

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

WP(C) .No. 23740 of 2015 (N)

PETITIONER:

SHINA SONNET, AGED 45 YEARS
KATTIKANAL, PALA.

BY ADVS.SRI.MATHEW JOHN (K)
SRI.DOMSON J.VATTAKUZH

RESPONDENTS:

1. THE PALA MUNICIPALITY
REPRESENTED BY ITS SECRETARY, MUNICIPAL OFFICE
PALA 686 575.
2. SECRETARY
THE PALA MUNICIPALITY, MUNICIPAL OFFICE, PALA 686 575.

R BY SRI.V.M.KURIAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
13-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 23740 of 2015 (N)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1. A TRUE COPY OF THE NOTICE DATED 31.7.15 BY THE ASSISTANT ENGINEER.

EXHIBIT P2. A TRUE COPY OF THE JUDGMENT DATED 31.7.08 IN WPC 8656/08.

EXHIBIT P3. A TRUE COPY OF THE COMMON JUDGMENT DATED 21.1.13 IN WPC 28706,28724 AND 29139 OF 2012.

EXHIBIT P4. COPY OF THE JUDGMENT DATED 25.7.14 IN WPC 2170/14.

RESPONDENT'S EXHIBITS: NIL

TRUE COPY

PA TO JUDGE

Scl.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 23740 of 2015

Dated this the 13th day of August, 2015.

JUDGMENT

The petitioner is aggrieved by the rejection of the petitioner's application for building permit by the respondent municipality on the ground that the petitioner's property is an area covered by a master plan and also for other reasons.

2. The petitioner alleges that his application dated 28.07.2015 for grant of a building permit for the construction of a commercial complex has been rejected by the 2nd respondent as per Ext.P1 notice. A reference to Ext.P1 would show that two reasons assigned by the Asst. Engineer in Ext.P1. The 1st reason is that the property building does not provide adequate distance from the road as per the proposed master plan for the Pala Municipality. The second reason in Ext.P1 is that there is deficiency in parking area as per the plan submitted by the petitioner. The petitioner further alleges that he immediately took leave to submit that in respect of the

second reason the petitioner undertakes to make necessary amendments to the plan providing for adequate parking space as provided under the Kerala Municipality Building Rules (hereinafter referred to as KMBR for brevity). As regards the first reason namely, that the petitioner has not provided enough distance from the road to the building as provided under the Master Plan, the petitioner points out the following facts.

3. The question as to whether there is a valid master plan for Pala Municipality is no more *res-integra* in the light of the judgment of this Court in W.P.C. No. 8656 of 2008 dated 31.07.2008. This is more so in the light of the subsequent judgments of this Court including the common judgment in W.P.C.No. 28706, 28724 and 29139 of 2012 dated 21.01.2013 which followed Ext.P2 judgment. The petitioner also takes leave to submit that after the date of Ext.P3 namely, 21.01.2013 no scheme under the provisions of the Town Planning Act has been published for the Pala Municipality.

Therefore it is transparently evident that there is no valid master plan in force for Pala Municipality as on date; it is alleged. In this connection it is also pointed out that in the context of the Kerala Town and Country Planning Ordinance, 2013 the respondent municipality contended that the draft plan published by the Municipality earlier would be deemed to be Town Planning Scheme published in terms of Section 42 of the afore said ordinance. This question was also pointedly considered by this Court in a batch of writ petitions and vide its judgment dated 25.07.2014, this Court in unambiguous term held that the provisions of the Ordinance would not come to the rescue of the respondent municipality to save the draft master plan. Therefore, according to the petitioner, Ext.P1 is liable to be quashed and the petitioner's application dated 28.07.2015 is entitled to be considered for grant of building permit. It is with this background, the petitioner has come up before this court.

4. I have heard the learned counsel for the petitioner

and the learned standing counsel for the respondent municipality in the matter.

5. The learned standing counsel for the respondent municipality on instructions submitted that apart from the fact that the property is within the scheme covered area, there are other defects also in the petitioner's application.

6. In answer to the said submission, the learned counsel for the petitioner submits that the petitioner is ready to cure the other defects pointed out by the respondent municipality.

7. 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 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.

8. It shall be open to the petitioner to cure the other defects within a time prescribed by the respondent municipality.

Therefore, the writ petition is allowed.

Ext.P1 is set aside 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 in the light of what has been stated above.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

W.P.(C) No. 23740 of 2015

-6-

Scl.