

---

**(2009) 06 KL CK 0065**  
**In the High Court Of Kerala**  
**Case No : WP (C) . No. 9585 of 2007 (N)**

A.P. Sibunisa

APPELLANT

Vs

The Secretary, Thalassery Municipality

RESPONDENT

---

**Date of Decision :** 01-06-2009

**Acts Referred:**

Land Acquisition Act, 1894 — Section 4(1)

**Citation :** (2009) 06 KL CK 0065

**Hon'ble Judges :** S. Siri Jagan, J

**Bench :** Single Bench

**Advocate :** Grashious Kuriakose, for the Appellant; I.V. Pramod, for the Respondent

---

## Judgement

S. Siri Jagan, J.—The petitioner obtained Ext.P1 permit for alteration of an existing building from the respondent. The petitioner was directed to show cause why construction made pursuant to Ext.P1 permit should not be directed to be demolished on the ground that it violates the DTP Scheme in force. Despite Ext.P4 objections by the petitioner, again Ext.P5 show cause notice had been issued to the petitioner. Again petitioner filed Ext.P6 reply. Thereafter, by Ext.P7 order, the respondent cancelled Ext.P1 permit primarily on the ground that the permit itself was granted without noticing the DTP Scheme which provides for a road by the side of the petitioner's property, for which the petitioner's property is to be acquired. Petitioner challenged the same before the Tribunal which resulted in Ext.P8 order whereby the Tribunal passed the following order:

In the result, the appeal is dismissed with the direction to the Secretary, Thalassery Municipality that if the appellant files an affidavit within 30 days from today undertaking to effect such alterations to the building directed to be demolished as per Order No. E5-BA-241/04-05 dated 31.1.06 so as to make it in tune with the statutory provisions and apply for its regularisation within 4 months from today and submits regularisation application accordingly, further action pursuant to that order shall be taken only after passing orders on that

application after rendering her an opportunity of being heard.

2. Petitioner thereafter filed Ext.P9 affidavit which was rejected by Ext.P10 on the ground that the same does not conform to the directions in Ext.P8 order of the Tribunal. Petitioner has now filed this writ petition challenging the impugned orders and seeking the following reliefs:

(a) issue a writ of certiorari or other appropriate writ, order or direction calling for the records of the case and to quash the originals of Exts.P3, P5, P7 P8 and P10 orders to the extent they are against the petitioner.

(b) issue writ of mandamus or other appropriate writ, order or direction directing the respondent to accept Ext.P9 affidavit and to act upon it.

(c) direct the respondent not to demand demolition of any portion of the petitioner's building till he widening of the road is undertaken.

3. The petitioner's contention is that the DTP Scheme itself has become impractical by passage of time and in fact this Court has in several writ petitions held that on the ground of existence of such a DTP Scheme, persons cannot be prevented from getting permit for construction of building. Petitioner would submit that the DTP Scheme itself has expired on 25.08.08.

4. I have considered the rival contentions in detail.

5. In WP(C) No. 21901/07 this Court has held thus:

Sri. T.M. Abdul Latheef, counsel for the petitioner submits that even without examining the question as to whether the view of the Tribunal for Local Self Government Institutions which seems to be taken on the basis of a judgment of this Court, relief can be given to the petitioner on the basis of the principles laid down in *Raju S. Jethmalani and Others Vs. State of Maharashtra and Others*, and by the Division Bench of this Court in *Padmini v. State of Kerala* 1999 (3) KLT 465.

The application submitted by the petitioner for permit for the construction of a commercial building was rejected by the Thalassery Municipality on the reason that the property where the building is proposed to be constructed falls within the area of the DTP Scheme, where a 20 meter road is proposed. Obviously, all these years, the DTP Scheme in so far as it pertains to the 20 meter wide road has not been implemented by utilising any portion of the petitioner's property. The Full Bench of this Court in *Francis v. Chalakkudy Municipality* 1999 (3) 560 held that under comparable circumstances it can be held that the scheme has become oppressive. Concededly, no notification has so far been promulgated u/s 4(1) of the Land Acquisition Act for acquisition of any portion of the petitioner's property. The Supreme Court also has practically approved these principles in *Raju Jethmalani's* case (*supra*). In my opinion the local authority is not justified in insisting that the petitioners who are co-owners of the property must keep their property idle on the reason that there is a proposal to have a 20 meter road

as per the DTP scheme. Setting aside Exts.P3 and P6, I dispose of the Writ Petition issuing the following directions:

Petitioners are directed to file an affidavit undertaking that in the event of a notification u/s 4(1) of the Land Acquisition Act for acquisition of any portion of their property being promulgated within a period of 9 months from today, they will not claim any compensation for the building to be put up by them on the strength of the permit to be issued to them. Once such an affidavit is filed, the Municipality will reconsider the plan submitted by the petitioners for construction of the commercial building and pass fresh orders. If the plan is otherwise in order, they will grant that application and issue permit. In other words, existence of the proposal to have a 20 meter wide road as per the DTP scheme, will not be a reason for rejecting the plan. It is made clear that even after the expiry of 9 months in the event of any genuine public purpose it will be open to the Municipality to acquire the property in question. Under such an event the petitioners will be entitled for adequate compensation not only for the land but also for the building to be constructed by them.

6. Since facts of both cases are similar and I have no reasons to take a different view, I am of opinion that the petitioner is entitled to similar reliefs as in that case. Accordingly, the writ petition is disposed of on the following terms:

The impugned orders are quashed. The petitioner is directed to file an affidavit undertaking that in the event of a notification u/s 4(1) of the Land Acquisition Act for acquisition of any portion of her property within one year from today, she will not claim any compensation for demolition of that part of the building which has been constructed on the basis of Ext.P1 permit. On filing of such an affidavit, respondent shall permit the petitioner to continue the construction as per Ext.P1 permit. In other words, existence of the proposal to have a 20 meter wide road as per the DTP scheme, will not be a ground for not permitting the petitioner to continue construction as per Ext.P1 permit. It is made clear that even after the expiry of one year, in the event of any genuine public purpose arising requiring the acquisition of the petitioner's property, it would be open to the Municipality to take steps to acquire the property where the building as per Ext.P1 permit is situate.

The writ petition is disposed of as above.