IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

WP(C).No.18930 of 2015 (M)

PETITIONER:

R.NAGALAKSHMI,W/O.RAJENDRAN,AGED 62 YEARS,
39/730,THOMMADRAM,HARIKARA STREET,
SULTANPET,PALAKKAD.

BY ADVS.SRI.BABU S. NAIR
SMT.SMITHA BABU

RESPONDENT'S:
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1. THE PALAKKAD MUNICIPALITY,
REPRESENTED BY ITS SECRETARY,
PALAKKAD,PIN-678 001.

2. THE SECRETARY,PALAKKAD MUNICIPALITY,
PALAKKAD,PIN-678 001.

BY SRI.T.C.SURESH MENON,S.C.
SRI.P.S.APPU.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

pk

WP(C).No.18930 of 2015 (M)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF THE COMMUNICATION ISSUED BY THE 2ND RESPONDENT AS BA/1060/14-15/PW5 DATED 8-5-2015.

P2: TRUE COPY OF THE JUDGMENT DATED 22-1-2015 IN WPC.NO.25640/2014 OF THIS HON'BLE COURT.

RESPONDENT'S EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

pk

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No.18930 of 2015

Dated this the 1st day of July, 2015.

JUDGMENT

Aggrieved by the rejection of the petitioner's application for building permit by the respondents on the ground that the area is earmarked for park and open place.

2. The petitioner is the owner of a land in Sy.No.3032 of the Palakkad - II Village. The petitioner alleges that the petitioner had applied for the construction of a residential house in the said property with all necessary sketches and plans, strictly in accordance with the Kerala Municipality Building Rules. The second respondent by communication dated 8.5.2015 informed the petitioner that the application for building permit cannot be considered as the area comes within 'Kalvakulam Scheme' under the D.T.P. Scheme prepared by the Municipality and the area is earmarked for park and open place. It is with this background, the petitioner has come up before this Court.

3. I have heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent municipality in the matter.

4. The learned counsel for the petitioner would submit that after the scheme was framed, more than 4 decades have passed and at no point of time, no steps have been taken for acquiring the properties.

5. 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 to the decision of the apex court in **Raju S. Jethmalani** v. **State of Maharastra** [(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 petitioner is entitled to get the reliefs prayed for.

Therefore, the writ petition is allowed.

Ext.P1 is set aside and the respondent municipality is directed to reconsider petitioner's application for building permit within a period of one month from the date of receipt of a copy of this judgment.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.