

(2014) 06 KL CK 0185
In the High Court Of Kerala
Case No : WP(C). No. 20676 of 2013 (H)

Ummathur Zainaba

APPELLANT

Vs

Malappuram Municipality

RESPONDENT

Date of Decision : 02-06-2014

Acts Referred:

Citation : (2014) 06 KL CK 0185

Hon'ble Judges : C.T. Ravi Kumar, J

Bench : Single Bench

Advocate : Babu S. Nair and Sri K. Rakesh Advs, Advocate for the Appellant; Thomas John Ambookan, Government Pleader for R2 and R3, Advocate for the Respondent

Judgement

C.T. Ravikumar, J.—It is the rejection of an application for building permit as per Ext.P4 order that constrained the petitioner to file the captioned writ petition. The petitioner is the owner in possession of 15 cents of property comprised in Survey No. 421/12 of Malappuram Village. She filed an application for constructing a residential building in the property. It is that application which was rejected as per Ext.P4 assigning the reason that the land in question abuts the National Highway and that there is a proposal to widen the same. It is challenged on the ground that in the light of the decision of this Court in Padmini and Others Vs. State of Kerala and Another an application for building permit could not have been and should not have been rejected assigning such a reason. Subsequently, another Division Bench of this Court in 2014 (1) KLT 188 (Ker) restated the same and held that a mere proposal for acquisition for widening a road cannot be a reason for rejecting an application for building permit, it is contended.

2. I have heard the learned counsel for the petitioner and also the learned Government Pleader.

3. A scanning of the impugned order would reveal that the application submitted by the petitioner for building permit was rejected on the ground that the property in question abuts the National Highway and there is a proposal to widen the

same. A counter affidavit has been filed on behalf of respondents 2 and 3. I have carefully gone through the statements in the counter affidavit. There is conspicuous absence of any statement to the effect that in furtherance of the said proposal acquisition proceedings have been initiated. If pursuant to the proposal or a scheme no steps were taken to effectuate the same there cannot be any justification in depriving the petitioner from enjoying the property in whichever manner she likes without violating any provisions of law. The action on the part of the respondents would virtually violate the property right of the petitioner. As submitted by the learned counsel for the petitioner the issue involved in this case is squarely covered by the decision of this Court in Padmini's case (supra). Going by the said decision, merely based on such a proposal a land owner cannot be denied the right to effect construction on his own property in accordance with law. True that, at a later point of time if acquisition proceedings are to be initiated for a public purpose certainly, it can be done in accordance with law. However, the fact that there is a proposal for widening a road cannot be a reason for rejecting an application when no steps were admittedly taken by the concerned respondents to effectuate a DTP scheme by acquiring properties. In the said circumstances and taking note of the decisions in Padmini's case (supra) and Kunhilakutty's case (supra) I am of the view that the impugned order is liable to be set aside and the respondents are bound to reconsider the application. In the said circumstances, to enable the respondents to reconsider the matter Ext.P4 is set aside. Consequently, there will be a direction to the respondents to consider the application for building permit submitted by the petitioner afresh and in accordance with the observations made hereinbefore. This shall be done expeditiously, at any rate, within a period of six weeks from the date of receipt of copy of this judgment.