

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937

WP(C).No. 29693 of 2015 (J)

PETITIONER:

P.K.AJAYAKUMAR, S/O. KUMARAN, 20/327, ANUGRAHA,
VADUKKUMURI, KALMANDAPAM, PALAKKAD.

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENTS:

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 ADVS. SRI.T.C.SURESH MENON

SRI.P.S.APPU

R2 & R3 BY SMT. S. HYMA, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 12-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C).No. 29693 of 2015 (J)

APPENDIX

PETITIONER'S EXHIBITS :

P1 : A COPY OF THE BASIC TAX PAID RECEIPT RELATING TO THE PLOT
DTD.8.5.2015.

P2 : A COPY OF THE COMMUNICATION DTD.9.9.2015 ISSUED BY THE 1ST
RESPONDENT.

P3 : A COPY OF THE JUDGMENT REPORTED IN 2011(3) KHC 162 (DB).

RESPONDENTS' EXHIBITS: NIL

// True Copy //

P.A to Judge.

smp

P.BHAVADASAN, J.

Writ Petition (Civil) No.29693 OF 2015

Dated this the 12th day of October, 2015.

J U D G M E N T

Assailing Ext.P2 order whereby the petitioner was declined permit to put up a building in his property, the petitioner has come up before this Court with this writ petition.

2. Relying on the decisions in **Padmini** vs. **State of Kerala** (1999 (3) KLT 465) and in **Raju S. Jethmalani and others** vs. **State of Maharashtra** ((2005) 11 SCC 222), it is contended by the learned counsel for the petitioner that the reason given for rejecting the application cannot be sustained.

3. The petitioner owns 5 cents of land comprised in resurvey No.3215/1, Ward No.2, Block No.75 of Palakkad 3 Village in Palakkad Taluk and District. He had purchased the property with the intention of putting up a commercial structure and he applied in the prescribed form. The application was rejected on the ground that the petitioner's property falls within the area which is acquired for establishing a township. The

petitioner points out that the idea of Town Planning Scheme was envisaged in 1984 and since then nothing has been transpired and the scheme has become obsolete. It is further pointed out that in all surrounding properties, buildings have been put up and it is become a commercial area. The scheme remains on paper and no steps in pursuance to the so called Town Planning Scheme have been taken so far by the authorities.

4. Relying on the decision in **Saidu P vs. State of Kerala and others** (2010 (3) KHC 974), it is contended by the learned counsel for the petitioner that mere proposal for a Town Planning Scheme cannot be a ground to reject the application for permit to put up a building. Reliance is also placed on the decision of this Court in **Gopalakrishnan T.V vs. State of Kerala and others** (2011 (3) KHC 162). The petitioner points out that in several such circumstances, this Court had occasion to interfere and direct the Municipality to re-consider the application in accordance with law and in the light of the principles laid down in the above decisions referred to by the petitioner.

5. After having heard the learned counsel for the petitioner,

learned Standing Counsel appearing for the Municipality and after having perused the records and also the decisions made mention of in the petition, it becomes clear that a mere proposal for Town Planning Scheme cannot be taken as a ground to reject the application for permission to construct a commercial building. It has to be re-valued in accordance with the Rules and Regulations for construction. The petitioner has specifically pointed out that around his property, there are other commercial buildings and in such a situation Ext.P2 order cannot survive.

6. There is considerable force in the above submission and it becomes necessary to interfere with Ext.P2 order in the light of the decisions referred to above.

In the result, this writ petition is allowed and Ext.P2 is quashed and the respondent-Municipality is directed to re-consider the application for building permit submitted by the petitioner in accordance with law and in the light of the principles laid down in the decisions mentioned in the petition.

Sd/-

P.BHAVADASAN
JUDGE

smp