

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY, THE 31ST DAY OF MARCH 2015/10TH CHAITHRA, 1937

WP(C).No. 3140 of 2015 (N)

PETITIONERS:

- 
1. AHMED NAZEER, AGED 46 YEARS,  
S/O.K.M.AHMED HAJEE,  
KOCHUPADEETTATHIL KARUVATTA NORTH P.O.,  
ALLEPPEY DISTRICT,  
REPRESENTED BY HIS POWER OF ATTORNEY HOLDER,  
ABDUL AZEEZ, RESIDING AT XV/77, THAZHCHAYIL,  
NEAR FIRE STATION, CHANGANACHERRY - 686 101.
  2. AZMI NAZEER, AGED 36 YEARS,  
W/O.AHMED NAZEER,  
KOCHUPADEETTATHIL KARUVATTA NORTH P.O.,  
ALLEPPEY DISTRICT,  
REPRESENTED BY HIS POWER OF ATTORNEY HOLDER,  
ABDUL AZEEZ, RESIDING AT XV/77, THAZHCHAYIL,  
NEAR FIRE STATION, CHANGANACHERRY - 686 101.

BY ADV. SRI.A.A.MOHAMMED NAZIR

RESPONDENTS:

- 
1. CORPORATION OF COCHIN,  
CORPORATION OFFICE, P.B.NO.1016, ERNAKULAM - 682 011  
REPRESENTED BY ITS SECRETARY.
  2. GREATER COCHIN DEVELOPMENT AUTHORITY,  
P.B.NO.2012, KADAVANTHARA, COCHIN - 682 020  
REPRESENTED BY ITS SECRETARY.

R2 BY ADV. SMT.K.R.KRISHNAKUMARI, SC, GREATER COCHIN  
DEVELOPMENT AUTHORITY

R1 BY ADV. SRI.PRAVEEN K. JOY

R BY SRI.P.K.SOYUZ,SC,COCHIN CORPORATION

R BY SMT.K.R.KRISHNAKUMARI, SC, GREATER COCHIN DEVELOPM

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
31-03-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

WP(C).No. 3140 of 2015 (N)

-----

: 2 :

**APPENDIX**

PETITIONERS' EXHIBITS :

-----

EXHIBIT P1. TRUE COPY OF THE NOTICE DATED 13.10.2014 ISSUED BY THE CORPORATION OF COCHIN.

EXHIBIT P2. TRUE COPY OF THE LETTER DATED 04.12.2014 RECEIVED BY THE PETITIONERS FROM THE EAST ZONAL OFFICE OF THE CORPORATION OF COCHIN.

EXHIBIT P3. TRUE COPY OF THE APPLICATION DATED 11.12.2014 SUBMITTED BY PETITIONERS BEFORE ADDITIONAL TAHSILDAR, KANAYANNOOR TALUK.

RESPONDENTS' EXHIBITS:

-----

EXHIBIT R2: TRUE COPY OF THE LETTER DATED 23.04.2010 SENT BY THE SECOND RESPONDENT TO THE SECRETARY TO GOVERNMENT, LOCAL SELF GOVERNMENT DEPARTMENT ALONGWITH THE REMARKS OF THE GOVERNMENT.

EXHIBIT R2(a): TRUE TRANSLATION OF EXHIBIT R2.

/True Copy/

P.A to Judge.

rv.

DAMA SESHADRI NAIDU, J.

-----  
W.P. (C) No. 3140 of 2015 (N)  
-----

Dated this the 31<sup>st</sup> day of March, 2015.

### JUDGMENT

The petitioners, desirous of constructing a three storied building in their properties, filed an application on 18.09.2012 before the respondent Corporation for a building permit. When it was rejected through Ext.P2, they have filed the present writ petition.

2. The learned counsel for the petitioners has submitted that Ext.P2 contains two objections: that the petitioners have to get their property surveyed and submit the sketch to the Corporation for ascertaining the boundaries of the property; that the petitioners' land on which the constructions are proposed to be raised, falls under the Road Land Bank Project, and as such, no permission can be granted -- contradictory as they may seem.

3. The learned counsel has also contended that insofar as the first objection is concerned, the petitioners have already

got the property surveyed by the Taluk Surveyor, who is to provide a sketch to the petitioners within a couple of days' time. Concerning the second objection, he has strenuously contended that beginning from *Raju S. Jetmalani v. State of Maharashtra and others*<sup>1</sup>, through a series of judgments, the Apex Court and also this Court have held that there can be no interdiction of property rights of a person without any acquisition on a mere premise that the property is required for some public purpose in future.

4. The learned Standing Counsel for the respondent Corporation has submitted that unless the petitioners submit a proper survey sketch showing the boundaries and the extent, it is not possible for the respondent Grama Panchayath to process the petitioner's application further.

5. The learned Standing Counsel has further submitted that in the light of the definite proposal as has been expressed in letter No. 4610/PL/208 dated 11.06.2012 received from the

---

<sup>1</sup> (2005) 11 SCC 222

second respondent, pending the said project, it is not possible for the respondent Corporation to consider the petitioners' application for building permit, as it will lead to further complications.

6. The learned counsel for the second respondent has submitted that the second respondent has already sent a letter to the Secretary of the first respondent Corporation on 11.06.2012 informing them that survey Nos. 19-25, 50, 103-106 and 108 of Edapally South Village are included in the proposal for Land Bank Project, and that the first respondent Corporation should not permit any construction in the aforesaid survey numbers. According to her, in the light of the said clear communication from the second respondent, the first respondent cannot grant any building permit.

7. Heard the learned counsel for the petitioners and the learned Standing Counsel for the respondent Corporation, apart from perusing the record.

8. Indeed, this Court, as well as the Hon'ble Supreme

Court, has often times held that the property rights of a person can only be interfered with or interdicted in terms of Article 300A of the Constitution of India. It has almost assumed aphoristic proportions to hold that a mere proposal to use the land of a private person for public purpose without proper acquisition cannot come in the way of the said person's right to enjoy the property.

9. Concerning the first objection, the learned counsel for the petitioners has submitted that the petitioners have already taken the remedial steps and are willing to submit the necessary sketch and survey report from the Taluk surveyor to the respondent Corporation to enable it to process their application further. Concerning the second objection, in the light of a profusion of precedents from this Court, I do not see any substance in the contention of either the first respondent or the second respondent that in the face of a proposal to include the petitioners' property in Land Bank, the petitioners cannot be allowed to enjoy their property.

10. In the facts and circumstances, Ext.P2 order of rejection by the first respondent Corporation is set aside to the extent of the objection concerning the Land Bank Project, thereby leaving it open for the petitioners to comply with the first objection, namely submitting the survey report and sketch to identify the boundaries.

Once the petitioners comply with the first limb of Ext.P2 notice, the first respondent Corporation is expected to process the petitioners' application expeditiously in accordance with law.

This writ petition is disposed of as above.

sd/- DAMA SESHADRI NAIDU, JUDGE.

