

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. 24491 of 2015 (J)

PETITIONER:

JOSEPH JOSEPH
TRUSTEE, ST.THOMAS CATHEDRAL, PALA.

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

RESPONDENTS:

1. THE CHIEF TOWN PLANNER
2ND FLOOR, SWARAJ BHAVAN, NANDANCODE
THIRUVANANTHAPURAM - 695 001.
2. PALA MUNICIPALITY,
REPRESENTED BY ITS SECRETARY, MUNICIPAL OFFICE
PALA - 686 575.
3. 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
19-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) .No. 24491 of 2015 (J)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT-P1-TRUE COPY OF THE INTIMATION DATED 29/07/2015 BY THE
MUNICIPAL SECRETARY.

EXHIBIT-P2-TRUE COPY OF THE LETTER DATED 07/07/2015 BY THE CHIEF TOWN
PLANNER, THIRUVANANTHAPURAM.

EXHIBIT-P3-TRUE COPY OF THE JUDGMENT DATED 31/07/2008 IN W.P(C)
8656/208.

EXHIBIT-P4-TRUE COPY OF THE COMMON JUDGMENT DATED 21/01/2013 IN W.P
(C) 28706, 28724 AND 29139 OF 2012

EXHIBIT-P5-TRUE COPY OF THE JUDGMENT DATED 25/07/2014 IN W.P(C)
2170/2014

RESPONDENT'S EXHIBITS: NIL

TRUE COPY

PA TO JUDGE

Scl.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No.24491 of 2015

Dated this the 19th day of August, 2015.

JUDGMENT

The petitioner's application dated 23.12.2014 for grant of a building permit for the construction of a commercial complex has been rejected by the third respondent as per Ext.P1 notice. A reference to Ext. P1 would show that the reasons stated in Ext.P1 are as follows: (a) On inspection of the property, it is revealed that as per zoning regulation the property is included in "public and semi public zone". (b) When the length and the set back of the proposed construction is taken into reckoning the same would exceed a depth of 50 metres from the road proposed to be widened to 18 metre. Therefore, the papers were forwarded to the District Town Planner, Kottayam for his concurrence. While so, a clarification dated 7.7.2015 has been received from the office of the first respondent. The said clarification would show that in respect of roads with width of

15 metres or more construction of commercial buildings are permissible upto a depth of more than 50 metres. It is further pointed out that in the letter of the first respondent that as per the zoning regulation, the property in question comes within public and semi public zone. Therefore, in Ext.P1, the first respondent referred to the aforesaid two reasons in the letter of the Chief Town Planner dated 7.7.2015 and intimated the petitioner that the application submitted by the trustee of the church cannot be considered.

3. Arguments have been heard.

4. The petitioner alleges that 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 31.7.2008. It is further alleged that this is more so in the light of the subsequent judgment of this Court including the common judgment in W.P.(C) Nos.28706, 28724 and 29139 of 2012 dated 21.1.2013 which followed Ext.P2 judgment. The petitioner also takes leave to submit

that after the date of Ext.P4 viz, 21.1.2013 no scheme under the provisions of the Town Planning Act has been published for the Pala Municipality. Therefore, it is evident that there is no valid master plan in force for Pala Municipality as on date. It is further 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 a Town Planning Scheme published in terms of Section 42 of the aforesaid ordinance. This question was also pointedly considered by this Court in a batch of writ petitions and vide its judgment dated 25.7.2014, this Court in unambiguous terms held that the provisions of the Ordinance would not come to the rescue of the respondent municipality to save the draft master plan.

5. The second reason namely, that as per the zoning regulation the property where the construction is proposed to be made comes within 'public and semi public' zone. This reason is also bad in law and covered against the respondents

vide judgment of this Court marked as Exts.P3 and P5; it is alleged.

6. Arguments have been heard.

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 petitioner is entitled to get the reliefs prayed for.

Therefore, the writ petition is allowed.

Exts. P1 and P2 are set aside 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
in the light of what has been stated above.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.