

(2023) 12 KL CK 0163

In the High Court Of Kerala

Case No : Writ Petition (C) No. 38879, 36044 Of 2022

V.Unnikrishnan

APPELLANT

Vs

Kozhikode Municipal Corporation

RESPONDENT

Date of Decision : 18-12-2023

Acts Referred:

Kerala Town and Country Planning Act, 2016 — Section 2(g), 2(r), 2(y), 15, 17, 34
Kerala Municipality Building Rules, 2019 — Rule 3(3)

Citation : (2023) 12 KL CK 0163

Hon'ble Judges : Bechu Kurian Thomas, J

Bench : Single Bench

Advocate : Deepu Lal Mohan, Aiswarya, K.Ammunikutty, G.Santhosh Kumar

Final Decision : Dismissed

Judgement

Bechu Kurian Thomas, J

1. These two writ petitions challenge the orders rejecting applications for building permits relying upon the Detailed Town Planning Scheme (for short 'the DTP Scheme') for the area. As per the DTP Scheme, the properties of the petitioners, which are the subject matter of these two writ petitions, fall within the residential zone, while the petitioners had applied for a permit for construction of commercial buildings. Since the issues involved in both these writ petitions are the same, they are considered together and are disposed of by this common judgment.

2. Petitioners in W.P.(C) No.38879 of 2022 are the owners of 13.40 Ares of property in Re-Sy. No.649 of Block No.15 of Kasaba Village, Kozhikode while the petitioner in W.P.(C) No.36044 of 2022 is the owner of 2.5487 Ares of property in Re-Sy. No.298 of Block No.11 of Kasaba Village, Kozhikode.

3. In both cases, the properties are situated in residential zones as per the DTP Scheme, while the property involved in W.P.(C) No.38879 of 2022, is, as per the Master Plan, situated in a commercial zone and the property in W.P.(C) No.36044

of 2022 is situated in a commercial cum residential zone.

4. Petitioners allege that their applications for building permits have been rejected, referring to the DTP Scheme created in 1987, which has practically become redundant. It is further pleaded that in the existing approved Master Plan 2035 for Kozhikode City, the areas in question are all treated as commercial zones or mixed zones and therefore, rejection of the applications for building permits on the basis of the redundant DTP Scheme deprives the right to property of the petitioners. Petitioners have also relied upon other instances where this Court interfered and directed applications for building permits to be considered on the basis of the new Master Plan of 2035 and contrary to the DTP Scheme.

5. A counter affidavit has been filed by the Corporation as well as the Town Planner separately.

6. In W.P.(C) No.38879 of 2022, respondents 1 and 2 have contended in their counter affidavit that Ward 17, as per the DTP Scheme, is a residential zone and only commercial buildings upto 150 Sq.m alone are permitted. On a perusal of the application of the petitioners, apart from various violations of the Building Rules, the proposal was to construct a commercial building of 3976.59 Sq.m. According to the respondents, as per the provisions of the Kerala Town and Country Planning Act, 2016 (for short 'the Act') read with Rule 3(3) of the Kerala Municipality Building Rules, 2019 (for short 'KMBR'), the applications could not have been allowed. It was also stated that the DTP Scheme is required to be implemented since it sanctions controlled development of the scheme area as per the zones, and the regulatory restrictions for construction activities are necessary by way of zoning regulations. The respondents have pleaded that it is unlawful to issue building permits violating the existing DTP Scheme.

7. In the counter affidavit of the District Town Planner, it is stated that in any planning effort, future development and well-being of the people are considered, and the planning is done for public interest rather than individual interest. As per the zoning regulations of the DTP Scheme, the buildings proposed to be constructed as per the applications of petitioners can be permitted only within the limits allowed in a residential zone with the authority and approval of the Chief Town Planner. It was also stated that within the limits of permitted activities, the Chief Town Planner can give concurrence. It is further stated that the Master Plans are Town Planning Schemes prepared for a larger area framed at the macro level, while DTP Schemes are prepared for a smaller area at the micro level. It was also stated that under the DTP Schemes, micro-level plans are prepared based on detailed study and micro level data analysis for the specific purpose of small developmental areas. It was also pointed out that as per the statute, the Detailed Town Planning Scheme shall prevail over the provisions of the Master Plan where both plans are in force in an area, and therefore petitioner cannot claim that the proposals in the DTP Scheme are not envisaged in the Master Plan.

