

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

WP(C).No. 18936 of 2015 (N)

PETITIONER :

**K.SIVARAMAN
S/O.KRISHNAMOORTHY, AGED 64 YEARS,
18/412A, OPP.RAPPADI, WEST FORT ROAD,
PALAKKAD.**

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

RESPONDENT(S) :

**1. THE PALAKKAD MUNICIPALITY
REPRESENTED BY ITS SECRETARY,
PALAKKAD, PIN - 678 001.**

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

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

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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...2/-

WP(C).No. 18936 of 2015 (N)

APPENDIX

PETITIONERS' EXHIBITS :

**EXHIBIT P1 TRUE COPY OF THE COMMUNICATION ISSUED BY THE 2ND
RESPONDENT AS BA/1070/14-15/PW5 DATED 12-06-2015.**

**EXHIBIT P2 TRUE COPY OF THE JUDGMENT DATED 22-1-2015 IN W.P(C)
NO. 25640/2014 OF THIS HON'BLE COURT.**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 18936 of 2015

Dated this the 3rd day of July, 2015

J U D G M E N T

Ext.P1, by which the petitioner's application for building permit was rejected, is under challenge.

2. The petitioner is the owner in possession of a property comprised in Sy. No.3032 of Palakkad-II Village within the local limits of the respondent municipality. The petitioner submitted an application seeking permit for constructing a residential building, which was rejected by Ext.P1 stating that the aforementioned property is falling within the 'Kalvakulam Scheme' under the DTP Scheme prepared in the municipality and the area is ear marked for park and open space. According to the petitioner, the reasons showed in Ext.P1 order is per se unsustainable. According to him, the Town Planning Scheme framed under the Madras Town Planning Act, several decades ago has not been acted upon nor implemented in the

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Palakkad Municipality and on the ground of a staled scheme, the development of the properties cannot be prevented by the municipality. The petitioner points out that as per Ext.P2 judgment, this Court directed the municipality to permit the petitioners therein to develop their properties, which are the neighbouring properties of the petitioner. It is with this background, the petitioner has approached this Court.

3. Arguments have been heard.

4. 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 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

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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 quashed 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

bka/-