

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 8TH DAY OF DECEMBER 2015/17TH AGRAHAYANA, 1937

WP(C).No. 36991 of 2015 (Y)

PETITIONER :

**IRENE ANN
AGED 28 YEARS, D/O. JAISON JOSEPH
KUZHAKKEDATH HOUSE
20, MEKKADAMBU, KODATHY
ERNAKULAM DISTRICT – 682 316.**

BY ADV. SRI.R.RAJESH

RESPONDENT(S) :

- 1. THE THRIKKAKARA MUNICIPALITY
REPRESENTED BY ITS SECRETARY
THRIKKAKARA – 682 030
ERNAKULAM.**
- 2. THE SECRETARY
THRIKKAKARA MUNICIPALITY
THRIKKAKARA – 682 030
ERNAKULAM.**

R1 & R2 BY ADV. SRI.S.SHANAVAS KHAN, SC

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 08-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Mn

...2/-

WP(C).No. 36991 of 2015 (Y)

APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P1 : COPY OF THE WILL DATED 19/6/2009.
- EXT.P2 COPY OF THE TAX RECEIPT DATED 10/9/2015 ISSUED BY THE VILLAGE OFFICER, KAKKANAD.
- EXT.P3 COPY OF THE POSSESSION CERTIFICATE DATED 16/9/2015 ISSUED FROM THE VILLAGE OFFICE, KAKKANAD.
- EXT.P4 COPY OF THE PLAN SUBMITTED BEFORE THE 2ND RESPONDENT.
- EXT.P5 COPY OF THE RECEIPT ISSUED FROM THE OFFICE OF THE FIRST RESPONDENT EVIDENCING THE RECEIPT OF BUILDING PERMIT APPLICATION.
- EXT.P6 COPY OF THE NOTICE DATED 31/10/2015 ISSUED BY THE 2ND RESPONDENT.
- EXT.P7 COPY OF THE JUDGMENT DATED 4/3/2015 IN WP(C) NO. 6747 OF 2015 OF THIS HON'BLE COURT.
- EXT.P8 COPY OF THE JUDGMENT DATED 5/2/2015 IN WP(C) NO. 3648 OF 2015 OF THIS HON'BLE COURT.
- EXT.P9 COPY OF THE JUDGMENT DATED 27/1/2015 IN WP(C) NO. 2512 OF 2015 OF THIS HON'BLE COURT.
- EXT.P10 COPY OF THE JUDGMENT DATED 22/9/2014 IN WP(C) NO. 22153 OF 2013 OF THIS HON'BLE COURT.

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

K.HARILAL, J.

W.P.(C) No.36991 of 2015

Dated this the 8th day of December, 2015.

JUDGMENT

The petitioner, in this writ petition, seeks to challenge Ext.P6 proceedings of the 2nd respondent, by which the request of the petitioner to grant building permit for constructing a residential building in her property having an extent of 25 cents stands rejected. According to the petitioner, she is the owner in possession of 25 cents of land comprised in Re-Sy.No. 384/2 of Kakkanad Village in Kanayannoor Taluk by virtue of Ext.P1 and the said land is a pucca garden land and the same is recorded as dry land in the Thandaper account and the Basic Tax Register maintained by the Revenue Authorities. The petitioner, being desirous of constructing a residential building, submitted an application for building permit with Ext.P4 plan before the 2nd respondent. Surprisingly, the 2nd respondent rejected

the application for building permit, by Ext.P6, on the ground that the land, where the construction is sought to be made, lies within the area ear-marked as agricultural zone, by virtue of the structural plan for Central City of Kochi. The legality and propriety of the reason, by which building permit is denied to the petitioner, are under challenge in this writ petition.

2. Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent Municipality.

3. The sum and substance of the arguments advanced by the learned counsel for the petitioner is that the structural plan for the Central City of Kochi was never implemented in the 1st respondent Municipality. As a matter of fact, the 1st respondent Municipality has never observed any kind of zonal restrictions, in the matter of granting building permits. The entire surrounding area in and around the disputed property is covered by huge residential and commercial buildings and the petitioner is discriminated by denying the right to construct a

residential house.

4. The learned counsel for the petitioner drew my attention to the decisions reported in *Padmini v. State of Kerala* [1999 (3) KLT 465], *Nasar v. Malappuram Municipality* [2009 (3) KLT 92], *V.Shivaprasad v. State of Kerala and Others* [2011 (1) KLT 690], *T.V.Gopalakrishnan v. State of Kerala and Others* [2011 (3) KLT 317], *Abdul Kabeer v. Malappuram Municipality* [2012 (3) KLT 106], *Corporation of Thrissur v. Kunjilakutty* [2014 (1) KLT 188] and *Raju S. Jethmalani v. State of Maharashtra and Others* [(2005) 11 SCC 222] and the decisions, rendered by this Court relying on the above decisions, in W.P(C) No.6747/2015, W.P(C)No.3648/2015, W.P(C)No.2512/2015, and W.P(C)No.22153/2013.

5. Considering the fact involved in this writ petition, the decision laid down by the Supreme Court in *Raju S. Jethmalani v. State of Maharashtra and Others* [2005 (11) SCC 222] assumes significance and relevancy. In the above decision, the Apex Court held that the land belonging to private individuals cannot be included in development plans, unless a land is

acquired by the State Government or the Municipal Corporation. The State Government cannot deprive the land owner of beneficially using his property, under the guise of DTP scheme, when no steps have been taken to actually implement the Scheme. Further, in *Nazar v. Malappuram Municipality*(2009 (3) KLT 92), this court held as follows:

“If any demand to create a rider over the title of the owner of the property under the pretext of a Town Planning Scheme which has not become operational by acquisition would essentially be oppressive and would not be countenanced on the face of Article 14 of the Constitution of India”.

In W.A. No.1731/2008 dated 14/6/2011 this Court held as follows:

“If in an area earmarked as a residential zone large number of constructions for commercial purposes were permitted whether under orders issued by the Government or not, then the only sensible thing for the Corporation to do is to take a realistic approach by not regarding the area any longer as a residential zone and request the Government to make suitable change in the Master Plan to make it in conformity with ground reality.”

6. Going by the decisions laid down by this Court in W.P(C)No.6747/2015, W.P(C)No.3648/2015, W.P(C)No.2512/2015, and W.P(C)No.22153/2013, it is seen that, in

the same facts and circumstances, this Court remitted back the matter to the concerned Municipalities to reconsider the applications for building permit, which were rejected on the basis of zonal regulations, for fresh consideration and to pass order afresh. I do not find any reason to take a different view in this case also. Needless to say, it is incumbent upon the 2nd respondent to conduct a site inspection to ascertain as to whether the zonal regulations have been observed in that locality and whether the petitioner alone is discriminated by depriving her from exercising her right to construct a residential house.

7. The learned Standing Counsel for the respondent, on instruction, fairly submitted that, in the light of the judgment passed by this Court, the respondent Municipality is ready to reconsider the application seeking building permit filed by the petitioner after conducting the site inspection.

8. Hence Ext.P6 will stand set aside. The 2nd respondent is directed to conduct a site inspection so as to ascertain whether zonal regulations have been

observed in that area and to assess the ground reality, notwithstanding the classification of zones. After inspection, the 2nd respondent will pass order afresh within a period of one month from the date of production of a copy of this judgment.

This writ petition is disposed of accordingly.

Sd/-
K. HARILAL, JUDGE

okb.