

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 1937

WP(C).No. 15421 of 2015 (C)

PETITIONER(S) :

RESHA RANI,
AGED 42 YEARS, W/O. PRADEEP KUMAR,
USHAS, M.P. ROAD,
OLAVAKKOD, PALAKKAD - 678 002.

BY ADV. SRI.JACOB SEBASTIAN.

RESPONDENT(S) :

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

BY GOVERNMENT PLEADER SMT.K.A.SANJEETHA &
BY SRI.T.C.SURESH MENON.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 26-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

EXHIBIT P1: A TRUE COPY OF THE POSSESSION CERTIFICATE RELATING
 TO THE PROPERTY DATED 24.2.2014.

EXHIBIT P1(A): A TRUE COPY OF THE ORDER OF K.L.U. EXEMPTION DATED
 3 MAY 2007 ISSUED BY THE REVENUE DIVISIONAL OFFICER,
 PALAKKAD.

EXHIBIT P1(B): A TRUE COPY OF THE RECEIPT OF PROPERTY TAX
 ASSESSMENT RELATING TO THE SHED CONSTRUCTED BY THE
 PETITIONER.

EXHIBIT P2: A TRUE COPY OF THE COMMUNICATION DATED AUGUST 30,
 2014 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P3: A TRUE COPY OF THE JUDGMENT DATED OCTOBER 30, 2014
 IN WPC NO 24638 OF 2014 OF THIS HONOURABLE COURT.

EXHIBIT P4: A TRUE COPY OF THE ORDER DATED MARCH 30, 2015 OF THE
 FIRST RESPONDENT

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 15421 of 2015

Dated this the 26th day of May, 2015.

JUDGMENT

The petitioner has approached this Court, as the first respondent rejected the petitioner's application for building permit stating that the property could be required for widening of the Kozhikode bye-pass road. The petitioner alleges that the statutory authorities have not so far taken any steps to acquire the land and such proceedings are not even in contemplation. Without even acquiring the land, the respondents cannot deprive the petitioner from using her land. It is further alleged that the regulations relied on by the first respondent came into force in 1984 and the same has become obsolete and the same has not been implemented in full despite the lapse of several decades. It is further alleged that all the surrounding properties consist of buildings and the area is a busy commercial junction.

2. I have heard the learned counsel for the petitioner,

the learned Standing Counsel for the respondent Municipality as well as the learned Government Pleader in the matter.

3. The learned counsel for the petitioner submitted that the petitioner is ready to demolish the construction for widening of the road.

4. The learned counsel for the respondent Municipality submitted that in addition to that, the petitioner should be directed to comply with the statutory formalities in accordance with the Building Rules.

5. The learned counsel for the petitioner submits that the additional requirement was only regarding the construction of a bathroom and a revised plan in terms of Rule 62 of the Building Rules.

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 in 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. Viewed in that profile, this Court is of the view that the petitioners are entitled to get the reliefs prayed for.

Considering the rival submissions, the writ petition is disposed of directing the respondent Municipality to grant building permit on condition that the petitioner shall demolish the building in the event of future acquisition proceedings, if any. The petitioner shall comply with all formalities laid down by Rule 62 of the Building Rules. Formal orders to this effect shall be issued within a period of two weeks from the date of receipt of a copy of this judgment.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.