

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 25TH DAY OF FEBRUARY 2015/6TH PHALGUNA, 1936

WP(C).No. 34227 of 2014 (C)

PETITIONER :

**SAJITHA SALIM,
THACHARIKUDY HOUSE, CHERUVELIKKUNNU, MUDIKKAL P.O.,
PERUMBAVOOR, ERNAKULAM - 683 542.**

**BY ADVS.SRI.P.THOMAS GEEVERGHESE
SRI.TONY THOMAS (INCHIPARAMBIL)**

RESPONDENT(S):

- 1. CHIEF TOWN PLANNER,
DEPTMENT OF TOWN AND COUNTRY PLANNING,
KOTTARATHIL BUILDING, PALAYAM,
THIRUVANANTHAPURAM - 695 033.**
- 2. TOWN PLANNER,
DISTRICT PLANNING OFFICE, ST. ANTONY COMPLEX,
NEAR MUNICIPAL BUS STAND, NAGAMPADAM, KOTTAYAM.**
- 3. VELLOOR GRAMA PANCHAYAT,
MEVELLOOR P.O., KOTTAYAM - 686 609,
REPRESENTED BY ITS SECRETARY.**

**R1 & R2 BY GOVERNMENT PLEADER SMT. K.A.SANJEETHA
R3 BY ADV. SRI.SAJI KURIACHAN,SC**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 25-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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WP(C).No. 34227 of 2014 (C)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1- TRUE COPY OF THE LETTER DATED 21/05/2014 ISSUED BY THE 3RD RESPONDENT TO THE 2ND RESPONDENT.

EXHIBIT-P2- TRUE COPY OF THE IMPUGNED ORDER NO. C3-8958/2014/K.DIS DATED 04/10/2014 ISSUED BY THE CHIEF TOWN PLANNER.

EXHIBIT-P3- TRUE COPY OF THE RESOLUTION NO.11 DATED 17/12/2012 OF VELLOOR GRAMA PANCHAYAT.

EXHIBIT-P3(A)- TRUE COPY OF THE APPLICATION DATED 03/12/2014 FILED BY UNDER RIGHT TO INFORMATION ACT, TO THE 3RD RESPONDENT

EXHIBIT-P4- TRUE COPY OF THE APPLICATION DATED 24/10/2014 FILED UNDER RIGHT TO INFORMATION ACT, TO THE 3RD RESPONDENT.

EXHIBIT-P4(A)- TRUE COPY OF THE REPLY NO. B5-6580/2014 DATED 17/11/2014 ISSUED BY THE SECRETARY, VELLOOR GRAMA PANCHAYAT.

EXHIBIT-P5- TRUE COPY OF THE RESOLUTION NO.1 DATED 22/11/2014 OF VELLOOR GRAMA PANCHAYAT.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

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DAMA SESHADRI NAIDU, J.

W.P.(c) No. 34227 of 2014

Dated this the 25th day of February, 2015

JUDGMENT

Heard the learned counsel for the petitioner and the learned Government Pleader, as well as the learned Standing Counsel for the respondent, 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 petitioner submitted an application for building permit to construct an industrial building with a view to manufacturing M-Sand, it was rejected by the second respondent through Exhibit P2. Aggrieved thereby, the petitioner has filed the present writ petition.

3. The learned counsel for the petitioner has contended that, neither Exhibit P2 nor the counter affidavit

filed by the second respondent discloses any reasons why the petitioner's application was rejected. In furtherance of his submissions, the learned counsel has submitted that assuming that the development plan is in force, no right of a private person regarding his property can be curtailed, unless the property in question has been subjected to any acquisition. In this regard, the learned counsel has placed reliance on **Raju S. Jethmalani v. State of Maharashtra and Others** [2005 (11) SCC 222].

4. The learned Government Pleader, on her part, has submitted that since development plan has been re-promulgated through Ordinance No.3 of 2015 dated 09.01.2015, the petitioner's applications could not be processed by the respondent authorities.

5. Be that as it may, a perusal of Exhibit P2, which is laconic, reveals no reason why the petitioner's application was not considered. Though the said Exhibit is in vernacular, the learned counsel for the petitioner has read out its contents in English. The first respondent is said to have simply stated that the petitioner's application is in violation of the development plan. A perusal of the counter

affidavit, too, apart from stating that the Kerala Town and Country Planning Ordinance, 2015, has been promulgated, does not disclose any specific reason why the petitioner's application could not be considered.

6. In the facts and circumstances, I do not see any ground to sustain Exhibit P2 issued by the first respondent; accordingly, it is set aside. Consequently, the first respondent shall reconsider the petitioner's application and assign specific reasons, if any, why the petitioner's application shall not be considered. Needless to observe that before reconsidering the petitioner's application, the first respondent may provide an opportunity of personal hearing to the petitioner. The same shall be done within a period of one month from the date of receipt of a copy of this judgment.

With the above observation, this writ petition is disposed of. No order as to costs.

**DAMA SESHADRI NAIDU
JUDGE**

DMR/-