

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

WP(C) .No. 32171 of 2015 (V)

PETITIONER:

V.SATHI,
D/O.VELANDI, KARUKODI, VADAKKANTHARA
PALAKKAD.

BY ADVS.SRI.P.R.AJITHKUMAR
SRI.K.MANOJ CHANDRAN

RESPONDENTS:

1. THE PALAKKAD MUNICIPALITY
REPRESENTED BY ITS SECRETARY, MUNICIPAL OFFICE
PALAKKAD 678 001.
2. THE SECRETARY
PALAKKAD MUNICIPALITY, MUNICIPAL OFFICE
PALAKKAD 678 001.
3. THE DISTRICT TOWN PLANNER
OFFICE OF THE DISTRICT TOWN PLANNER
PALAKKAD 678 001.

R1,R 2 BY ADV. SRI.T.C.SURESH MENON
R1,R 2 BY ADV. SRI.P.S.APPU
R1,R 2 BY ADV. SRI.A.R.NIMOD
R3 BY GOVERNMENT PLEADER SMT. S. HYMA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
03-11-2015, ALONG WITH WPC. 32182/2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT P1. COPY OF THE PARTITION DEED DATED 15.7.06.

EXHIBIT P2. COPY OF THE POSSESSION CERTIFICATE DATED 6.2.14.

EXHIBIT P2(A) . COPY OF THE BASIC TAX RECEIPT DATED 15.9.15.

EXHIBIT P3. COPY OF THE COMMUNICATION DATED 18.9.14.

EXHIBIT P4. COPY OF THE JUDGMENT DATED 6.11.14.

EXHIBIT P5. COPY OF THE BUILDING PERMIT DATED 9.4.15.

EXHIBIT P6. COPY OF THE LETTER DATED 25.9.15.

RESPONDENTS' EXHIBITS : NIL.

TRUE COPY

P.A. TO JUDGE.

kp/-

P.BHAVADASAN, J.

=====

W.P.(C). Nos.32171 & 32182 of 2015

Dated this the 3rd day of November, 2015

JUDGMENT

Aggrieved by Ext.P3 order in both these writ petitions whereby the applications filed by the petitioners seeking permission to put up a construction was rejected, the petitioners have come up with these writ petitions.

In a partition effected in the family, the petitioners obtained their respective properties made mentioned of in the writ petitions. Ever since the partition, the respective parties are in absolute possession and enjoyment of their respective properties. Petitioners say that they would like to put up a residential building in the property which is located in a residential area. Several houses have already come up in the area and there is no reason why the petitioners cannot be permitted to put up building. They, therefore, filed necessary applications under the bonafide belief that they would be granted permission to put up the

structures. However, to their utter dismay and shock they received Ext.P3 order rejecting their applications.

2. Petitioners say that Ext.P3 order is unsustainable, especially in view of Ext.P4 judgment of this Court in a similar situation.

3. It is unnecessary to go into further details for the simple reason that the issue stands covered by Ext.P4 judgment of this Court in W.P.(C).No.25662 of 2014. That petition was filed by one of the sharers in the partition deed to which petitioners are also parties. The sharer, who moved that petition, wanted to put up a residential building. Her application was rejected on similar grounds. This Court, after advertng to the objection raised on behalf of the authorities and referring to the decision reported in **Raju S.Jethmalani and Others v. State of Maharashtra and Others** [(2005) 11 SCC 222], disposed of the writ petition as follows:

“This Writ Petition is accordingly disposed of directing the 2nd respondent to consider the application submitted by

the petitioner afresh, after conducting an inspection of the petitioner's land to verify whether the land is a paddy field and thereafter, to pass appropriate orders on the application in accordance with law. Appropriate orders as indicated above shall be passed, as expeditiously as possible and at any rate within a period of one month of the date of receipt of a copy of this judgment."

4. The petitioners have produced Ext.P5 which is a sanction granted to the petitioner in W.P.(C).No.25662 of 2014 pursuant to the order of this Court. One fails to understand as to how the petitioners could be discriminated under the circumstances, especially in view of the judgment in the writ petition referred to above and the consequential order passed by the authority.

These writ petitions are allowed. The impugned orders are set aside and respondents concerned are directed to consider the applications filed by the petitioners afresh, after conducting an inspection of the petitioners land to verify whether the land is a paddy field and thereafter to pass appropriate orders on their applications in accordance with law, keeping in view the principles laid down in the

decision referred to above and also the fact that Ext.P5 has been issued to one of the sharers to the partition deed, within thirty days from the date of receipt of a copy of this judgment.

**P.BHAVADASAN,
JUDGE.**

kp/-