

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. 29697 of 2015 (J)

PETITIONER:

THASNEER KAJA, S/O.M.A.KAJA MOITHEEN,
AGED 35 YEARS, KADEEJA MANZIL, 8/879,
KADAMKODE, KARINGARAPULLY P.O.,
PALAKKAD DISTRICT, PIN -678 551.

BY ADVS.SRI.BINOY VASUDEVAN
SMT.P.G.BABITHA

RESPONDENTS:

1. THE PALAKKAD MUNICIPALITY,
REPRESENTED BY ITS SECRETARY, MUNICIPAL OFFICE,
PALAKKAD - 678 101.
2. THE SECRETARY,
PALAKKAD MUNICIPALITY, PALAKKAD - 678 101.
3. DISTRICT TOWN PLANNER,
OFFICE OF THE DISTRICT TOWN PLANER, PALAKKAD - 678 101.

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

R3 BY SMT.S. HYMA, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 12-10-2015, ALONG WITH WP(C) 29703/2015, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P1. TRUE COPY OF THE DOCUMENT NO.3897/2015 OF SRO,
PALAKKAD.
- EXT.P2. TRUE COPY OF THE POSSESSION CERTIFICATE
DATED 30/7/2015 IN RESPECT OF THE PETITIONER'S
PROPERTY.
- EXT.P3. TRUE COPY OF THE LAND TAX RECEIPT IN RESPECT OF THE
PETITIONER'S PROPERTY.
- EXT.P4. TRUE COPY OF THE PROCEEDINGS OF THE RDO, PALAKKAD
DATED 13/5/2008.
- EXT.P4(a). TRUE COPY OF THE PROCEEDINGS OF THE RDO, PALAKKAD
DATED 16/5/2008.
- EXT.P5. TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT
DATED 2/9/2015.
- EXT.P6. TRUE COPY OF THE JUDGMENT IN WPC NO.5505/2014
RENDERED BY THIS HONOURABLE COURT.

RESPONDENTS' EXHIBITS: NIL.

// True Copy //

P.A to Judge.

smp

P.BHAVADASAN, J.

Writ Petition (Civil) Nos.29697 & 29703 OF 2015

Dated this the 12th day of October, 2015.

J U D G M E N T

Aggrieved by Ext.P5 order, petitioners who applied for permission to put up structures in their properties have come up before this Court with these writ petitions.

2. The petitioners own parcels of land in Palakkad III Village in Palakkad Taluk, Palakkad District. They applied for permit for putting up structure in their properties. Their application was rejected by Ext.P5 order on the ground that their properties fall within the area marked as paddy zone. It was also stated in the order that as per the Government Order dated 11.11.2009, only those buildings which are having a plinth area upto 200 sq.mtr will be permitted.

3. The petitioners assail Ext.P5 order on several grounds. They rely on the decisions in **Raju S. Jethmalani and others** vs. **State of Maharashtra and others** ((2005) 11 SCC 222) and in **Gopalakrishnan** vs. **State of Kerala and others** (2011 (3)

KLT 317) and also on Ext.P6 judgment of this Court in an identical matter.

4. It is contended by the learned counsel for the petitioners that in the light of the decisions referred to in the petitions, Ext.P5 order is clearly unsustainable and the respondent has to consider the applications in accordance with law and in the light of the principles laid down in the decisions referred to in the petitions.

5. After having heard the learned counsel on both sides and after having gone through the decisions referred to in the petitions and also after having gone through Ext.P6, facts of which are similar to the facts on hand, this Court is of the view that Ext.P5 order cannot be sustained.

6. This Court in Ext.P6 judgment has referred to various decisions and has held that in such circumstances petitioners are entitled to relief and the application for permission to put up structures cannot be rejected on the grounds mentioned in the order.

7. There is no reason as to why the principles laid down in

the above decision shall not be applied to the facts of the case. It stands on similar footing.

For the above reasons, these petitions are allowed. The impugned orders are set aside and the respondent-Municipality is directed to re-consider the petitioners' applications for building permit in accordance with law and in the light of the principles laid down in the decisions referred to above, within a period of one month from today.

Sd/-

**P.BHAVADASAN
JUDGE**

smp