

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

MONDAY, THE 12TH DAY OF JANUARY 2015/22ND POUSHA, 1936

WP(C).No. 34450 of 2014 (E)

PETITIONERS:

1. KANDIYAN PRAJINA AGED 32 YEARS
W/O.SANIL, KANDIYAN HOUSE, P.O.THIRUVANGAD
THALASSERY.
2. MAROLI SANIL
S/O.CHATHU, KANDIYAN HOUSE, P.O.THIRUVANGAD
THALASSERY.

BY ADV. SRI.P.NARAYANAN

RESPONDENT(S) :

1. THALASSERY MUNICIPALITY
REPRESENTED BY ITS SECRETARY.
2. THE SECRETARY
THALASSERY MUNICIPALITY.
3. THE ASSISTANT ENGINEER
LOCAL SELF GOVT.
THALASSERY MUNICIPALITY (SOUTH SECTION).
4. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVT.
LOCAL SELF GOVERNMENT DEPARTMENT
THIRUVANANTHAPURAM.

R BY GOVERNMENT PLEADER SMT CK SHERIN
R BY SRI.I.V.PRAMOD

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
12-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

kkj

WP(C).No. 34450 of 2014 (E)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1 : TRUE COPY OF THE BUILDING PLAN SUBMITTED BY THE PETITIONER.

EXT.P2 : TRUE COPY OF THE COMMUNICATION NO.E5/BA/282/14-15
DT.13-11-14 ISSUED BY THE R3.

EXT.P3 : TRUE COPY OF THE GOVERNMENT ORDER DT.29-11-1983.

EXT.P4 : TRUE COPY OF THE JUDGMENT DT.30-9-2013 IN WPC 21845/13.

EXT.P5 : TRUE COPY OF THE JUDGMENT REPORTED IN CORPORATION TRISSUR
VS.KUNJILAKKUTTY (2014(1)KLT 188) .

EXT.P6 : TRUE COPY OF THE JUDGMENT DT.9-7-14 IN WPC 21974/13.

RESPONDENT(S) ' EXHIBITS

NIL

// TRUE COPY //

PA TO JUDGE

K.SURENDRA MOHAN, J.

W.P.(C) No.34450 of 2014-E

Dated this the 12th day of January, 2015

J U D G M E N T

The petitioner has filed this Writ Petition challenging Ext.P2 proceedings of the third respondent rejecting his application for permission to construct a building in his property. His application has been rejected on the ground that as per the Town Development Part Variation Plan, 2007 of the Municipality, the petitioner's property is included in the agricultural zone and therefore no permission could be granted to construct a building over the same.

2. According to the learned counsel for the petitioner, the ground on which Ext.P2 has been issued is unsustainable. It is contended that, there has been no land acquisition proceedings initiated pursuant to the Development Scheme that is said to be applicable to the Municipality. In the light of the law laid down by the apex court, rejection of the petitioner's request on the said

ground is unsustainable. Therefore, he seeks the issue of appropriate orders setting aside Ext.P2.

3. Advocate I.V.Pramod appears for the respondents. It is not in dispute that though the Town Development Variation Plan has been in existence for quite some time, no proceedings for acquisition of the land have been initiated in implementation of the said scheme.

4. Having considered the rival contentions of the contesting parties, it has to be held that Ext.P2 is unsustainable in view of the dictum laid down by the apex court in **Raju S.Jethmalani and others v. State of Maharashtra and others** [(2005) 11 SCC 222]. The petitioner cannot be prevented from putting his property to any use on the ground that there is a Development Scheme in existence which has not been implemented for a long time. For the above reason, Ext.P2 is set aside.

This Writ Petition is accordingly disposed of directing the third respondent to consider the application submitted

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W.P.(C) No.34450 of 2014-E

by the petitioner afresh, after conducting an inspection of the petitioner's land to verify whether the land is a paddy field and thereafter, to pass appropriate orders on the application in accordance with law. Appropriate orders as indicated above shall be passed, as expeditiously as possible and at any rate within a period of one month of the date of receipt of a copy of this judgment

Sd/-
K.SURENDRA MOHAN,
JUDGE

kkj