8. Sri. Deepu Lal Mohan, the learned counsel for the petitioners, vehemently contended that this Court had been granting permissions in various cases after noticing the redundancy of the Master Plan or DTP Scheme on noticing the buildings that have come up in the locality. According to the learned counsel, the statutory provisions contemplate three schemes, which include a Master Plan, a Spatial Perspective Plan, and a Detailed Town Planning Scheme. Attention to the definitions provided in sections 2(r), 2(y) and 2(g) of the Act were invited, apart from sections 15, 17 and 34 of the Act. The learned counsel vehemently contended that, due to various constructions already put in place, in and around the locality, petitioners' applications ought to have been considered based upon the Master Plan for 2035, which is already approved, and not on the basis of a redundant DTP Scheme.

9. Smt. Bindumol Joseph, learned Standing Counsel for the Municipality, as well as Smt. K. Amminikutty, learned Senior Government Pleader, submitted that the DTP Scheme is given predominance over the Master Plan as per the Act and, therefore, reference to the Master Plan is not decisive or conclusive. They relied upon the decisions in *State of Kerala v. Shareef* (2021 (2) KLT 338) and *Regional Town Planner v. Muhammed Rasheed* (2019 (3) KLT 433) and submitted that the DTP Schemes are created in public interest, and hence the private interest of the landowners will have to yield to the overriding public interest.

10. I have considered the rival contentions.

11. Though in various judgments, prior to the coming into force of the Act of 2016, this Court had referred to the redundancy of DTP Schemes and permitted constructions to come up despite the existence of the DTP Scheme, those judgments cannot be relied upon after the coming into force of the Act. The Act of 2016 has brought significant changes, especially through section 113 of the Act. By virtue of the provisions of section 113 of the Act, even in cases where a new Master Plan has come into force, the earlier DTP Scheme has been protected, and the same will remain in existence.

12. In fact, in *State of Kerala v. Shareef* (2021 (2) KLT 338), a Division Bench of this Court noticed the aforementioned and observed that "On an analysis of the said provision it is clear that a master plan cannot exist by itself without a scheme since the conjoint expression 'and' is used denoting that only a master plan and detailed town planning scheme together can operate in the field, which is the scheme of S.61 of Act 2016.As pointed out earlier, a new master plan has come into force, however, the detailed town planning scheme, in consequence to the master plan so introduced, have not come into force, and thereupon, the old and existing detailed town planning scheme, protected under S.113 of Act 2016, will come into play."

13. In this context, it is appropriate to observe that when a scheme is propounded, if courts start issuing directions permitting constructions to be put up without reference to the scheme, it would destroy the very purpose and

object of the scheme that has been prepared. Of course, the right to construct a building inheres in every owner. However, the same can be subject to reasonable restrictions.

14. A development scheme and zoning regulations are essential in the changing scenario of building constructions and property usage. If the comfort of living in residential areas and the construction of commercial buildings in tune with the development schemes of the town needs to be protected, zoning regulations have to be given due importance. Rampant constructions without heed to zoning regulations will affect the planned development of a town. The planned development of a town is essential for the future growth of an area. The micro-level plans for development are made in the DTP Schemes, while the Master Plans provide for schemes to a larger extent. If the private interest of an individual is given predominance over the public interest, the same would cause prejudice to the development of the State itself. It is taking into reckoning these aspects that the detailed town planning schemes and the Master Plans are prepared.

15. Notwithstanding the above, with the change in the nature of the use of land, it is necessary that the detailed town planning schemes are updated. However, a direction by a court to grant permission for construction, contrary to the zoning regulations or the DTP Scheme in force, can affect the development of the area in the future. Therefore, while issuing directions permitting constructions contrary to the detailed town planning schemes or the Master Plans, the courts must always be cautious. The schemes and the plans that are framed cannot be discarded by the courts or be directed to be ignored.

16. In the decision in *Regional Town Planner v. Muhammed Rasheed* (2019 (3) KLT 433), it was observed that in an area that has been developed in accordance with the scheme that was validly prepared and duly notified, future constructions would have to adhere to the terms of the scheme and the plans approved thereunder. It was further stated that this must be so unless and until the scheme itself is altered or varied by the State Government in accordance with the provisions of the Act. The mandate and purport of the scheme so framed assumes the nature of a law that regulates future construction in the area and would also bind subsequent purchasers of land and users thereof. It may not also be out of place to mention, in this context, that the earmarking of the areas as residential, industrial, commercial, agricultural or keeping apart areas for parks, roads etc., is an exercise that is done in public interest and hence the private interest of the land owners who seek to put up particular constructions would have to necessarily yield to the overriding public interest that informs a provision of the DTP Scheme.

17. The few instances where this Court has directed, through some of its decisions, to consider applications for building permits, dehors the DTP Scheme, are not reasons to issue directions in similar other cases. In all those cases, the directions were issued either before the Act came into force or without noticing

the effect of section 113 of the Act. Therefore, those decisions cannot be a reason to issue similar directions.

18. In the above view of the matter, I find no reason to interfere with the impugned orders.

Hence, these writ petitions are dismissed.