

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY, THE 7TH DAY OF APRIL 2015/17TH CHAITHRA, 1937

WP(C).No. 34950 of 2014 (P)

PETITIONERS:

1. D.RAJASANKARAN, AGED 48 YEARS,
S/O.K.DAMODHARAN, RESIDING AT RANJINI, J.N ROAD,
PERINTHALMANNA, MALAPPURAM DISTRICT.
2. K.BABU, AGED 50 YEARS,
S/O.KUTTAN, RESIDING AT BIJISH NIVAS, WEST HILL P.O.,
KOZHIKODE-673 005.

BY ADVS.SRI.HARISH R. MENON
SRI.K.T.SHYAMKUMAR

RESPONDENTS:

1. THE SECRETARY, KOZHIZKODE CORPORATION,
KOZHIKODE - 673 005.
2. THE REGIONAL TOWN PLANNER,
KOZHIKODE DISTRICT, KOZHIKODE - 673 005.

R1 BY ADV. SRI.P.V.SURENDRANATH, SC, KOZHIKODE CORPORATION
R BY SMT. C.K. SHERIN, GOVERNMENT PLEADER
R BY SRI.K.D.BABU,SC,KOZHIKODE CORPORATION

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
07-04-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS :

EXT.P1.TRUE COPY OF THE ORDER DATED 9/12/1993 PASSED BY THE REVENUE
DIVISIONAL OFFICER, KOZHIKODE.

EXT.P2.TRUE COPY OF THE ORDER DATED 18/6/2004 ISSUED BY THE DISTRICT
COLLECTOR, KOZHAIKODE.

EXT.P3.TRUE COPY OF THE JUDGMENT PASSED BY THE APPELLATE TRIBUNAL IN
APPEAL NO.181/2011 DATED 30/6/2011.

EXT.P4.TRUE COPY OF THE ORDER DATED 26/3/2013 ISSUED BY THE 1ST
RESPONDENT

RESPONDENTS' EXHIBITS: NIL

/True Copy/

P.A to Judge.

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 34950 of 2014

Dated this the 7th day of April, 2015.

JUDGMENT

Heard the learned counsel for the petitioners and the learned Standing Counsel for the respondent Corporation, apart from perusing the record.

2. Briefly stated, both the petitioners have a grievance that the respondent Corporation has rejected their applications for building permit without any basis. In 2011 itself, the second petitioner assailed the order of rejection passed by the respondent Corporation before the Tribunal for Local Self Government Institutions, Trivandrum, and invited Ext.P3 order. As far as the first petitioner is concerned, though he has not laid any specific challenge against the rejection, he seeks the benefit of Ext.P3 order obtained by the second petitioner, who is said to be similarly placed. Both the petitioners with their respective grievances have approached this Court.

3. The learned counsel for the petitioners has submitted that despite the learned Tribunal directing the respondent Corporation through Ext.P3 order to re-consider the application of the second petitioner, so far no steps have been taken by the Corporation in that regard, despite the lapse of more than three years from the date of Ext.P3 order. He has further contended that the first petitioner, though not assailed the order of rejection, in the light of judicial pronouncement in Ext.P3 by the learned Tribunal, there shall not be any impediment for the respondent Corporation to treat the first petitioner on a par with the second petitioner and re-consider his application as well.

4. The learned Standing Counsel for the respondent Corporation has, however, submitted that the application of the second petitioner has been under active consideration, and that the Corporation will give due regard to the directions issued in Ext.P3 order. According to the learned Standing Counsel, the case of the first petitioner stands on a different footing. In elaboration, he has submitted that the first petitioner's property

is shown in agricultural zone as per the sanctioned development plan for the Calicut Urban Area (General Town Planning Scheme). It is the specific contention of the learned Standing Counsel that there ought to be initial concurrence from the Regional Town Planner before the Corporation could process the first petitioner's application.

5. In reply, the learned counsel for the petitioners has submitted that even in the case of the second petitioner, identical objections were raised, but all of them were answered by the learned Tribunal in Ext.P3. According to him, once an order is passed even in the case of the first petitioner by the respondent Corporation, keeping in view Ext.P3 order, he may avail himself of all statutory remedies in that regard.

6. In the facts and circumstances, having regard to the respective submissions of the learned counsel for the petitioners and the learned Standing Counsel for the respondent Corporation, this Court disposes of the present writ petition with a direction to the respondent Corporation to re-consider

the application of the first petitioner, keeping in view the judicial pronouncement in Ext.P3 order, and pass appropriate orders thereon. Insofar as the second petitioner is concerned, since he has obtained Ext.P3 order more than three years ago and the matter has attained finality, the respondent Corporation shall consider his claim for building permit at the earliest.

It is made clear that the second respondent shall forward, if the said authority has already not done so, the necessary report of opinion on the petitioners' applications within three weeks from the date of receipt of a copy of this judgment. Needless to observe, in both cases, the respondent Corporation may pass appropriate orders within thirty days thereafter.

sd/- DAMA SESHADRI NAIDU, JUDGE.

