

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 2ND DAY OF JUNE 2015/12TH JYAISHTA, 1937

WP(C).No. 15313 of 2015 (L)

PETITIONER(S):

**K.A.AJEEM,
W.O LATE KADER SHAH, RESIDING AT 11/1179, T.B.ROAD
PALAKKAD.**

**BY ADVS.SRI.P.K.SURESH KUMAR (SR.)
SRI.K.P.SUDHEER**

RESPONDENT(S):

**PALAKKAD MUNICIPALITY,
REPRESENTED BY ITS SECRETRARY,
PALAKKAD 678001.**

BY SRI.T.C.SURESH MENON

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 TRUE COPY OF G.O (RT) 3144/2004/LSGD DATED 2.9.2004 ISSUED BY LOCAL SELF GOVERNMENT (M) DEPARTMENT, GOVERNMENT OF KERALA
- EXT.P2 TRUE COPY OF ORDER NO.C2/8989/05/D.DIS. DATED 12/9/2005 ISSUED BY THE RESPONDENT
- EXT.P3 TRUE COPY OF DEVELOPMENT PERMIT NO. PW6-34053/2003 DATED 7/10/2005 ISSUED BY THE RESPONDENT
- EXT.P4 TRUE COPY OF JUDGMENT DATED 31/5/2012 IN W.A. NO 1833/2011 PASSED BY THIS HON'BLE COURT
- EXT.P5 TRUE COPY OF BUILDING PERMIT NO.EJBR/736/12-13/PW4 DATED 22/2/2013 ISSUED BY THE RESPONDENT
- EXT.P6 TRUE COPY OF BUILDING PERMIT NO.EJBR/686/13-14/PW4 DATED 2/12/2013 ISSUED BY THE RESPONDENT
- EXT.P7 TRUE COPY OF BUILDING PERMIT NO.BA/1313/13-14/PW4 DATED 20/12/2014 ISSUED BY THE RESPONDENT
- EXT.P8 TRUE COPY OF ORDER NO.BA 671/14-15/PW4 DATED 5/2/2015 ISSUED BY THE RESPONDENT
- EXT.P9 TRUE COPY OF THE JUDGMENT IN O.P.NO/8740/1997 OF THIS HON'BLE COURT AND REPORTED IN 2005 (40 KLT 1027
- EXT.P10 TRUE COPY OF G.O(MS)NO.201/2007/LSGD DATED 1/9/2007 ISSUED BY LOCAL SELF GOVERNMENT (R.B) DEPARTMENT, GOVERNMENT OF KERALA

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.V.RAMAKRISHNA PILLAI, J

WPC No.15313 of 2015

Dated this the 1st day of June, 2015

JUDGMENT

Ext.P8 by which petitioners' application for building permit was rejected is under challenge.

2. The petitioner is the owner in possession of 566 cents of land in Sy.Nos.837/2C1, 837/2B2, 840/1A and 841 of Palakkad Village. The petitioner submitted applications for three commercial buildings and permits were granted by the Municipality which were marked as Exts.P5 to P7. But the application for construction of an auditorium was rejected by the Municipality on the ground that as per the approved lay out, only commercial buildings can be allowed to be constructed. According to the petitioner, the applications were rejected by the Municipality by Ext.P8 on the ground that the Government as per an order issued on the basis of the judgment in O.P.No.8740/1997 has cancelled all the zonal regulation orders and therefore

the commercial layout approved as per Exts.P1 to P3 is no longer valid.

3. Arguments have been heard.

4. One of the reasons for rejecting the petitioners' application is that the commercial lay out approved as per Exts.P1 to P3 is no longer valid on account of the cancellation of Zonal Regulation Order of the Government on the basis of the judgment in O.P.No.8740/1997. However, it is relevant to note that the commercial layout submitted by the petitioners was approved on 2.9.2004 and development permit was issued on 7.10.2005. The judgment in the said O.P. was rendered on 11.7.2005 and has no retrospective operation and therefore would not affect Exts.P1 to P3 orders issued in the petitioners' case.

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 senior counsel for the petitioners 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.P8 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 petitioner

and surrounding properties. The respondent is also directed to consider the application and pass appropriate orders, after affording the petitioner 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

css/

true copy

P.S.TO JUDGE