly forbidden in the scheme or which is reserved in the scheme for any purpose incompatible with building. Section 17 of the Town Planning Act empowers the responsible authority (defined in Section 2(9) of the Town Planning Act as meaning the authority or person, who is specified in the scheme as responsible for carrying out or enforcing the observance of all or any of the provisions of the Scheme or for enforcing the execution of any works which under the scheme are to be executed by any authority owner or other person) to enforce the scheme."

12. But, the judgment of this Court in Philip George's case (supra) is on an entirely different factual matrix. In that case, the area covered by the Elamkulam West Town Planning Scheme framed in accordance with the provisions of the Town Planning Act, 1108 and sanctioned by the Government of Kerala, is one that required an acquisition of land, in terms of the Land Acquisition Act, for the purposes of its implementation. The said acquisition of land was therefore one that was resorted to in public interest and for the purposes of implementing the project detailed in Ext.P2 layout plan. During the course of arguments, it was contended on behalf of the respondents that there is no clarity on the issue of whether the land in respect of which Ext.P11 building permit was granted was in fact the same land as that shown as reserved for park in Ext.P2 plan. Repelling the said contention, this Court held that, there cannot be any doubt that the land obtained by the 5th respondent through Exts.R7-9 and R7-10 sale deeds and on which construction was proposed as per Ext.P11 Building Permit is the same land that is shown as area reserved as parks in the particular survey number in Ext.P2 plan. Paras.20 and 31 of the judgment read thus;

“20. On a consideration of the legal provisions, therefore, it is apparent that in an area that has been developed in accordance with a scheme, that was validly prepared and duly notified in accordance with the provisions of the Town Planning Act, future construction must adhere to the terms of the scheme and the plans approved thereunder. This must be so unless and until the scheme itself is varied or altered by the State Government. This position will assume greater rigour if the land comprised in the area, covered by the scheme in question, has itself been acquired through land acquisition proceedings for the purposes of the scheme. The mandate and purport of the scheme assumes the nature of a law that regulates future construction in the area and must bind subsequent purchasers of such land and users thereof.

xxx xxx xxx xxx

31. The area covered by the Elamkulam West Town Planning Scheme framed in accordance with the provisions of the Town Planning Act, 1108 and sanctioned by the Government of Kerala, is one that required an acquisition of land, in terms of the Land Acquisition Act, for the purposes of its implementation. The said acquisition of land was therefore one that was resorted to in public interest and for the purposes of implementing the project detailed in Ext.P2 layout plan. During the course of arguments, it was contended on behalf of the respondents that there is no clarity on the issue of whether the land in respect of which Ext.P11 building permit was granted was in fact the same land as that shown as reserved for park in Ext.P2 plan. I have considered this contention in the light of the documents

available on record. It must be noted that the specific case of the petitioner in paragraph 14 of the writ petition that the area earmarked for parks was what was sold to the 5th respondent by the 4th respondent is not specifically traversed in the counter-affidavit filed on behalf of 5th and 7th respondents. In the said counter-affidavit, it is merely stated that it was in order to get over the Revenue Recovery Proceedings initiated by the 2nd respondent by attaching the two vacant plots that were within the exclusive and absolute ownership of the 4th respondent Society, that the society applied to GCDA and obtained sanction for the public sale of the two plots. It is also admitted by the 5th and 7th respondents that it was these vacant plots that were sold to them by the society. The survey numbers of the plots are evident from Ext.R7-5 possession certificate, Ext.R7-6 land tax receipt and Ext.R7-8 Building Permit produced by the 5th and 7th respondents. The layout and description of the plot in question are also clearly discernible from the recitals and schedule in Ext.R7-9 and Ext.R7-10 sale deeds produced by respondents 5 and 7 to show their title over the property. This is also clear from Ext.R7-17 produced by them. The description of the land in the aforementioned documents, read with the survey numbers in which they are located, clearly enables one to identify the land in Ext.P2 plan when read along with Ext.P17(a) notification. Further in Ext.P2 plan the plot itself is colour-coded with green (wash) which is the colour code prescribed for public open spaces and parks under R.41 of the Rules made under the Travancore Town Planning Regulations. There cannot therefore be any doubt that

the land obtained by the 5th respondent through Exts.R7-9 and R7-10 sale deeds and on which construction was proposed as per Ext.P11 Building Permit is the same land that is shown as area reserved as parks in the particular survey number in Ext.P2 plan.”

13. In **Havva v. Tirur Municipality (2015 (3) KLT 562)** this Court held that the civil right of the property owners cannot be deprived of by asserting futuristic public purpose, without the same being acquired either by the State Government or the Municipality. Para.23 of the judgment reads thus;

“**23.** So far as a property whether immovable or movable is concerned, it is a precious and proud possession of a citizen and he is entitled to enjoy the same by utilising it in a manner suitable to him by respecting the authority propounded under law. According to me, such a right was conferred under the Constitution with the avowed object to deprecate inhuman attitude of the State or other authorities against interfering in the right of a citizen over his property without authority of law. Therefore such civil right of the property owners cannot be deprived by asserting futuristic public purpose, without the same being acquired either by the State Government or the Municipality. Moreover, the owner of the property is

entitled to enjoy the same during his life time and if the development of the property is deprived on the basis of alleged D.T.P. Scheme proposed either by the Government or by the Municipality and continuance of the same indefinitely, no person may be entitled to enjoy the property putting it to profitable use during his life time. Therefore, according to me, the Respondent Municipality cannot be allowed to take such a stringent stand so as to fetter the right of the petitioners from developing their property in accordance with the Municipal Building Rules.”

14. In the case on hand, the respondents have no case that, either the Government or the 1st respondent Municipality propose to acquire the land in question, in order to implement the Town Planning Scheme in question. Therefore, in view of the principle laid down in the aforesaid judgments, the stand taken by the respondents that, since the petitioner's site falls within the area set apart for park and open space in the General Town Planning Scheme for Guruvayoor Township, she is not legally entitled for building permit sought for in Ext.P1 application cannot be sustained in law. Though the 3rd respondent is relying on Ext.R3(a) communication stated to have been issued to the 1st respondent Municipality on 24.9.2013, neither

the 1st respondent nor the 2nd respondent has a case that the petitioner was ever informed about rejection of lay out approval for her application for building permit. They have also no case that the petitioner was ever issued with a copy of Ext.R1(c) communication.

In the result, this writ petition is disposed of directing the 3rd respondent to reconsider the question of lay out approval for Ext.P1 building plan submitted by the petitioner, and intimate the result thereof to the 2nd respondent, with copy to the petitioner, as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a certified copy of this judgment. It is made clear that, the 3rd respondent shall not reject the said request on the ground that, petitioner's site falls within the area set apart for park and open space in the General Town Planning Scheme for Guruvayoor Township.

No order as to costs.

Sd/-
ANIL K.NARENDRAN, JUDGE

skj

True copy

P.A to Judge