

(2017) 06 KL CK 0012
In the High Court Of Kerala
Case No : 9188 of 2017 (W)

P.S.SANDHYA KUMARI

APPELLANT

Vs

THE NEDUMANGADU MUNICIPALITY

RESPONDENT

Date of Decision : 14-06-2017

Acts Referred:

Citation : (2017) 06 KL CK 0012

Hon'ble Judges : K.Vinod Chandran

Bench : SINGLE BENCH

Advocate : T.A.UNNIKRISHNAN?T.R.KANNAN

Judgement

1. The petitioner is aggrieved with the rejection of the building permit application by Exhibit P1.

2. The petitioner filed an application before the 1st respondent-Municipality, for constructing a residential building in a property having an extent of 02.15 Ares in Nedumangad Village. The petitioner filed the application on 27.05.2016. The rejection was made by Exhibit P1 by order dated 24.06.2016 for the reasons that there is a Detailed Town Planning Scheme [for brevity "DTP Scheme"] for widening of the road passing in front of the property of the petitioner and that in the DTP Scheme it was indicated that the property in question is recorded as "area to be acquired/reserved for public and semi-public. The other reason stated is that on inspection of the property there are variations in the plot measurement and re-survey sketch as also the present

site plan and the site plan submitted along with the application.

3. One of the grounds taken by the Municipality, obviously, is for the reason that if construction is allowed, then the Municipality would have to pay compensation for the improvements made in the property also. It is not clear as to when the DTP Scheme was introduced. The petitioner has produced Exhibit P2, which would indicate that the DTP Scheme was available in 2014. However, no steps have been taken till date to acquire the property. A Division Bench of this Court in *Padmini v. State of Kerala* [1999 (3) KLT 465] and the Hon"ble Supreme Court in *Raju S. Jethmalani v. State of Maharashtra* [(2005) 11 SCC 222] have deprecated the practise of interdicting constructions in a property on the basis of obsolete DTP Scheme which are kept pending without implementation.

4. In the present case, the petitioner filed an application for building permit in May, 2016. Even now there is no acquisition proceedings initiated. In the totality of circumstances, this Court is of the opinion that Exhibit P1 is unsustainable to the extent it makes the rejection on the grounds of the DTP Scheme. Ext.P1 to that extent is set aside. However, with respect to the 3rd defect pointed out in the impugned order, the petitioner would be entitled to file a rectified application. The Municipality shall consider the application de hors the proposal within a period of one month from the date of receipt of a certified copy of this judgment. It is made clear that if any acquisition proceedings are initiated within one year from today, then the petitioner would not be permitted to make a claim for compensation for the improvements made in the land acquired. However the proceedings for acquisition are initiated only after one year, necessarily the petitioner could claim compensation for the improvements made.

The writ petition is disposed of as above. No costs.