

(2017) 07 KL CK 0006
In the High Court Of Kerala
Case No : 23989 of 2016 (W)

K.C.SUBASH

APPELLANT

Vs

THE PALAKKAD MUNICIPALITY

RESPONDENT

Date of Decision : 11-07-2017

Acts Referred:

Citation : (2017) 07 KL CK 0006

Hon'ble Judges : K.Vinod Chandran

Bench : SINGLE BENCH

Advocate : P.S.APPU, A.R.NIMOD, RAVIKRISHNAN, S.ANANTHAKRISHNAN,
N.K.SUBRAMANIAN

Final Decision : Allowed

Judgement

1. The petitioner is aggrieved with the rejection of a building permit application at Ext.P7 for reason of the land being situated within the Paddy Zone as per the Detailed Town Planning (DTP) scheme. The petitioner contends that the land was originally a paddy land, but, however, the petitioner had obtained conversion under Clause (6) of the Kerala Land Utilization Order, 1967 ("KLU Order" for short), as per Ext.P4, as early as in the year 2003. The land was converted and later a building permit was applied for and obtained as per Ext.P6. The building, as per Ext.P6 permit, could not be constructed for reason of paucity of funds. It is, hence, a further application was submitted, which stood

rejected as per Ext.P7.

2. Since the petitioner's land has been permitted to be converted long prior to the implementation of the Kerala Conservation of Paddy Land and Wet Land Act, 2008, the land is not covered under the said Act. The petitioner has also obtained conversion of user under the KLU Order. The land is said to be included as "converted land" in the data bank. Hence, the only objection that could survive is with respect to the DTP scheme.

3. As to the DTP scheme and the Paddy Land Zone, it is trite that such obsolete schemes remaining idle without implementation for long years cannot restrict the enjoyment of the property of the land holders, as has been laid down by the decision of the Apex Court in *Raju S. Jethmalani v. State of Maharashtra* - (2005) 11 SCC 222 and the decision of a Division Bench of this Court in *Padmini v. State of Kerala* - 1999 (3) KLT 465. The learned Counsel for the petitioner also contends that there are many commercial buildings in the area and in such circumstance, there is no reason why the petitioner's building permit application is rejected.

4. On the above reasoning, it is found that the rejection of the building permit application, as per Ext.P7, is unsustainable and hence Ext.P7 is set aside. The respondent Municipality is directed to consider the application in accordance with the Kerala Municipality Building Rules, 1999.

The writ petition is allowed. No Costs.