

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. 12891 of 2015 (J)

PETITIONER(S):

1. MOHAMMED SHANAVAS,
AGED 33 YEARS, S/O.SALAHUDHEEN,
2. MOHAMMED SHABEER,
AGED 38 YEARS, S/O.SALAHUDHEEN,

PETITIONERS ARE RESIDING AT 16/257,
MUMTHAZ MAHAL, NEHRU COLONY, KALMANDAPAM,
KUNNATHURMEDU, PALAKKAD.

BY ADVS.SRI.JACOB SEBASTIAN
SMT.SHAMSEERA. C.ASHRAF.

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 LOCAL LEVEL MONITORING COMMITTEE CONSTITUTED
UNDER THE KERALA CONSERVATION OF PADDY AND WETLAND
ACT FOR PALAKKAD MUNICIPALITY REPRESENTED BY ITS
CONVENER, PALAKKAD - 678 001.
4. THE DISTRICT LEVEL MONITORING COMMITTEE CONSTITUTED
UNDER THE KERALA CONSERVATION OF PADDY AND WETLAND ACT
REPRESENTED BY ITS CONVENER,
PALAKKAD, PALAKKAD DISTRICT, PIN - 678 001.
5. THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF LOCALSELF GOVERNMENT,
THIRUVANANTHAPURAM PIN : 695 001.

R1 BY ADV. SRI.T.C.SURESH MENON

R1 BY ADV. SRI.P.S.APPU

R 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 :

EXT.P-1: A TRUE COPY OF THE POSSESSION CERTIFICATE DATED JANUARY 16, 2015 ISSUED BY THE VILLAGE OFFICER, PALAKKAD - 3 VILLAGE IN THE NAME OF THE FIRST PETITIONER.

EXT.P-1(A): A TRUE COPY OF THE POSSESSION CERTIFICATE DATED JANUARY 16, 2015 ISSUED BY THE VILLAGE OFFICER, PALAKKAD - 3 VILLAGE IN THE NAME OF THE SECOND PETITIONER.

EXT.P-2: A TRUE COPY OF THE ORDER DATED MARCH 16, 2015 ISSUED BY THE 1ST RESPONDENT.

EXT.P-3: A TRUE COPY OF THE JUDGEMENT REPORTED IN 2011 (3) KHC 162 (DB) OF THIS HON'BLE COURT.

EXT.P-4: A TRUE COPY OF THE JUDGEMENT 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.12891 of 2015

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Dated this the 22nd day of May, 2015

JUDGMENT

Ext.P2 by which petitioners' application for building permit was rejected by the first respondent is under challenge.

2. The petitioners, who are brothers, own a residential plot having an extent of 0.0566 hectares within the local limits of respondent municipality. For constructing a residential building, they submitted an application for building permit, which was rejected by the first respondent by Ext.P2 stating that the area of the proposed building is beyond 200 sq.m and that the plot is included in the draft data bank constituted in terms of the Kerala Conservation of Paddy Land and Wetland Act, 2008. The petitioners allege that the application was rejected stating that the property is kept apart for paddy cultivation as per the Government approved master plan and DTP scheme. It is with this background, the petitioner has approached this Court.

3. I have heard the learned counsel for the petitioners and the learned standing counsel for the respondent municipality.

4. It was pointed out by the learned counsel for the petitioners that the regulations relied on by the first respondent came into force in 1984 and it has become obsolete and the same has not been implemented despite the lapse of several decades.

5. In this Connection, the learned counsel 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 on 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.

6. The learned counsel for the petitioners point out that going by the scheme of the Kerala Conservation of Paddy Land and Wetland Act, the local authority has to refer the application to the third respondent, who shall inspect the petitioners' plot and submit a report along with his recommendation to the fourth respondent who shall pass orders permitting conversion or change in the draft data bank.

Therefore, the writ petition is disposed of quashing Ext.P2. The first respondent is directed to forward the application to the third respondent further. The third respondent is directed to consider and dispose of the said application after affording the petitioner an opportunity of being heard, within a period of one month from the date of receipt of a copy of this judgment. The said order shall be passed by the third respondent after an inspection of the property to ascertain the present nature of the property.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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