

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 19TH DAY OF JUNE 2015/29TH JYAISHTA, 1937

WP(C).No.16734 of 2015 (N)

PETITIONER:

**Y.FIROS KHAN,S/O.YOSEF,AGED 42 YEARS,
32/376,SELVI NAGAR,VADAKKANTHARA.P.O,
PALAKKAD-678012.**

**BY ADVS.SRI.BINOY VASUDEVAN
SMT.P.G.BABITHA**

RESPONDENTS:

- 1. THE PALAKKAD MUNICIPALITY,
REPRESENTED BY ITS SECRETARY,
MUNICIPAL OFFICE,PALAKKAD,PIN-678101.**
- 2. THE SECRETARY,PALAKKAD MUNICIPALITY,
PALAKKAD,PIN-678101.**
- 3. DISTRICT TOWN PLANNER,
OFFICE OF THE DISTRICT TOWN PLANNER,
PALAKKAD,PIN-678101.**

**R1 & R2 BY ADVS.SRI.T.C.SURESH MENON
SRI.P.SAPPU**

R3 BY GOVT. PLEADER SRI.G.GOPAKUMAR.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 19-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

pk

WP(C).No.16734 of 2015 (N)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:TRUE COPY OF THE DOCUMENT NO.4798/2008 IN S.R.O,PALAKKAD.

**EXT.P2:TRUE COPY OF THE POSSESSION CERTIFICATE IN RESPECT OF THE
PETITIONER'S PROPERTY.**

EXT.P3:TRUE COPY OF THE LANT TAX RECEIPT.

EXT.P4:TRUE COPY OF THE ORDER NO.EJBR.962/12-13/PW4 DATED 2.3.2013.

EXT.P5:TRUE COPY OF THE JUDGMENT DATED 10.7.2014 IN W.P(C)13042/2015.

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

pk

A.V.RAMAKRISHNA PILLAI, J

WPC No.16734 of 2015

Dated this the 19th day of June, 2015

JUDGMENT

Ext.P4 order rejecting the petitioner's application for building permit is under challenge in this writ petition.

2. The petitioner is the owner in possession of an extent of 5.30 cents in Palakkad Municipality. The petitioner submitted an application for building permit before the respondents which was rejected by Ext.P4 on the ground that the land is located in a paddy zone as per the detailed Town Planning Scheme.

3. Arguments have been heard.

4. The learned counsel for the petitioner submitted that the property is surrounded by several buildings both residential and commercial.

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 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.P4 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 respondents 1 and 2 are also directed to consider the application and pass positive orders granting permit, if they are satisfied that the property of the petitioner is not fit for paddy cultivation at present, 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