

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

WP(C).No. 4342 of 2015 (P)

PETITIONER:

**SAJINA FAIZAL,
DAUGHTER OF MINHAJ,
AGED 31 YEARS, RC ROAD, WEST YAKKARA,
PALAKKAD - 678014, REPRESENTED BY POWER OF
ATTORNEY MINHAJ S/O.MOHAMMED MEDHAR,
AGED 54 YEARS, RC ROAD, WEST YAKKARA,
PALAKKAD.**

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENT(S):

- 1. PALAKKAD MUNICIPALITY,
REPRESENTED BY ITS SECRETARY,
MUNICIPAL OFFICE, PALAKKAD - 678 001.**
- 2. THE DISTRICT TOWN PLANNING OFFICER,
PALAKKAD, CIVIL STATION, PALAKKAD - 678 001.**
- 3. THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF LOCAL SELF GOVERNMENT,
THIRUVANANTHAPURAM, PIN -695 001.**

**R1 BY ADVS. SRI.T.C.SURESH MENON
SRI.P.S.APPU**

R2 & R3 BY GOVERNMENT PLEADER SMT.C.K.SHERIN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 02-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

mbr/

WP(C).No. 4342 of 2015 (P)

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXT.P1 - A TRUE COPY OF THE POSSESSION CERTIFICATE RELATING TO THE
PROPERTY DTD. JANUARY 9, 2015.**
- EXT.P2 - A TRUE COPY OF THE COMMUNICATION DATED JANUARY 31, 2015
ISSUED BY THE 1ST RESPONDENT.**
- EXT.P2(A) - THE ENGLISH TRANSLATION OF EXT.P2.**
- EXT.P3 - A TRUE COPY OF THE JUDGMENT REPORTED IN 2011(3) KHC 162 (DB).**

RESPONDENT(S)' EXHIBITS: - **NIL**

/TRUE COPY/

P.S. TO JUDGE

mbr/

DAMA SESHADRI NAIDU, J.

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W.P.(C) No.4342 of 2015

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Dated this the 2nd day of March, 2015

JUDGMENT

Heard the learned counsel for the petitioner, the learned Standing Counsel appearing for respondents 1 and 2 and the learned Government Pleader, apart from perusing the record. Since the issue lies in a narrow compass, this Court proposes to dispose of the writ petition at the admission stage itself.

2. Briefly stated, the petitioner's application for constructing a commercial building was rejected by the 1st respondent through Ext.P2, citing the reason that the petitioner's plot, in the Detailed Town Planning Scheme, is kept apart to be acquired for industrial purposes. Another objection raised by the 1st respondent for rejecting the building permit is that the petitioner's proposed construction would offend Rule 62 (2) of Chapter VIII of the Kerala Municipality Building Rules, 1999. Assailing Ext.P2, the petitioner filed the present writ petition.

3. The learned counsel for the petitioner strenuously contended that the Apex Court in **Raju S. Jethmalani v. State of Maharashtra** (2005 (11) SCC 222) has held that unless the property is subjected to acquisition, the owner thereof cannot be prevented from enjoying his property on a mere premise that the authorities have proposed to acquire the property in future.

4. The learned counsel has also brought to my notice Ext.P3 judgment rendered by a learned Division Bench of this Court as reported in **Gopalakrishnan T.V. v. State of Kerala and others** (2011(3) KHC 162) to contend that unless the Master Plan is notified and implemented, no zoning regulation can be imposed.

5. The learned Standing Counsel for the 1st respondent has submitted that the authorities are willing to re-consider the petitioner's application keeping in view the judicial dicta laid down in **Raju S. Jethmalani (supra)** and in Ext.P3 judgment of this Court.

In the facts and circumstances, having regard to the respective submissions of the learned counsel for the petitioner, the learned Government Pleader and the learned Standing

Counsel for the respondents, without advertng to the merits of the matter, this Court disposes of the present writ petition with a direction to the 1st respondent to re-consider the petitioner's application, which was earlier rejected through Ext.P2, keeping in view the ratio laid down in the judgment referred to above and also the 2nd proviso of Rule 62(2) of the Kerala Municipal Building Rules, 1999, and pass appropriate orders thereon, as expeditiously as possible, at any rate, within a period of one month from the date of receipt of a copy of this judgment.

DAMA SESHADRI NAIDU, JUDGE

sj