

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 28TH DAY OF JANUARY 2015/8TH MAGHA, 1936

WP(C).No. 33414 of 2014 (B)

PETITIONERS:

1. CHANDRAMOHAN.C., AGED 32 YEARS
UMA MANDIRAM, KOZHIKODE ROAD, MANJERI
MALAPPURAM.
2. KERALA LAND REFORMS AND DEVELOPMENT CO-OPERATIVE SOCIETY
LTD.NO.4482,
NALONKANDY ARCADE, FRANCIS ROAD JUNCTION, CHALAPPURAM,
KOZHIKODE, REPRESENTED BY ITS GENERAL MANAGER.

BY ADVS.SRI.B.S.SWATHY KUMAR
SRI.REMYA MURALI
SRI.A.K.RAJESH

RESPONDENTS:

1. THE CHIEF TOWN PLANNER,
OFFICE OF THE TOWN PLANNER, PALAYAM,
THIRUVANANTHAPURAM, PIN:695 001.
2. MANJERI MUNICIPALITY,
MUNICIPAL OFFICE, MANJERI, MALAPPURAM,
PIN:676 121, REPRESENTED BY ITS SECRETARY.
3. THE SECRETARY
MANJERI MUNICIPALITY, MUNICIPAL OFFICE, MANJERI
MALAPPURAM, PIN:676 121.

R BY SMT. C.K. SHERIN, GOVERNMENT PLEADER
R BY SRI.K.SHIBILI NAHA, SC, MANJERI MUNICIPALITY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
28-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS :

EXHIBIT P1: TRUE COPY OF THE ORDER NO.B.A.E5/13-14 DATED 6.6.2013 OF THE 2ND RESPONDENT.

EXHIBIT P2: TRUE COPY OF THE ORDER IN APPEAL NO.595/2013 DATED 27.7.2013 OF THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTION.

EXHIBIT P3: TRUE COPY OF THE ORDER NO.B.A.E5/13-14 DATED 31.1.2014 OF THE 2ND RESPONDENT.

EXHIBIT P4: TRUE COPY OF THE JUDGMENT IN WPC NO.5174/2014 DATED 4.3.2014.

EXHIBIT P5: TRUE COPY OF THE COMMUNITION NO.E1-2239/2014 DATED 25.3.2014.

EXHIBIT P6: TRUE COPY OF THE ORDER NO.C1/518/14 DATED 26.4.2014.

EXHIBIT P7: TRUE COPY OF THE ORDER NO.C1/518/14 DATED 18.6.2014.

EXHIBIT P8: TRUE COPY OF THE JUDGMENT IN WPC NO.18164/2014 DATED 4.11.2014.

EXHIBIT P9: TRUE COPY OF THE ARGUMENT NOTE SUBMITTED BY THE 2ND PETITIONER BEFORE THE 1ST RESPONDENT DATED 14.11.2014.

EXHIBIT P10: TRUE COPY OF THE ORDER NO.E1/7598/2014 DATED 25.11.2014.

EXHIBIT P11: TRUE COPY OF THE COMMUNICATION DATED 10.1.2014 TO THE 1ST RESPONDENT.

EXHIBIT P12: TRUE COPY OF THE COMMUNICATION DATED 20.5.2014 TO THE 1ST RESPONDENT.

EXHIBIT P13: TRUE COPY OF THE SITE PLAN/SETBACK DETAILS OF LOWER AND UPPER BASEMENT FLOORS UPTO THE 14 TH FLOOR.

RESPONDENTS' EXHIBITS : NIL

/True Copy/

P.A to Judge.

DAMA SESHADRI NAIDU, J.

W.P. (C) No.33414 of 2014 (B)

Dated this the 28th day of January, 2015.

JUDGMENT

Heard the learned counsel for the petitioners, the learned Standing Counsel for the respondent Municipality and the learned Government Pleader, apart from perusing the record. Since the issue lies in a narrow compass, this Court proposes to dispose of the writ petition at the admission stage itself.

2. Briefly stated, when the first petitioner applied for building permit to construct a 'commercial cum apartment building' in Manjery village, it was rejected through Ext.P1 by the 2nd respondent on the ground that the property is governed by the District Town Planning Scheme. Aggrieved thereby, when the petitioner filed an appeal before the Tribunal for Local Self Government Institutions, the Tribunal through Ext.P2 order directed the 2nd respondent to consider the first petitioner's application without reference to DTP Scheme.

3. Complaining of non-compliance with Ext.P2 order by the 2nd respondent, the petitioner filed W.P.(C) No. 5174 of 2014 and

invited Ext.P4 judgment from this Court, which directed, once again, the 2nd respondent to comply within six weeks with the directions issued in Ext.P2. In compliance with Ext.P4 judgment, the first respondent issued Ext.P6 proceedings, yet again requiring the first petitioner to get a revised plan in accordance with DTP Scheme. Under those circumstances, the petitioner initiated contempt proceedings in Con. Case (C). No. 494 of 2014.

4. The record reveals that pending contempt proceedings, the first respondent issued Ext.P7 pointing out four defects. Once again, the petitioner filed W.P.(C) No. 18164 of 2014 laying challenge against Ext.P7 and invited Ext.P8 judgment through which this Court directed the first respondent to provide personal hearing to the first petitioner and consider the petitioner's application afresh. Thereafter, based on Ext.P9 hearing notes submitted by the first petitioner, the first respondent issued Ext.P10 proceedings, which contained the principal objection that the first petitioner is required to submit the site plan in one single sheet showing all the setbacks and other details, inasmuch as the rest of the objections raised in Ext.P7 stood complied with. Aggrieved by the condition imposed in Ext.P10, the

petitioner has filed the present writ petition. Indulgence

5. The learned counsel for the petitioner has strenuously contended that the first petitioner has complied with all the objections raised by the first and second respondents, and that still after many repeated rounds of litigations, the authorities have not thought it right to consider the petitioner's application in accordance with law. In elaboration of his submissions, the learned counsel has submitted that the first respondent has raised a facetious objection that the first petitioner shall supply the site plan in one single sheet showing all the setbacks, which is technically impossible. In support of his submissions, the learned counsel has relied on Ext.P14 certificate issued by a panel engineer and Chief Architect. The learned counsel has also submitted that Ext.P13 site plan, which is spread across four sheets, was duly approved by the 2nd respondent and thereafterwards sent to the first respondent through District Town Planner.

6. The learned Government Pleader has fairly submitted that if it is a technical impossibility as has been contended by the learned counsel for the petitioner, and as has been certified through Ext.P14, respondents have no objection to re-consider the decision.

In the facts and circumstances, Ext.P10 is set aside and the writ petition is disposed of with a direction to the 2nd respondent to process the petitioner's application without reference to or without insisting on site plan shown in a single sheet reflecting all the setbacks, provided the first petitioner has complied with all other statutory parameters. The entire process shall be completed as expeditiously as possible, at any rate, within one month from the date of receipt of a copy of this judgment.

sd/- DAMA SESHADRI NAIDU, JUDGE.

