

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 28TH DAY OF SEPTEMBER 2015/6TH ASWINA, 1937

WP(C).No. 26520 of 2015 (L)

PETITIONER(S):

- 1. ABDUL GAFOOR AGED 45 YEARS
S/O.ABDUL WAHAB**
- 2. SHAMEENA ABDUL GAFOOR AGED 36 YEARS
W/O.ABDUL GAFOOR, PETITIONERS ARE RESIDING AT
MYMOONA MANZIL
OLAVAKKODE PALAKKAD AND REPRESENTED BY POWER OF ATTORNEY;
K.C.SULAIMAN S/O.K.V.CHEKKUTY, AGED 69 YEARS,
KANAYAMKODE HOUSE
PAMBENGINE ROAD, OLAVAKKODE, PALAKKAD.**

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENT(S):

- 1. PALAKKAD MUNICIPALITY
REPRESENTED BY ITS SECRETARY, MUNICIPAL OFFICE
PALAKKAD 678 001.**
- 2. THE DISTRICT TOWN PLANNING OFFICER
PALAKKAD, CIVIL STATION, PALAKKAD 678 001.**
- 3. THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY
DEPARTMENT OF LOCAL SELF GOVERNMENT
THIRUVANANTHAPURAM, PIN: 695 001.**

R1 BY ADV. SRI.T.C.SURESH MENON

R1 BY ADV. SRI.P.S.APPU

BY GOVERNMENT PLEADER SRI. C.K. JAYAKUMAR

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
28-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: A TRUE COPY OF THE BASIC TAX PAID RECEIPT RELATING TO THE PLOT
DATED JULY 22, 2015**
- P2: A TRUE COPY OF THE COMMUNICATION DATED JUNE 30, 2015 BY THE 1ST
RESPONDENT**
- P2(A): A TRUE COPY OF THE ENGLISH TRANSLATION OF EXT.P2**
- P3: A TRUE COPY OF THE CURRENT PHOTOGRAPHS OF THE PLOT**
- P4: A TRUE COPY OF THE JUDGMENT REPORTED IN 2011(3) KHC 162 (DB) OF
THIS HON'BLE COURT**

RESPONDENT(S)' EXHIBITS: NIL

//True copy//

P.A. to Judge

ds

P.BHAVADASAN, J.

W.P.(C) No. 26520 of 2015

Dated this the 28th day of September, 2015

J U D G M E N T

Petitioners, who are desirous of putting up a construction acquired 7.6 cents of property in survey number 907/2 of Yakkara Village in Palakkad Taluk and District, applied for putting up the structure. Unfortunately for the petitioner, his application was rejected on the ground that a portion of the petitioner's plot falls within in the town planning scheme required for industrial purposes and another portion falls within the special category for residential area. Therefore, the application of the petitioner could not be considered. The petitioner has produced the order as Ext.P2.

2. The petitioner points out that the scheme and plan referred to in Ext.P2 was came into force in 1984, but nothing has been done in furtherance thereof. Several commercial plots have been put up in the area and they are

almost 15 to 20 years old. The petitioner has produced Ext.P3 photographs showing the various structures the has come up in the area. The petitioner points out that the so called scheme which is made a tool for refusing his application remains on paper till date. No steps have been taken in furtherance thereof. The petitioners are deprived of enjoying their property in the manner in which they want to put it use. The petitioner refers to the decision reported in **Saidu P. v. State of Kerala** (2010 (3) KHC 974) and points out that a mere proposal for a town planning scheme which requires acquisition of properties cannot be a ground to reject the application for building permits. The petitioner also refers to the decision reported in **Gopalakrishnan T.V. v. State of Kerala and Others** (2011 (3) KHC 162). The petitioner thus points out that the rejection of his application by Ext.P2 order cannot be sustained in law and the matter is likely to be reconsidered.

3. The learned counsel appearing for the Municipality submits that the Municipality may be directed to reconsider the matter after verifying the records and inspecting the plot, if necessary.

4. After having heard the learned counsel on both sides, it is felt that a reconsideration of the issue is necessary in the light of the facts and circumstances stated by the petitioners in the petition as well as the principles laid down in the decisions referred to in the writ petition.

In the result, this writ petition is allowed. The impugned order is set aside and the Municipality is directed to reconsider the application of the petitioners in accordance with law and in the light of the principles down in the decisions referred to in this writ petition.

Sd/-
P.BHAVADASAN
JUDGE

ds

//True copy//

P.A. to Judge