

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 22ND DAY OF JANUARY 2015/2ND MAGHA, 1936

WP(C).No. 28733 of 2014 (N)

PETITIONER:

**C.SARADA, W/O.KITTUAPPAN,
AGED 70 YEARS, 13/530, MANKAVU,
PALAKKAD, PALAKKAD DISTRICT.**

**BY ADVS.SRI.BABU S. NAIR
SMT.SMITHA BABU**

RESPONDENT(S):

- 1. THE CHIEF TOWN PLANNER,
TOWN AND COUNTRY PLANNING DEPARTMENT,
THIRUVANANTHAPURAM, PIN-695001.**
- 2. THE PALAKKAD MUNICIPALITY,
REPRESENTED BY ITS SECRETARY,
PALAKKAD, PIN-678001.**
- 3. THE SECRETARY,
PALAKKAD MUNICIPALITY,
PALAKKAD, PIN-678001.**

**R1 BY GOVERNMENT PLEADER SMT.SANJEETHA.K.A
R2 & R3 BY SRI.T.C.SURESH MENON, SC
ADV. SRI.P.S.APPU**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 22-01-2015 ALONG WITH WPC.25640/2014 & CONNECTED
CASES, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

mbr/

WP(C).No. 28733 of 2014 (N)

APPENDIX

PETITIONER(S)' EXHIBITS:

**P1: TRUE COPY OF THE ORDER OF THE FIRST RESPONDENT AS ORDER
NO.C2/2791/06/D.DIS. DATED 20.4.2006.**

**P2: TRUE COPY OF THE RESOLUTION OF THE MUNICIPAL COUNCIL, PALAKKAD
DATED, 14.10.2014.**

RESPONDENT(S)' EXHIBITS: - **NIL**

/TRUE COPY/

P.S. TO JUDGE

mbr/

DAMA SESHADRI NAIDU, J.

**W.P.(c) Nos. 28733 of 2014,
28679 of 2014, 28732 of 2014,
25640 of 2014 & 28740 of 2014**

Dated this the 22nd day of January, 2015

JUDGMENT

All the petitioners in the five writ petitions are similarly placed, having a common grievance against the same set of respondents. Accordingly, this Court proposes to dispose of all the five writ petitions through a common judgment.

2. The petitioners, having lands within the limits of Palakkad Municipality, are desirous of developing their properties. Accordingly, when one of them initially approached the Town and Country Planning Department way back in 2006, his request was positively considered through Exhibit P1 proceedings on condition that the applicant had to first surrender to Palghat Municipality the required land, free of cost, for laying new roads. However, even after lapse of many years, so far the Municipality has not permitted the

petitioners to put their lands to beneficial use as they desired. Evidently, the reason offered by the respondent Municipality was that the land was covered under Detailed Town Planning Scheme, whereunder it was shown as park and open space.

3. Eventually, after repeated efforts on the part of the petitioners, the respondent Municipality passed Exhibit P2 resolution on 14.10.2014 agreeing in principle that the petitioners may be permitted to develop their properties subject to the same condition that has in fact initially been imposed through Exhibit P1 by the Town and Country Planning Department. When no further steps were taken pursuant to Exhibit P2, the petitioners approached this Court.

4. The learned counsel for the petitioners has strenuously contended that the Honourable Supreme Court in **Raju S. Jatmalani v. State of Maharashtra** [2005 (11) SCC 222] has categorically held that though land belonging to private persons can be included in development plan, unless the land is acquired by the Government or Municipal

Corporation to effectuate the public purpose, the owner cannot be deprived of the use of his land. He has also brought to my notice the judgments rendered by this Court in **Padmini v. State of Kerala** [1999 (3) KLT 465] and **Sivaprasad v. State of Kerala** [2011 (1) KLT 690], whereby the same principle has been reiterated. Eventually, the learned counsel has urged this Court to allow the writ petition with a positive direction to the second and third respondents to expedite the process of granting necessary permission to the petitioners to develop their properties.

5. The learned Standing Counsel for respondents 2 and 3 has submitted that the respondent Municipality does not have any objection to consider the representations, if any, of the petitioners, in terms of Exhibit P2 resolution passed by the Municipality.

6. In the facts and circumstances, having regard to the respective submission of the learned counsel for the petitioners, and the learned Standing Counsel for the respondents, as well as the learned Government Pleader, this Court disposes of the writ petition with a direction to

respondents 2 and 3 to permit the petitioners' to develop their properties for commercial use in terms of Exhibit P2 resolution, subject to the petitioners' compliance with all other statutory parameters by the petitioners. It is brought to my notice that W.P.(C) No. 25640/2014 does not contain Exhibit P2 proceedings. It is however to be made clear that once the petitioner in the said writ petition is also similarly placed, the same benefit can be extended to the said petitioner as well.

With the above observation, all the writ petitions are disposed of. No order as to costs.

**DAMA SESHADRI NAIDU
JUDGE**

DMR/-