

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 10TH DAY OF AUGUST 2015/19TH SRAVANA, 1937

WP(C) .No. 23364 of 2015 (U)

PETITIONER(S) :

1. K.JOMY,
AGED 40 YEARS, W/O.GEORGE ABRAHAM, PULIKKIYIL,
ELANJI P.O., PIN - 686 655 (FROM KANIYARASSERIL,
ARUNAPURAM P.O., PIN - 686 574.
2. GEORGE ABRAHAM,
AGED 46 YEARS, PULIKKIYIL,
ELANJI P.O., PIN - 686 655.

BY ADV. SRI.P.C.HARIDAS.

RESPONDENT(S) :

1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO THE
DEPARTMENT OF LOCAL SELF GOVERNMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
2. THE PALA MUNICIPALITY,
PALA, PIN-686 575, REPRESENTED BY ITS SECRETARY.
3. THE SECRETARY,
PALA MUNICIPALITY, PALA - 686 575.
4. THE ASSISTANT ENGINEER,
L.S.G.D., PALA - 686 575.
5. DISTRICT TOWN PLANNER,
KOTTAYAM - 686 001.

BY GOVERNMENT PLEADER SMT. ANITHA RAVEENDRAN
BY ADV. SRI.V.M.KURIAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
10-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXT.P-1: TRUE COPY OF POWER OF ATTORNEY DATED 10.12.2014 EXECUTED BY THE PETITIONERS.
- EXT.P-2: TRUE COPY OF THE INTIMATION DATED 18.6.2015 OF THE 4TH RESPONDENT.
- EXT.P-3: TRUE COPY OF THE LETTER DATED 28.5.2015 OF THE TOWN PLANNER.
- EXT.P-4: A TRUE COPY OF JUDGEMENT DATED 31.7.2008 IN WPC NO.8656/2008.
- EXT.P-5: TRUE COPY OF THE COMMON JUDGEMENT DATED 21.1.2013 IN WPC NO.28706/2012 AND CONNECTED CASES.
- EXT.P-6: TRUE COPY OF THE JUDGEMENT DATED 25.7.2014 IN WPC NO.13372/2014.
- EXT.P-7: TRUE COPY OF THE BUILDING PERMIT NO.BA-188/09-10 DATED 7.11.2009.
- EXT.P-8: TRUE COPY OF THE OCCUPANCY CERTIFICATE ISSUED TO FRANCIS VYPANYIL.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V.RAMAKRISHNA PILLAI, J.

W.P.(C)No.23364 of 2015

Dated this the 10th day of August, 2015.

J U D G M E N T

The petitioner is aggrieved by the rejection of his application for building permit by respondent Municipality on the ground that the petitioners' property is covered by the Detailed Town Planning Scheme.

2. The petitioners submitted an application for building permit for the construction of a three storied building with 5 residential building units. The 4th respondent by Ext.P2 informed the petitioners that the 5th respondent, by sending Ext.P3 letter, returned the application for building permit stating that the property is situated in a zone earmarked as “public and semi public” as per draft development plan and therefore residential building cannot be permitted therein. It is with this background, the petitioners have approached this Court challenging Exts.P2 and P3.

3. I have heard the learned counsel for the petitioners and the learned standing counsel for the respondent Municipality.

4. The application is opposed by the Standing counsel for the respondent Municipality on the ground that, as per the Detailed Town Planning Scheme of the respondent Municipality, the property is situated in a zone earmarked as “public and semi public” as per the draft development plan and therefore residential building cannot be permitted therein. However, it was pointed out by the learned counsel for the petitioners, that from Exts.P4 to P6 judgments, it is evident that no development scheme is in force within the area of the 2nd respondent and that under the guise of the development permit, the respondents cannot reject application of building permit. According to him, Exts.P7 and P8 would show that building permits were issued to the neighboring land owners, who are similarly situated. 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. 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 petitioners are entitled to get the reliefs prayed for.

Therefore, the writ petition is allowed. Exts.P2 and P3 are quashed and the respondent Municipality is directed to reconsider petitioners' application for building permit and grant permit within a period of one month from the date of receipt of a copy of this judgment.

Sd/-
A.V.RAMAKRISHNA PILLAI,
Judge.

ami/

//True copy//

P.A. to Judge