

(2023) 02 KL CK 0148

In the High Court Of Kerala

Case No : Writ Petition (C).No.34134 Of 2022

Herik Ajith Kumar George

APPELLANT

Vs

Thalassery Municipality, Represented By Its Secretary,
Thalassery.P.O, Kannur District 670101

RESPONDENT

Date of Decision : 14-02-2023

Acts Referred:

Citation : (2023) 02 KL CK 0148

Hon'ble Judges : Anu Sivaraman, J

Bench : Single Bench

Advocate : C.P.Peethambaran

Judgement

Anu Sivaraman, J

1. This writ petition is filed challenging Exhibit P4 order of the 3rd respondent and seeking directions to the respondents to issue building permit to the petitioner and approve the plan so as to enable him to construct a residential building in his property.
2. Heard the learned counsel for the petitioner and the learned standing counsel appearing for the respondents.
3. It is submitted by the learned counsel for the petitioner submits that the petitioner purchased 12 cents of land with an old residential building therein in the jurisdiction of the 1st respondent Municipality by Exhibit P1 sale deed. Since the building was old and dilapidated the petitioner submitted an application for building permit, which was rejected by Exhibit P4 order on the ground that the property is included in the public and semi public zone in the development plan for Thalassery town of the year 2007. The learned counsel for the petitioner submits that there are several buildings in existence in the vicinity and there is absolutely no justification for the refusal to grant building permit to the petitioner.
4. A statement has been placed on record by respondents 1 and 2 wherein it is

contended that a development plan was sanctioned for the Thalassery town on 29.11.1983 and the same was varied by Government order dated 3.1.2008 and notified in the Gazette dated 5.8.2008. It is submitted that the property of the petitioner is included in the public and semi public zone in the variation plan of the year 2008. It is stated that the Municipality has taken steps to make appropriate changes in the master plan, which is pending consideration and that it is only after the Master Plan is revised that the request of the petitioner can be considered. A decision of a Division Bench of this Court in Registered Town Planner and another v. Muhammed Rasheed and others [2019 (3) KLT 433] is also relied on by the learned counsel for the respondent.

5. I have considered the contentions advanced. It is not disputed that the property purchased by the petitioner contained a residential building, as is evidenced by Exhibit P1 itself. The site plan produced by the petitioner would also show that there are other buildings in the vicinity of the petitioner's property. The inclusion of the property as public or semi public zone by itself cannot result in a complete freezing of the right of the petitioner to use the property in question, unless steps are taken for acquisition of the property and the use of the property as public property by the municipality. In the instant case, though it is contended that a property is included as public/semi-public zone in the revised DTP Scheme, there is no contention that any steps have been taken pursuant to the said scheme to use the area in question for any public purpose.

6. In the above factual situation, I am of the opinion that the decision relied on by the learned counsel for the respondent has no application in the instant case and the mere fact that a DTP Scheme in force cannot result in a complete embargo on the usage of the property in question, especially in the light of the specific contention raised by the petitioner that there are several other buildings in the vicinity as well.

7. In the above view of the matter, Exhibit P4 is set aside. There will be a direction to the respondent to take up the building permit application submitted by the petitioner and to consider and pass orders on the same specifically noticing the fact that there was a building in existence in the property. The application shall be considered strictly in accordance with the building rules in force and shall not be rejected on the ground that the property is included in the public/semi public zone, since no steps are have been taken by the Municipality for effectuating such zoning by appropriate land acquisition proceedings. Order shall be passed on the application for building permit in the light of the Kerala Municipality Building Rules, 2019 within a period of three weeks from date of receipt of the copy of the judgment.

Writ petition is ordered accordingly.