

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 28TH DAY OF JULY 2015/6TH SRAVANA, 1937

WP(C).No. 20459 of 2015 (F)

PETITIONER(S) :

**RAJAGOPAL MENON, AGED 75 YEARS,
S/O.LATE THACHU MENON, DILKUSH, 17/461,
NSC BOSE ROAD, PALAKKAD- 678 001.**

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENT(S) :

- 1. PALAKKAD MUNICIPALITY,
REPRESENTED BY ITS SECRETARY, MUNICIPAL OFFICE,
PALAKKAD- 678 001.**
- 2. THE TOWN PLANNING OFFICER,
PALAKKAD MUNICIPALITY, MUNICIPAL OFFICE,
PALAKKAD- 678 001.**
- 3. THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF LOCAL SELF GOVERNMENT,
THIRUVANANTHAPURAM- 695 001.**

R1 BY ADVS. SRI.T.C.SURESH MENON

SRI.P.S.APPU

R2 & R3 BY GOVERNMENT PLEADER SMT.K.A.SANJEETHA

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 28-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

WP(C).No. 20459 of 2015 (F)

APPENDIX

PETITIONER(S)' EXHIBITS :

**EXHIBIT P1: A TRUE COPY OF THE POSSESSION CERTIFICATE RELATING TO
THE PLOT DATED MAY 20, 2014.**

**EXHIBIT P2: A TRUE COPY OF THE COMMUNICATION DATED MAY 21, 2015
ISSUED BY THE 1ST RESPONDENT.**

**EXHIBIT P3: A TRUE COPY OF THE JUDGMENT REPORTED IN
2011 (3) KHC 162 (DB).**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 20459 of 2015

Dated this the 28th day of July, 2015

J U D G M E N T

Ext.P2, by which the petitioner's application for building permit was rejected, is under challenge.

2. The petitioner is the owner in possession of an extent of 0.0348 hectares of land in Palakkad III Village, Palakkad Taluk 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.P2 stating that the property is kept apart for constructing a 18 m wide road as per the Government approved master plan and DTP Scheme. According to the petitioner, the statutory authorities have not so far taken any step to acquire the land and such proceedings are not even in contemplation. It was further pointed out that without acquiring the land, the respondents cannot deprive the petitioner from using his

land for residential purpose. It is with this background, the petitioner has approached this Court.

3. Heard the learned counsel for the petitioner, the learned Standing Counsel for the respondent municipality and the learned Government Pleader in the matter.

4. When the matter was taken up on 20.07.2015, I have instructed the learned Government Pleader to ascertain whether any step has been initiated by the State for acquisition as pointed out in the objection raised by the respondent municipality.

5. Today, after getting instructions, the learned Government Pleader submitted that no step has been initiated for acquisition as stated.

6. 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

..3..

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. 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.P2 is quashed and the respondent municipality is directed to reconsider petitioner's application for building permit and to pass positive orders within a period of one month from the date of receipt of a copy of this judgment.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-