

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 20TH DAY OF JULY 2015/29TH ASHADHA, 1937

WP(C).No. 20158 of 2015 (T)

PETITIONERS :

1. SIVAKUMAR, AGED 43 YEARS,
S/O.SUKUMARAN, DOOR NO.13/126,
ARIYAMPALLAM, CHITTUR.P.O., CHITTUR VILLAGE,
PALAKKAD-678 101
2. SINIJA, AGED 37 YEARS, W/O.SIVAKUMAR,
DOOR NO.13/126, ARIYAMPALLAM, CHITTUR.P.O.,
CHITTUR VILLAGE, PALAKKAD-678 101

**BY ADVS.SRI.SUNIL NAIR PALAKKAT
SRI.K.N.ABHILASH**

RESPONDENT(S):

1. THE TOWN PLANNING OFFICER,
OFFICE OF THE TOWN PLANNER,
COLLECTORATE, PALAKKAD-678 001
2. PALAKKAD MUNICIPALITY, REPRESENTED BY THE SECRETARY,
PALAKKAD MUNICIPAL OFFICE, PALAKKAD-678 001
3. THE DISTRICT COLLECTOR, COLLECTORATE,
PALAKKAD,PIN-678 001
4. STATE OF KERALA, REPRESENTED BY SECRETARY,
MINISTRY OF URBAN AFFAIRS AND WELFARE OF MINORITIES,
SECRETARIAT, THIRUVANANTHAPURAM-695 001

**R1,R3 & R4 BY GOVERNMENT PLEADER SMT. ANITHA RAVINDRAN
R2 BY SRI.T.C.SURESH MENON**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 20-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

sts

WP(C).NO.20158/2015

APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE ORDER NO.C.2287/2014 DATED 01/12/2014 ISSUED BY THE 1ST
RESPONDENT**
- P2 COPY OF THE BUILDING PERMIT NO.BA 25/14-15/PW6 DATED 27/12/2014.**

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

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A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.20158 of 2015

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Dated this the 20th day of July, 2015

JUDGMENT

The petitioners are challenging Condition Nos.7 and 8 in Ext.P1 issued by the Town Planning Officer, Palakkad.

2. The petitioners are the owners of a property having an extent of 7.30 cents in Sy. No.1833 of Yakkara Village, Palakkad. The petitioners allege that the property is a wetland. The petitioners applied for permission to construct a residential building having 153.08 sq. mtrs. as per the provisions of the Kerala Conservation of Paddy Land and Wetland Act, 2008 and the zoning regulation committee consisting of the second respondent and the village officer, accorded permission by decision No.51 dated 25.09.2014.

3. The petitioner further alleges that the zoning regulation committee forwarded the application to the first respondent for his concurrence and the first respondent issued concurrence for construction vide Ext.P1 letter dated 1.12.2014. After obtaining the concurrence, the petitioner applied for development permit from the 2nd respondent. However, the second respondent issued Ext.P2

building permit for construction of the residential building having an area of 153.08 sq. metres, *inter alia*, taking into account the concurrence issued by the first respondent and the report of the zoning regulation committee.

4. The grievance of the petitioners is that the first respondent while issuing concurrence for construction as per Kerala conservation of Paddy Land and Wetland Act imposed a condition restraining the petitioners from alienating their property for a period of ten years and directed the petitioner to protect the adjoining thodu/canal by constructing a protection wall at the expense of the petitioners.

5. The petitioners point out that in **Ramankutty v. Principal Agricultural Officer, Malappuram and another** [2014 (3) KLT 730] this Court has held that the local authority has no power to restrain the applicant from transferring his property in the absence of any provision as such to be specified as a clog to alienation of the land and it is beyond the power of such authority. It is with this background, the petitioners have approached this Court.

6. I have heard the learned counsel for the petitioners, the learned Government Pleader and the learned standing counsel for the respondent municipality.

7. The learned counsel for the petitioners invited my attention to Ext.P1 concurrence given by the town Planner, Palakkad dated 1.12.2014 which contains eight conditions subject to which concurrence was granted. The petitioners are aggrieved by conditions Nos.7 and 8 in Ext.P1 which read as follows:

“7. The petitioners shall not transfer the property for ten years.

8. The petitioners shall construct a retaining wall to the canal on the eastern side at their expense.”

8. Both the conditions cannot be countenanced. Condition No.7 would certainly cast an embargo on the right of enjoyment over the petitioners' property which takes in the right to dispose of the same. Though the right to property has been taken away from Part III of the Constitution by the 44th amendment of the Constitution, the same is retained in the Constitution as a legal right under Article 300 A. Therefore, any restriction on the enjoyment of the property can only be in accordance with law.

9. Regarding Condition No.8, the learned counsel for the petitioners would submit that the canal made mention of in Ext.p1 is vested with the panchayat and it runs upto a distance of 7 kilometres. Therefore, it may not be possible for the petitioners to maintain the said canal. As it is vested with the respondent

panchayat, it is beyond the competence of the petitioner to protect the aforesaid water course by constructing retaining walls.

Therefore, the writ petition is allowed. Condition Nos.7 and 8 in Ext.P1 are quashed. The respondent municipality is directed to grant building permit *de hors* condition Nos.7 and 8. However, it is made clear that while making construction, the petitioners shall ensure that they shall not encroach upon the existing water course adjacent to their property.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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