

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 21ST DAY OF AUGUST 2015/30TH SRAVANA, 1937

WP(C).No. 25011 of 2015 (B)

PETITIONER :

**C .H .NASEEMA
W/O.MUHAMMED ESSA, MAITHRI NAGAR, THOTTINGAL
PALAKKAD, PALAKKAD DISTRICT.**

BY ADV. SRI.BABU S. NAIR

RESPONDENT(S) :

**1. THE PALAKKAD MUNICIPALITY
REPRESENTED BY ITS SECRETARY, PALAKKAD
PALAKKAD DISTRICT, PIN - 678001.**

**2. THE SECRETARY
PALAKKAD MUNICIPALITY, PALAKKAD,
PALAKKAD DISTRICT, PIN - 678001.**

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

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 21-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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WP(C).No. 25011 of 2015 (B)

APPENDIX

PETITIONERS' EXHIBITS :

**EXHIBIT-P1: TRUE COPY OF THE BUILDING PERMIT ISSUED TO THE PETITIONER
BY THE 2ND RESPONDENT DATED 14.8.2013.**

**EXHIBIT-P2: TRUE COPY OF THE REQUEST FOR THE APPROVAL OF REVISED PLAN
GIVEN BY THE PETITIONER AND HER CHILDREN DATED 20.6.2015.**

**EXHIBIT-P3: TRUE COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT
DATED 1.8.2015.**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 25011 of 2015

Dated this the 21st day of August, 2015

J U D G M E N T

Ext.P3, by which the petitioner's application for building permit was rejected, is under challenge in this writ petition.

2. The petitioner and her three sons jointly own a parcel of properties comprised in Sy.No.3155/2 and 3276/1C of Palakkad - III Village within the local limits of the respondent Municipality. The 2nd respondent, by Ext.P1 order, was issued with building permit for the construction of a shop cum residential building, having an area of 2690 m². Subsequently, the petitioner wanted to convert the nature of occupancy as the petitioner wanted to use more area for commercial use and applied, vide Ext.P1 application, for the approval of a revised plan for the residential cum commercial building itself, giving more space to commercial use than residential use. When

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the petitioner submitted Ext.P2, the municipality rejected the revised plan, vide Ext.P3, stating that as per the approved master plan, the area will come within the residential zone. It is further stated that as per the revenue records, the nature of the land is 'nanja'. According to the petitioner, the reasons stated in Ext.P3 for rejecting the building permit is absolutely untenable. It is further pointed out that after issuing Ext.P1 building permit for construction of a commercial cum residential building, the municipality cannot turn around and say the reasons, which are stated now in Ext.P3. Therefore, according to the petitioner, Ext.P3 is liable to be quashed. Hence, this writ petition.

3. Arguments have been heard.

4. The decision of this Court in **Mohammed Abdul Basheer C.P. v. State of Kerala and another** [2012(3) KLT 86] lays down the principle that the present position of the land has to be taken into consideration and on ascertaining these facts, permission can be granted

for construction.

5. 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.

6. In **Jalaja Dileep v. Revenue Divisional Officer** [2012(3) KLT 333], this Court observed that the description in the title deed or in revenue records will not be crucial if the property is reclaimed already. The aforesaid legal position settled by this Court escaped the attention of the authorities while rejecting the petitioner's application.

7. The learned counsel for the petitioner invited

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my attention also to the decision of this Court in **Adani Infrastructure & Developers Pvt. Ltd., Mumbai v. State of Kerala and Others** [2014 (1) KLT 774], wherein it was held that an authority, which has been conferred with the functions of preparing a data bank with the details of the cultivable paddy land and wetland within its area of jurisdiction with the aid of modern technology and institutions of science and technology under sub-clause (1) of sub-section (4) of Section 5 could at any time, look into the ground realities and decide upon the suitability for prospective cultivation of such lands.

8. 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.

Therefore, this writ petition is allowed. Ext.P3 is quashed.

The respondent municipality is directed to conduct a local inspection of the property regarding the present lie as well as the condition of the property of the petitioner and surrounding properties. The respondents are also directed to consider the application and pass positive orders granting building permit after affording the petitioner an opportunity of being heard if the respondents are satisfied that the land in its present form is not suitable for paddy cultivation. This shall be done within a period of two months from the date of receipt of a copy of this judgment.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-