

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 19TH DAY OF AUGUST 2015/28TH SRAVANA, 1937

WP(C).No. 20914 of 2015 (L)

PETITIONER :

**N.HARIS ALI,
S/O.NOOR MUHAMMED, AGED 41 YEARS,
ANFAS MANZIL, PALLIMOKKU,
TATTAMANGALAM P.O, CHITTUR TALUK,
PALAKKAD -678 102.**

**BY ADVS.SRI.BINOY VASUDEVAN
SMT.P.G.BABITHA**

RESPONDENT(S):

- 1. THE PALAKKAD MUNICIPALITY,
REPRESENTED BY ITS SECRETARY,
MUNICIPAL OFFICE, PALAKKAD. PIN-678 101**
- 2. THE SECRETARY,
PALAKKAD MUNICIPALITY, PALAKKAD-678 101**
- 3. DISTRICT TOWN PLANNER,
OFFICE OF THE DISTRICT TOWN PLANNER,
PALAKKAD. PIN-678 101**

***ADDL.R4 & R5 IMPEADED**

***ADDL.R4: THE ARCHAEOLOGICAL SURVEY OF INDIA,
REPRESENTED BY ITS DIRECTOR GENERAL,
JANPATH, NEW DELHI-110 011.**

***ADDL.R5: THE SUPERINTENDING ARCHAEOLOGIST, ASI,
THRISSUR CIRCLE, THRISSUR, FF 19(A) K.S.H.B. FLATS,
BLOCK-III, PULLAZHY.P.O., THRISSUR-680 012.**

***ADDL.R4 & R5 ARE IMPEADED AS PER ORDER DATED 19/08/2015 IN
IA.NO.11971/2015**

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

**R3 BY GOVERNMENT PLEADER SMT. K.A.SANJEETHA
R4 & R5 BY SRI.DINESH R.SHENOY, SC**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 19-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WP(C).No. 20914 of 2015 (L)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1. COPY OF THE DOCUMENT NO.6572/14 OF S.R.O., PALAKKAD.
- EXHIBIT P2. COPY OF THE POSSESSION CERTIFICATE IN RESPECT OF THE PETITIONER'S PROPERTY.
- EXHIBIT P3. COPY OF THE BASIC TAX REGISTER ISSUED BY THE VILLAGE OFFICER, YAKKARA.
- EXHIBIT P4. COPY OF THE ORDER NO.BA-20/15-16/PW6 DATED 17.6.15.
- EXHIBIT P5. COPY OF THE JUDGMENT DATED 10.7.14 IN WPC 13042/2014.
- EXHIBIT P6. COPY OF THE F.NO2-25/207/2014-NOC/NMA DATED 15/1/2015 ISSUED BY THE NATIONAL MONUMENTS AUTHORITY.

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.20914 of 2015

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Dated this the 19th day of August, 2015

JUDGMENT

The petitioner is aggrieved by the rejection of the application for building permit submitted by him before the respondent municipality on the ground of a town planning scheme which, according to the petitioner, is obsolete.

2. The petitioner is the owner of a parcel of land covered by Ext.P1 document. The petitioner alleges that the property is situated in a commercial area within the limits of respondent municipality. The petitioner intends to construct a commercial building in the property. Therefore, he submitted an application for building permit before the second respondent as early as on 1.4.2015. The petitioner further alleges that as per Exts.P2 and P3 documents the property is a pucca garden land for the last several years.

3. However, the second respondent by Ext.P4 dated 17.6.2015 rejected the application for the reason that the property of the petitioner is located in a paddy zone as per the master plan prepared for the respondent municipality. It was also stated that since the application is for construction of a commercial building, as per G.O (MS) No.210/2009 dated 11.11.2009, the application cannot be submitted before the Zoning Regulation Committee. It is with this background, the petitioner has approached this Court.

4. I have heard the learned counsel for the petitioner and the learned standing counsel for the respondent municipality.

5. The learned standing counsel for the respondent municipality opposed the petition on the ground that apart from the fact that the petitioner's property is located in the paddy zone as per the DTP Scheme, the petitioner is not having clearance from the Archaeological Survey of India which is the additional respondent in this writ petition.

6. In answer to the said submission, the learned counsel for the petitioner would submit that the predecessor-in-interest of the petitioner has obtained clearance from the Archaeological Survey of India and the copy of the same is produced as Ext.P6.

7. It was pointed out by the learned counsel for the petitioner that the DTP Scheme has so far remained as a mere proposal and it has not been implemented. In this Connection, the learned counsel 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.

8. Reliance was also placed on 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.

9. 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.P4 is quashed and the respondent municipality is directed to reconsider petitioner's application for building permit de hors Ext.P4 within a period of one month from the date of receipt of a copy of this judgment.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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