

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 16TH DAY OF DECEMBER 2015/25TH AGRAHAYANA, 1937

WP(C).No. 37080 of 2015 (H)

PETITIONER:

N.L.THUSHAR, AGED 32 YEARS,
S/.N.B.LALSON, RESIDING AT NADUPARAMBIL HOUSE,
FATHIMA NAGAR P.O., EAST FORT, THRISSUR 680 005.

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

RESPONDENT(S) :

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

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

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
16-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 37080 of 2015 (H)

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXT.P1: TRUE COPY OF THE TAX RECEIPT ISSUED IN FAVOUR OF THE PETITIONER BY THE VILLAGE OFFICER, THRISSUR VILLAGE OFFICE DATED 10/8/2015.
- EXT.P2: TRUE COPY OF THE ORDER PASSED BY THE 2ND RESPONDENT DATED 18/11/2015.
- EXT.P3: TRUE COPY OF THE JUDGMENT IN W.A. NO.1731/2008 DATED 14/6/2011.
- EXT.P4: TRUE COPY OF FEW PHOTOGRAPHS DEPICTING THE LIE OF THE PROPERTY DATED NIL.
- EXT.P5: TRUE COPY OF THE JUDGMENT IN WPC NO.25252/2015 ON THE FILE OF THIS HONOURABLE COURT DATED 19/8/2015

RESPONDENT(S) ' EXHIBITS: NIL

//TRUE COPY//

P.A. TO JUDGE

DST

K. HARILAL, J.

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W.P. (C) No.37080 of 2015

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Dated this the 16th day of December, 2015

J U D G M E N T

The petitioner is the owner in possession of 40 cents of land comprised in Sy. No.1763/3 of Thrissur Village in Thrissur District, within the limits of the 1st respondent, Corporation. A double storied building exists in the above the said property and the petitioner wants to construct a commercial building therein, after demolishing the existing structure. The petitioner, accordingly, applied to the 1st respondent for building permit. According to the petitioner, to his shock and dismay, the 2nd respondent rejected the application, stating that as per the DTP scheme, the area has been categorised as residential and hence, building

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permit could not be granted by Ext.P2 order. The legality and propriety of the denial of building permit, as per Ext.P2 is under challenge in this Writ Petition.

2. Heard the learned counsel for the petitioner in extenso.

3. Learned counsel for the petitioner advanced arguments, challenging the denial of building permit under the guise of the DTP scheme, which was formulated long years back and has not been implemented so far. According to the learned counsel, building permit cannot be denied under the guise of such a scheme formulated long years back and could not be implemented despite the long lapse of time. To support the above arguments, the learned counsel drew my attention to the decisions in *Raju S. Jetmalani v. State of Maharashtra and Ors.* [(2005) 11 SCC 222] and *Nazar v. Malappuram*

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Municipality [2009(3) KLT 92] and *Saidu P. v. State of Kerala and Ors.* [2010 (3) KHC 974] and *Gopalakrishnan T.V. v. State of Kerala and Ors.*[2011 (3) KHC 162].

4. The short question that arises for consideration is, whether the denial of building permit can be justified for the reason stated in Ext.P2. Going by Ext.P2, it is seen that the sole reason stated for denying the building permit is that the said property is situated in the residential zone, as per the DTP scheme formulated by the Corporation and accepted by the Government and for that reason no permission can be granted for the construction of a commercial building, as the same will violate the zonal regulations. Going by Ext.P4 photographs, it is seen that the said property is situated in the middle of an area, where huge commercial buildings are in existence.

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The genuineness of the photographs is not challenged by the respondent Corporation. It is discernible from the photographs that the zonal regulations have not been fully implemented, within the respondent Corporation. In the above view of the matter, decision laid down by the Supreme Court in ***Raju S. Jetmalani's case (Supra)*** assumes significance and relevancy in the instant case. In the above decision, the Apex Court held that 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's case (Supra)* this Court held as follows:

"if any demand to create a rider over the title of the owner of the property under the pretext

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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 *Saidu P's case (Supra)* this Court held that mere proposal under a Town Planning Scheme, without implementation of the same cannot be a ground for rejection of an application for building permit. In *Gopalakrishnan's case (Supra)* this Court held as follows:

"If an area is earmarked as a residential zone number of constructions for commercial purpose 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"

5. In view of the above decisions, it can be safely concluded that the denial of building permit under the guise of the DTP scheme, which has not been implemented so far, is unreasonable and unjust, warranting interference of this Court under Article

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226 of the Constitution of India.

6. In the above view of the matter, Ext.P2 will stand set aside and the respondent Corporation is directed to consider the application afresh, in the light of the decisions referred above, at the earliest, at any rate, within a period of one month from the date of receipt of a copy of this judgment.

This Writ Petition is disposed of accordingly.

Sd/-

**K. HARILAL,
JUDGE**

DST

//True copy//

P.A. To Judge