

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

WP(C).No. 33204 of 2015 (A)

PETITIONER(S):

1. **V.H.SHAHEER, AGED 28 YEARS,
S/O. HAMZA, RESIDING AT VALIYAPARAMBIL HOUSE,
THOZHIYOOR P.O.,
THRISSUR 680 520.**
2. **FATHIMA, D/O. HAMZA, AGED 55 YEARS,
RESIDING AT ASSANARAKATH HOUSE,
KADAPPORAM P.O.,
CHAVAKKAD TALUK,
THRISSUR 680 514.**
3. **ABDUL KAREEM, S/O. SAITHALI, AGED 67 YEARS,
RESIDING AT THEKKARAKATH HOUSE, KADAPRAM P.O.,
CHAVAKKAD TALUK, THRISSUR 680 514.**

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

RESPONDENT(S):

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

**R1&R2 BY ADV. SRI.K.P.VIJAYAN
R1&R2 BY ADV. SRI.V.N.HARIDAS
BY SRI.K.P.VIJAYAN,SC,THRISSUR CORPORATION**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
12-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER(S) EXHIBITS:

- EXT.P1: COPY OF THE TAX RECEIPT ISSUED TO THE PETITIONERS DATED 14.10.2015.
- EXT.P2: COPY OF THE BUILDING PERMIT EARLIER GRANTED BY THE CORPORATION TOT HE PETITIONERS DATED 2.5.2013.
- EXT.P3: COPY OF ONE PHOTOGRAPH DEPICTING THE FACTUAL SITUATION PREVAILING DATED NIL.
- EXT.P4: COPY OF THE ORDER PASSED BY THE 2ND RESPONDENT TO THE PETITIONER DATED 26.10.2015.
- EXT.P5: COPY OF THE JUDGMENT IN W.A. NO. 1731/2008 ON THE FILE OF THIS HONOURABLE COURT DATED 14.06.2011.
- EXT.P6: COPY OF THE JUDGMENT IN W.P.(C) NO. 25252/2015 ON THE FILE OF THIS HONOURABLE COURT DATED 19.08.2015.

RESPONDENTS EXHIBITS: NIL

//True copy//

P.A. to Judge

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P.BHAVADASAN, J.

W.P.C. No.33204 of 2015

Dated this the 12th day of November, 2015

J U D G M E N T

Strange are the ways in which the local authorities react. Here is the typical example of the same.

2. Petitioners own 19.50 cents of land in Sy.No. 1090/1P of Thrissur Village. They sought for permission to put up a commercial building, the permission for which was granted as per Ext.P2. Subsequently and prior to the permit granted to petitioners, several such structures have come in the locality. Desirous of carrying out further constructions in the building, they applied for permit to put up additional construction of three floors. That application, quite to the surprise of petitioners, was dismissed on the ground that the area had been under DTP scheme as an industrial zone and therefore permission could not be granted. Ext.P4 is the order passed by the local authority. Ext.P4 is assailed in this writ petition. The learned counsel for the petitioners also

relies on the decisions reported in **Gopalakrishnan v. State of Kerala** (2011 (3) KHC 162), **Raju S. Jetmalani v. State of Maharashtra and others** ((2005) 11 SCC 222), **Padmini v. State of Kerala** (1999 (3) KLT 465) and **Nazar v. Malappuram Municipality** (2009 (3) KLT 92).

3. Of course, the above decisions relate to the DTP scheme etc., but it is not necessary to go into those decisions for the simple reason that the petitioners were allowed to put up a commercial structure as per Ext.P2 permit granted to them and they did put up a structure. When additional constructions were sought for, the local authority comes forward with the same reasoning that as per the DTP scheme, that area is an industrial zone. It is seen that the Corporation already granted permission to put up a structure and petitioners had done so. Further, petitioners have produced sufficient photographs showing that prior to the permit granted to petitioners, several other structures have come in the locality and now to reject his

application on the ground made mention of above does not stand to reason.

4. There is considerable force in the above submission made by the learned counsel for the petitioners. After having granted permit to put up a structure as per Ext.P2 and after having put up a building as per the permit, when they were desirous of extending the building, the same has denied to them by pointing out that the property falls under DTP scheme as an industrial zone area. If that be so, the first permission itself could not have been granted. Having granted the first permission and having allowed to put up certain other structures in the locality, obviously Ext.P4 cannot survive.

In the result, this petition is allowed. Ext.P4 is set aside and the local authority is directed to conduct a local inspection of the property and ascertain the true nature and lie of the property involved in the proceedings and then proceed in pursuance to the principle laid down in the

decision referred to above and in accordance with law and re-consider the application for permission within in a period of one month from the date of receipt of a copy of this judgment.

Sd/-
P.BHAVADASAN
JUDGE

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