

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. 27460 of 2015 (F)

PETITIONER(S):

**P.A SIDIQUE,
S/O.LATE AHAMMED HAJI, AGED 47 YEARS,
MANAGING DIRECTOR, ERAM MOTORS PVT.LTD.,
CHOICE TOWERS
G.B.ROAD, PALAKKAD.**

**BY ADVS.SRI.BINOY VASUDEVAN
SMT.P.G.BABITHA
SRI.M.R.MANIKANTAN**

RESPONDENT(S):

- 1. THE PALAKKAD MUNICIPALITY, REPRESENTED BY ITS SECRETARY,
MUNICIPAL OFFICE, PALAKKAD.**
- 2. THE SECRETARY, PALAKKAD MUNICIPALITY, PALAKKAD.**
- 3. DISTRICT TOWN PLANNER, OFFICE OF THE DISTRICT TOWN PLANNER,
PALAKKAD.**

**R1 & R2 BY ADV. SRI.T.C.SURESH MENON (SC)
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:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: TRUE COPY OF DOCUMENT NO.7012/2014 OF S.R.O., PALAKKAD.
- EXT.P2: TRUE COPY OF THE LAND TAX RECEIPT IN RESPECT OF THE PETITIONER'S PROPERTY.
- EXT.P3: TRUE COPY OF THE POSSESSION CERTIFICATE IN RESPECT OF THE PETITIONER'S PROPERTY.
- EXT.P4: TRUE COPY OF THE LOCATION CERTIFICATE ISSUED BY THE VILLAGE OFFICER.
- EXT.P5: TRUE COPY OF THE DECISION BEARING NO.BA/355/15-16/PW4 DATED 20.8.2015 OF THE 2ND RESPONDENT.
- EXT.P6: TRUE COPY OF THE JUDGMENT DATED 10.7.2014 IN WP(C) NO.13042/2014.

RESPONDENT(S)' EXHIBITS: NIL

//True copy//

P.A. to Judge

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P.BHAVADASAN, J.

W.P.(C) No. 27460 of 2015

Dated this the 28th day of September, 2015

J U D G M E N T

The petitioner acquired 16.13 cents of dry land in Re-survey No. 4/56 of Yakkara Village in Palakkad Taluk. Ever since then, he has been in absolute possession and enjoyment of the same. The petitioner points out that the property is situated in a commercially important area of the Palakkad town. The petitioner claims to have submitted an application on 15.07.2015 for grant of a building permit to put up a structure in the property. It is also pointed out that there are several commercial buildings in and around the property owned and possessed by the petitioner where he wants to put up the structure. The petitioner also claims that the application has been submitted strictly in accordance with the rules in force and in accordance with law. To the utter dismay of the petitioner, his application was rejected by Ext.P5 order stating that his property is

located in a special category and residential area and it will be included in the DTP scheme and his application cannot be considered.

2. The petitioner points out that the scheme has become obsolete and even assuming that there is a scheme and since nothing has been done in furtherance thereof, that cannot be a ground to reject the application of the petitioner. In support of his contention, he relies on the decision reported in **Raju S. Jethmalani and others v. State of Maharashtra and others** ((2005) 11 SCC 222) and various other decisions of this Court also.

3. This Court, by a series of decisions which have been referred to in this petition, as well as the Apex Court has considered this issue in detail and has held that such obsolete schemes in pursuance to which no further action has been taken and anticipated projects cannot be a ground to reject an application for putting up structures in the property. The petitioner has also pointed out that as far as

his case is concerned, there are commercial buildings allowed to be put up by the respondents near his property and there is no reason as to why the petitioner should be discriminated.

4. After having heard the learned counsel on both sides, it is felt that there is considerable force in the submissions made by the learned counsel for the petitioner.

In the light of the principles laid down by the petitioner in the petition, this petition is allowed. Ext.P5 order is set aside and the second respondent is directed to reconsider the application in accordance with law and in the light of the principles laid down in the various decisions of this Court as well as the Apex Court within a period of 15 days from the date of receipt of a copy of this judgment.

Sd/-
P.BHAVADASAN
JUDGE

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//True copy//

P.A. to Judge