

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 27TH DAY OF JULY 2015/5TH SRAVANA, 1937

WP(C).No. 21802 of 2015 (A)

PETITIONER:

FRANCIS DEVASIA,
S/O. THE LATE MR.SEBASTIAN *alias* DEVASIA,
XXIII KANYARASSERIL, VYPANA, ARUNAPURAM POST,
KOTTAYAM, PIN - 686 574.

BY ADV. SRI.S.JAMES VINCENT.

RESPONDENTS:

1. THE STATE OF KERALA,
REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT,
LOCAL SELF GOVERNMENT DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
2. PALA MUNICIPALITY,
PALA P.O., KOTTAYAM DISTRICT - 686 575,
REP. BY ITS MUNICIPAL SECRETARY.
3. THE DISTRICT TOWN PLANNER,
OFFICE OF THE TOWN PLANNER, NEAR PRIVATE BUS STAND,
NAGAMPADAM, KOTTAYAM, PIN - 686 001.
4. THE ASSISTANT ENGINEER,
L.S.G.D MUNICIPAL OFFICE, PALA,
KOTTAYAM DISTRICT, PIN - 686 575.

R1 & R3 BY GOVERNMENT PLEADER SRI.K.K.SAIDALAVI,
R2 BY SRI.V.M.KURIAN, S.C.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 27-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

Prv/2.

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1 : TRUE COPY OF PARTITION DEED NO. 106 DT. 12.01.2005 OF MEENACHIL S.R.O.
- EXT.P2: TRUE COPY OF LAND REVENUE RECEIPT NO. 3459589 IN BOOK NO. 34596 DT. 18.4.2015 ISSUED TO THE PETITIONER BY THE VILLAGE OFFICER, PULIYANNOOR.
- EXT.P3: TRUE COPIES OF PROPERTY TAX RECEIPT NOS. 14208 DT. 24.9.2014 FOR 2014-15-I AND 21122 DT. 06.3.2015 FOR 2014-15 -II ISSUED BY THE MUNICIPAL COUNCIL, PALA (IN ONE SHEET).
- EXT.P4: TRUE COPY OF APPLICATION FOR BUILDING PERMIT SUBMITTED BY THE PETITIONER ON 28.4.2015 TO THE 2ND RESPONDENT WITH THE SITE PLAN AND THE LOCATION PLAN (SEVEN PAGES).
- EXT.P5: TRUE COPY OF LETTER NO. PW2-6836/15 (E-FILE NO. 62683) DT. 13.5.2015, ADDRESSED BY THE SECRETARY TO THE MUNICIPALITY TO THE 3RD RESPONDENT.
- EXT.P6: TRUE COPY OF NOTICE NO. PW2-6836/15 (E-FILE NO. 62683) DT. 18.6.2015 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER.
- EXT.P7: TRUE COPY OF THE PETITION SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT ON 10.7.2015.
- EXT.P8: TRUE COPY OF PETITION SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT ON 10.7.2015.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.A. TO JUDGE.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 21802 of 2015

Dated this the 27th day of July, 2015

J U D G M E N T

Ext.P6, 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 9.46 Ares of land comprised in Re.Sy.No.5/26-A of Puliyanloor Village, Meenachil, Kottayam within the local limits of the respondent municipality. On the southern portion of the land, he put up a residential building in 2007 and he is residing there with his family. As his son's marriage is under proposal, for his separate residence in the rear portion of the said property, the petitioner submitted an application seeking permit for constructing a residential building before the respondent municipality with the site plan and location sketch on 28.04.2015. The Secretary of the municipality sent Ext.P5 letter to the 3rd respondent, stating that on one portion of the land, there is already a residential building, whereas the area is part of

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'public and semi-public zone'. Thereupon, the 4th respondent issued Ext.P6 notice to the petitioner stating that the particular site, on which the proposed building is intended to be constructed, comes within the 'public and semi-public zone' in the master plan of the municipality as per the report of the II Grade Overseer dated 16.06.2015; and hence, building permit cannot be issued. According to the petitioner, adoption of the master plan classifying the land as 'public and semi-public zone' without providing sufficient opportunities to the residents and land holders of the affected area to submit their objections is illegal and violates the principles of natural justice. Aggrieved by Ext.P6, the petitioner has approached this Court.

3. Arguments have been heard.

4. According to the learned counsel for the respondent municipality submitted that it is a scheme covered area whereas the learned counsel for the petitioner submitted that the acquisition proceedings have not been commenced yet.

5. The learned counsel for the petitioner invited my

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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 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.P6 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/-