
(2016) 02 KL CK 0039
In the High Court Of Kerala
Case No : WP(C) No. 3472 of 2016 (H)

Vinodkumar V.P. and Others

APPELLANT

Vs

The Palakkad Municipality and Others

RESPONDENT

Date of Decision : 08-02-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 226, Article 300A

Citation : (2016) 02 KL CK 0039

Hon'ble Judges : K. Harilal, J.

Bench : Single Bench

Advocate : Sajan Vargheese K. and Liju M.P., Advocates, for the Appellant; T.C. Suresh Menon, P.S. Appu and A.R. Nimod, Advocates, for the Respondent

Final Decision : Disposed off

Judgement

K. Harilal, J.—1. The petitioners are the title holders in possession of 13.5 cents of land comprised in Sy. No. 635 of Palakkad-II Village by virtue of Ext. P1 sale deed. They wanted to put up their residence in the said plot and submitted an application seeking a building permit for the construction of a residential building. But, the 2nd respondent has rejected the said application, by Ext. P4, stating that in terms of the Detailed Town Planning Scheme ("DTP Scheme"), a road proposes to go through the said survey number, as such, the permit could not be granted" but according to the petitioners, the DTP Scheme has not been implemented so far, even though it was proposed long years back and the matter is pending for consideration only. The legality and propriety, of the reasonings; whereby the petitioners' application for building permit stands rejected, are under challenge in this writ petition.

2. Heard the learned counsel for the petitioners and the learned Sanding Counsel appearing for the respondent/Municipality.

3. Going by Ext. P4 order, it is seen that the building permit has been rejected, on the sole reason that in terms of the Detailed Town Planning Scheme, a road

proposes to go through the said survey number, as such, the permit could not be granted. Indisputably, even though, the DTP Scheme had been proposed long years back, the same has not been approved or implemented by the competent authorities, so far.

4. In the above view of the matter, the question whether the building permit can be denied on the basis of a mere proposal of DTP Scheme, was considered by the Supreme Court as well as this Court in various decisions, which are given below:

5. In *Raju S. Jetmalani v. State of Maharashtra and Ors.* [, (2005) 11 SCC 222] and *Nazar v. Malappuram Municipality* [, 2009(3) KLT 92] and *Saidu P. v. State of Kerala and Ors.* [, 2010 (3) KHC 974] and *Gopalakrishnan T.V. v. State of Kerala and Ors.*[2011 (3) KHC 162].

6. In the above view of the matter, the decision laid down by the Supreme Court in *Raju S. Jetmalani's* case (Supra) assumes significance and relevancy in the instant case. In the above decision, the Apex Court held that land belonging to private individuals cannot be included in development plans, unless a land is acquired by the State Government or the Municipal Corporation. The State Government cannot deprive the land owner of beneficially using his property under the guise of DTP scheme, when no steps have been taken to actually implement the scheme. Further, in *Nazar v. Malappuram Municipality* [, 2009(3) KLT 92], this Court held as follows:

"if any demand to create a rider over the title of the owner of the property under the pretext of a Town Planning Scheme which has not become operational by acquisition would essentially be oppressive and would not be countenanced on the face of Article 14 of the Constitution of India."

7. In *Saidu P. v. State of Kerala and Ors.* [, 2010 (3) KHC 974] this Court held that mere proposal under a Town Planning Scheme, without implementation of the same cannot be a ground for rejection of an application for building permit. In *Gopalakrishnan's* case (Supra) this Court held as follows:

"If an area is earmarked as a residential zone number of constructions for commercial purpose were permitted whether under orders issued by the Government or not, then the only sensible thing for the Corporation to do is to take a realistic approach by not regarding the area any longer as a residential zone"

8. In *Muhammed Subair v. Corporation of Kozhikode* [, 2015 (3) KHC 307], this Court held that in *Nasar's* case, a learned Single Judge of this Court following the ratio of *Padmini v. State of Kerala* [, 1999 KHC 619], has observed that in so far as the owner of the land is concerned, the acquisition affects his interest only from the issuance of notifications and declarations under the Land Acquisition Act, therefore, any attempt to curb the rights of the owners of lands, until the publication of those statutory notifications and declarations, would result in infraction of the right to property under Art. 300A of the Constitution. It is

further opined that any infraction of that nature would also result in the violation of the equality principle in the matter of enforcement of laws as is enshrined in Art. 14 of the Constitution. It is, in the end, emphatically held that any demand to create a rider over the title of the owner of the property under the pretext of a Town Planning Scheme which has not become operational by acquisition would, essentially, be oppressive and would not be countenanced in the face of Art. 14 of the Constitution. It is also observed that in terms of the ratio laid down in the decisions referred to above, no property right can be interdicted and ipso facto no building permit can be refused on a mere proposal to have certain lands acquired. In other words, contemplation on the part of the officials cannot be a substantive ground to defeat the constitutional right of a person who wants to enjoy his property in the manner he desired fit, albeit, subject to legal limitations.

9. In view of the above decisions, it can be safely concluded that the denial of building permit under the guise of the DTP scheme, which has not been implemented so far, is unreasonable and unjust, warranting interference of this Court under Article 226 of the Constitution of India.

10. In view of the proposition laid down by the Apex Court as well as this Court, in the above decisions, it can be held that until the publication of statutory notifications and declarations under the DTP Scheme with respect to the acquisition of land under the Land Acquisition Act, the building permit cannot be denied so as to create a rider over the title of the owner of the property under the pretext of a Town Planning Scheme which has not become operational by acquisition and the same would be oppressive and would not be countenanced in the face of Art. 14 of the Constitution of India.

11. In this view of the matter, Ext. P4 will stand set aside and the 2nd respondent is directed to consider the application afresh in view of the legal proposition referred above, within a period of one month from the date of receipt of a copy of this judgment.

This writ petition is disposed of accordingly.