

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

WP(C).No. 4937 of 2015 (N)

PETITIONER(S):

- 1. SAMEENA, AGED 32 YEARS,
D/O.ABDU SAMAD, PALLIYALIL HOUSE, DOWNHILL P.O.,
MALAPPURAM DISTRICT.**
- 2. FATHIMA FASNA, AGED 28 YEARS,
D/O.ABDU SAMAD, PALLIYALIL HOUSE, DOWNHILL P.O.,
MALAPPURAM DISTRICT.**

**BY ADVS.SRI.K.ABDUL JAWAD
SRI.MATHEW A KUZHALANADAN
SMT.VINEETHA V.KUMAR**

RESPONDENT(S):

- 1. THE MALAPPURAM MUNICIPALITY,
REPRESENTED BY THE SECRETARY,
MALAPPURAM -676 505**
- 2. THE SECRETARY,
MALAPPURAM MUNICIPALITY, MALAPPURAM- 676 505**

R1 & R2 BY SRI.ESM.KABEER

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 10-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

sts

WP(C).No. 4937 of 2015 (N)

APPENDIX

PETITIONER(S)' EXHIBITS

**P1: TRUE COPY OF THE JUDGMENT DATED 27.03.2012 IN WPC.NO. 7563/12 ON
THE FILE OF THIS HON'BLE COURT.**

**P2: TRUE COPPY OF THE ORDER DATED 03.08.2013 ISSUED BY THE 2ND
RESPONDENT ALONG WITH ENGLISH TRANSLATION.**

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

sts

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 4937 of 2015

Dated this the 10th day of June, 2015

J U D G M E N T

Ext.P2, by which the petitioners' application for building permit was rejected, is under challenge.

2. The petitioners are the co-owners of certain land in Re.Sy.No.517/1, 2 of Malappuram Village within the local limits of the respondent municipality. The petitioner submitted an application seeking permit for constructing a commercial building, which was rejected by Ext.P2 stating that the proposed construction comes within the area of the alignment of bypass road, proposed in the Master Plan. According to the petitioners, the application was rejected based on the unimplemented proposal in the Master Plan without taking any step for actual acquisition of land. It is with this background, the petitioners have approached this Court.

3. Arguments have been heard.

4. The learned counsel for the petitioners invited

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my attention to a Division Bench decision of this Court in **Padmini v. State of Kerala** [1999 (3) KLT 465], wherein it was held that no building permit can be refused to any person because there is a proposal to acquire the land in future. Reliance was also placed to the decision of the apex court in **Raju S. Jethmalani v. State of Maharashtra** [(2005) 11 SCC 222], wherein it was held that refusing to grant permits relying on obsolete DTP schemes is a clear violation of the provisions of the Constitution. Viewed in that profile, this Court is of the view that the petitioners are entitled to get the reliefs prayed for.

Therefore, the writ petition is allowed.

Ext.P2 is quashed and the respondent municipality is directed to reconsider petitioners' application for building permit within a period of one month from the date of receipt of a copy of this judgment.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-