

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

WP(C) .No. 16926 of 2015 (M)

PETITIONER(S) :

TOMY EAPEN,
S/O. EAPEN, ANCHERIL HOUSE,
KIZHATHADIYOOOR KARA & POST PALA.

BY ADVS.SRI.MATHEW JOHN (K) &
SRI.DOMSON J.VATTAKUZHAY.

RESPONDENT(S) :

1. THE PALA MUNICIPALITY,
REPRESENTED BY ITS SECRETARY,
MUNICIPAL OFFICE,
PALA - 686 575.
2. SECRETARY,
THE PALA MUNICIPALITY,
MUNICIPAL OFFICE,
PALA - 686 575.
3. THE DISTRICT TOWN PLANNER,
OFFICE OF THE DISTRICT TOWN PLANNER,
KOTTAYAM-686 001.

R1,R2 BY ADV. SRI.V.M.KURIAN, SC, PALA MUNICIPALITY,
BY GOVERNMENT PLEADER SMT.ANITHA RAVEENDRAN &
BY ADV. SRI.V.M.KURIAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
29-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

EXT.P1: A TRUE COPY OF THE NOTICE DATED 9.1.2015 BY THE MUNICIPAL ENGINEER.

EXT.P2: A TRUE COPY OF THE JUDGMENT DATED 31.7.2008 IN WPC NO.8656 OF 2008.

EXT.P3: A TRUE COPY OF THE COMMON JUDGMENT DATED 21.1.2013 IN WPC NOS 28706,
28724 AND 19139 OF 2012.

EXT.P4: A TRUE COPY OF THE JUDGMENT DATED 22.1.2015 IN WPC NO.2258 OF 2015.

EXT.P5: A TRUE COPY OF THE LETTER BY THE 2ND RESPONDENT DATED 16.2.2015
ADDRESSED TO THE 3RD RESPONDENT.

EXT.P6: A TRUE COPY OF THE LETTER BY THE 3RD RESPONDENT DATED 13.3.2015
ADDRESSED TO THE 2ND RESPONDENT.

EXT.P7: A TRUE COPY OF THE INTIMATION BY THE 2ND RESPONDENT DATED 23.4.2015
TO THE PETITIONER

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V.RAMAKRISHNA PILLAI, J.

= = = = =

W.P(C) No.16926 of 2015

= = = = =

Dated this the 29th day of July, 2015

JUDGMENT

Ext.P7 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 a property having an extent of 26.61 Ares in R.S Nos.22/66-1, 22/68 and 22/66-2 of respondent municipality. The petitioner submitted an application for building permit before the respondents which was rejected by Ext.P1 on the ground that the as per the master plan for respondent municipality, the property belonging to the petitioner is included in paddy field.

3. Challenging Ext.P1, the petitioner filed W.P(C) No.2258 of 2015 wherein this Court by Ext.P4 judgment set aside Ext.P1 and the second respondent was directed to reconsider the petitioner's application for building permit afresh, if necessary, by referring the matter to the District Town Planner after subjecting the land in question to physical verification and thereafter to pass appropriate orders on the same within a period of one month.

4. However, the second respondent without following the directions in Ext.P4 judgment issued Ext.P5 letter dated 16.2.2015 addressed to the third respondent expressing opinions to the contrary which runs counter to the directions in Ext.P4. On receipt of Ext.P5, the third respondent held that as per Rule 56(1) of the KMMR, 1999 a reference to the Town Planner is warranted only if the area of the proposed construction exceeds 4000 sq. metres. However, in this case, the construction proposed by the petitioner has only an area of 2490 sq. metres. Therefore, the third respondent by Ext.P6 intimated the second respondent that the matter need not have been referred to him. However, to the shock and dismay of the petitioner, the second respondent vide Ext.P7 intimated the petitioner that permission cannot be granted to construct the building. It is with this background, the petitioner has approached this Court

5. Arguments have been heard.

6. The learned standing counsel for the respondent municipality opposed the petition mainly on two grounds. According to him, the property is included in an area covered by the DTP Scheme and reclamation has been effected by the

petitioner without any consent from the authorities concerned.

7. In answer to the said submission, the learned counsel for the petitioner would submit that the only objection now raised is that the property of the petitioner is in a scheme covered area. It was argued that the said objection is not sustainable in the light of the pronouncements made by this Court. According to the learned counsel, entirely new grounds have been raised in the present notice. It was pointed out that originally a building was there in the property which was reclaimed years back and the present construction was proposed after demolition of the existing construction.

8. 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 for construction.

9. The learned counsel for the petitioner points out that the question as to whether there is a Town Planning Scheme in force in respondent municipality is no more res integra in the light of Ext.P2 judgment in W.P(C) No.8656 of 2008. It is pointed out that after

the date of Ext.P3 judgment in W.P(C) No.28706 of 2012 and connected cases, no scheme under the provisions of the Town Planning Act has been published for the Pala municipality. 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.

10. 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.

11. The learned counsel for the petitioner invited my attention also to the decision of this Court in **Adani Infrastructure**

& Developers Pvt. Ltd., Mumbai v. State of Kerala and Others

[2014 (1) KLT 774] wherein it was held that an authority which has been conferred with the functions of preparing a data bank with the details of the cultivable paddy land and wetland within its area of jurisdiction with the aid of modern technology and institutions of science and technology under sub-clause (1) of sub-section (4) of Section 5 could at any time, look into the ground realities and decide upon the suitability for prospective cultivation of such lands.

Therefore, this writ petition is allowed. Ext.P7 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 respondent municipality is also directed to consider the application and grant permission if the respondent is satisfied that the property is not cultivable at present. The petitioner shall be given an opportunity of being heard. This shall be done within one month from the date of receipt of a copy of this judgment.

Sd/-

**A.V.RAMAKRISHNA PILLAI
JUDGE**

krj