IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 16TH DAY OF JULY 2015/25TH ASHADHA, 1937

WP(C).No. 20638 of 2015 (D)

PETITIONER(S):

ABDUL LATHEEF A , AGED 24 YEARS,
S/O.ABDUL SALAM, NILAVAR MANZIL, CHEDANAMKURUSSI,
NOORANI.P.O., PALAKKAD.

BY ADVS.SRI.S.KANNAN
SMT.K.S.SANGEETHA
SMT.S.SIMY

RESPONDENT(S):

PALAKKAD MUNICIPALITY,
REPRESENTED BY ITS SECRETARY, MUNICIPAL OFFICE,
PALAKKAD-678 001.

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

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

WP(C).No. 20638 of 2015 (D)

APPENDIX

PETITIONER(S)' EXHIBITS

P1- A TRUE COPY OF THE LAND TAX RECEIPT PERTAINING TO THE SAID EXTENT OF LAND ISSUED BY VILLAGE OFFICER, YAKKARA VILLAGE, PALAKKAD FOR THE ASSESSMENT YEAR 2015-16.

P2- A TRUE COPY OF NOTICE DATED 11.06.2015 ISSUED BY THE RESPONDENT REJECTING THE APPLICATION OF THE PETITIONER FOR BUILDING PERMIT.

P3- A TRUE COPY OF GO(MS)NO.210/09/LSGD, DATED 11.11.2009.

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 20638 of 2015

Dated this the 16th day of July, 2015

J U D G M E N T

Aggrieved by the rejection of application for building permit, the petitioner has come up before this Court.

2. The petitioner is the owner in possession of 2.2 ares of land comprised in Re.Sy.No.7/PT (Sy.No.762/5) of Yakkara Village, Palakkad within the local limits of the respondent municipality as per Ext.P1. He submitted an application for building permit, which was rejected as per Ext.P2 for the reason that the adjacent properties surrounding the property of the petitioner are lying vacant. Ext.P2 has been issued based on Ext.P3 GO(MS) No.210/09/LSGD, dated 11.11.2009, which contemplates for the Development Plan (General Town Planning Scheme) for Palakkad Town. The petitioner alleges that while issuing Ext.P2, the respondent has miserably failed to appreciate that the

master plan for Palakkad District has become obsolete and so far no step, whatsoever, in any manner, has been initiated by the respondent municipality to implement the same. According to the petitioner, Ext.P3 has become redundant. It is further alleged that the respondent municipality failed to appreciate the fact that the entire area, where property of the petitioner is situated, is surrounded with buildings including commercial buildings, for which building permits were issued by the respondent municipality. It is pointed out that as discernible from Ext.P2, prior to the issuance of Ext.P2, the respondent has not chosen to inspect the property of the petitioner so as to ascertain the ground realities existing thereon. Therefore, according to the petitioner, the act of the respondent rejecting building permit, is illegal, unjust and is vitiated by non application of mind. Hence, this writ petition.

3. Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent

municipality.

4. The learned Standing Counsel for the respondent municipality submits that as per Ext.P3 G.O., the municipality is competent to issue permit only in respect of constructions having a plinth area up to 200m^2; and as the petitioner's request is to construct a building with a higher plinth area, the respondent municipality is not in a position to grant permit to the petitioner. It is also submitted that the area, where the property of the petitioner is situated, is covered by the DTP scheme.

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.P2 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/-