IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 08TH DAY OF DECEMBER 2020 / 17TH AGRAHAYANA, 1942

WP(C).No.38715 OF 2017(L)

PETITIONERS:

1 DR.SUJAY RANGA, AGED 39 YEARS, S/O.RANGA,
OMEGA HOUSE, NEMAM, PAPPANAMCODU,
THIRUVANANTHAPURAM.

2 BIBY GEORGE, AGED 47 YEARS, S/O.CHACKO,
TC.NO.36/510, SEEVELI NAGAR, KAITHAMUKKU,
PETTAH P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.V.M.KRISHNAKUMAR

RESPONDENTS:

1 THE REGIONAL TOWN PLANNER,
OFFICE OF THE REGIONAL TOWN PLANNER, UPPER ZONE,
HOUSING BOARD BUILDING, SANTHI NAGAR,
THIRUVANANTHAPURAM, PIN - 695 001.

2 THIRUVANANTHAPURAM CORPORATION,
REPRESENTED BY ITS SECRETARY,
CORPORATION OFFICE, THIRUVANANTHAPURAM,
PIN - 695 001.

BY ADVS. SRI.P.K.MANOJKUMAR, SC, TVPM CORPORATION
SRI.M R DHANIL, GP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08.12.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 8th day of December 2020

The 1st petitioner and his wife are the owners of landed property comprised in Sy.No.1171/1 and the 2nd petitioner is the owner of landed property comprised in Sy.Nos. 1371/1/1 and 1371/2/2 of Kadakampally Village in Thiruvananthapuram District.

2. The petitioners proposed to construct residential building. Admittedly, the area comes under the Green strip/ Agriculture reservation zone of the General Town Planning Scheme for Thiruvananthapuram, sanctioned as early as in the year 1971. The above Scheme was varied in the year 2007. As per the varied norms, single family residential buildings of floor area, upto 300 M^2 is permissible with the concurrence of the Regional Town Planner. The petitioners' application for the concurrence has been rejected by Ext.P6 order, dated 03.10.2017, by the 1st respondent. That is under challenge in this writ petition. The reason for rejection is that the petitioners' land is a part of an open space and therefore,

concurrence cannot be granted. In the Statement filed by the Regional Town Planner, in para.3 and 4, it is stated as follows:

> *3. In this case, it is submitted that an application was forwarded by the Secretary, Thiruvananthapuram Corporation vide letter No. ZK2/BA/55/2011 dated 04.05.2011 for concurrence for constructing a residential building by the petitioner on the land bearing the survey number mentioned above, which is in the Green strip/Agricultural reservation zone mentioned above. The committee decided not to grant concurrence as the area is not substantially built up with residential building which is a pre requisite for giving concurrence for permitting residential building in the green strip/agricultural zone as detailed in the preceding paragraph. This was informed to the Corporation vide Ltr No.E/2127/C-185/11 dated 03.09.11. Again the same the applicant submitted a review petition vide Ltr No. nil dated 16.02.2012 to this office directly for reconsidering the application. Upon consideration of this review application, the committee decided not to change the previous decision of the committee as the area was still having the same character as before.*
>
> *4. Recently, the application was again submitted vide Ltr No. ZK2/BA/55/11 dated nill of Thiruvananthapuram Corporation. The committee held on 30.08.2017 decided not to grant concurrence as the plot was still a part of a vast space, which is not substantially developed with lawful residential buildings and as the same is also abutting a large extent of floodable low lying land. This was informed to the corporation and the applicant vide ltr. No.E/1601/C-145/17 dated 03.10.2017 of the Town Planner.*

3. In fact, this Court had an occasion to consider the similar claim in respect of land in Sy.No.1371/1-2 & 1 of Kadakampally Village and also in W.P.(C) Nos.17639 of 2015 and 13955 of 2016 in respect of the same Village. This Court, noting

that the Scheme has not been implemented despite the fact that it is pending from 1971 onwards, interfered with the decision of declining concurrence and directed the Regional Town Planner to issue concurrence.

4. In the light of the above, I am of the view that the petitioners herein are also entitled to the benefits of the judgment of this Court in W.P.(C) Nos. 17639 of 2015 and 13955 of 2016.

5. Accordingly, the impugned order is set aside. The 1st respondent is directed to issue concurrence to the petitioners, within a period of one month and the Corporation shall also consider the application for building permit within a further period of one month.

The writ petition is disposed of as above.

Sd/-
A.MUHAMED MUSTAQUE
JUDGE

akv

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1.	**TRUE COPY OF THE SALE DEED NO.2452/2007 OF THIRUVANANTHAPURAM SUB REGISTRY.**
EXHIBIT P2.	**TRUE COPY OF BASIC TAX RECEIPT DATED 26.07.2016.**
EXHIBIT P3.	**TRUE COPY OF THE CIRCULAR NO.8911/R.D.2/08/LSGD DATED 06.02.2008.**
EXHIBIT P4.	**TRUE COPY OF THE CIRCULAR NO.64015/R.D.2/2010/LSGD DATED 10.01.2011.**
EXHIBIT P5.	**TRUE COPY OF THE JUDGMENT IN WP(C) NO.13955/2016 DATED 22.06.2017.**
EXHIBIT P6.	**TRUE COPY OF THE LETTER OF THE REGIONAL TOWN PLANNER DATED 03.10.2017.**
EXHIBIT P7.	**TRUE COPY OF THE LETTER OF THE REGIONAL TOWN PLANNER DATED 17.03.2017.**
EXHIBIT P8	**TRUE COPY OF THE PROCEEDINGS OF REGIONAL TOWN PLANNER DATED 30.6.2015.**
EXHIBIT P9	**TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WP(c)NO.17639/2015 DATED 20.07.2015.**

RESPONDENT'S/S EXHIBITS : NIL.

//TRUE COPY//
P.A. TO JUDGE