

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

WP(C).No. 12890 of 2015 (I)

PETITIONER(S) :

ASHOKAN,
AGED 64 YEARS, S/O KESAVAN,
KURUPPATH HOSUE, 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 ADV. SRI.T.C.SURESH MENON,
R1 BY ADV. SRI.P.S.APPU &
BY GOVERNMENT PLEADER SMT.K .A.SANJEETHA.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 22-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

EXHIBIT P1: A TRUE COPY OF THE POSSESSION CERTIFICATE DATED 28
 NOVEMBER 2014 ISSUED BY THE VILLAGE OFFICER, PALAKKAD
 III VILLAGE.

EXHIBIT P1(A): A TRUE COPY OF THE KLU ORDER DATED DECEMBER 31, 2005 OF
 THE REVENUE DIVISIONAL OFFICER, PALAKKAD.

EXHIBIT P2: A TRUE COPY OF THE ORDER DATED MARCH 31, 2015 ISSUED BY
 THE 1ST RESPONDENT.

EXHIBIT P3: A TRUE COPY OF THE JUDGMENT REPORTED IN 2011(3) KHC 162
 (DB) OF THIS HON'BLE COURT.

EXHIBIT P4: A TRUE COPY OF THE JUDGMENT DATED 18.11.2011 IN WPC
 NO.27778/2011.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.12890 of 2015

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Dated this the 22nd day of May, 2015

JUDGMENT

Ext.P2 order rejecting the petitioner's application for building permit is under challenge in this writ petition.

2. The petitioner owns a commercial plot having an extent of 0.1578 hectars, within the local limits of respondent municipality. He submitted an application for building permit before the respondents which was rejected by Ext.P2 on the ground that the area of the proposed building is beyond 200 sq.m. The petitioner alleges that the regulations relied on by the first respondent came into force in 1984 and it has become obsolete as the same has not been implemented in full, despite the lapse of several decades.

3. Arguments have been heard.

4. The petitioner points out that the regulation referred to in Ext.P2 has remained only in paper without any implementation and

the municipality has granted permits.

5. The decision of this Court in **Mohammed Abdul Basheer C.P. v. State of Kerala and another** [2012 (3) KLT 86] lays down the principle that the present position of the land has to be taken into consideration and on ascertaining these facts, permission can be granted to construct a house.

6. The learned counsel for the petitioner invited my attention to a Division Bench decision of this Court in **Padmini v. State of Kerala** [1999 (3) KLT 465] wherein it was held that no building permit can be refused to any person because there is a proposal to acquire the land in future. Reliance was also placed to the decision of the Apex court in **Raju S. Jethmalani v. State of Maharashtra** [(2005) 11 SCC 222] wherein it was held that refusing to grant permits relying on obsolete DTP schemes is a clear violation of the provisions of the Constitution.

7. In **Jalaja Dileep v. Revenue Divisional Officer** [2012 (3)

KLT 333] this Court observed that the description in the title deed or in revenue records will not be crucial if the property is reclaimed already. The aforesaid legal position settled by this Court escaped the attention of the authorities while rejecting the petitioners' application.

Therefore, this writ petition is allowed. Ext.P2 is quashed.

The respondent Municipality is directed to conduct a local inspection of the property regarding the present lie as well as the condition of the property of the petitioners and surrounding properties. The respondents are also directed to consider the application and pass appropriate orders, after affording the petitioners an opportunity of being heard. This shall be done within a period of two months from the date of receipt of a copy of this judgment.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

krj