

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 11TH DAY OF JUNE 2015/21ST JYAISHTA, 1937

WP(C).No. 7902 of 2015 (K)

PETITIONER(S) :

**IBRAHIM, AGED 37 YEARS,
S/O.ABDUL KAHDER, APPELY HOUSE, EDAVOOR KARA,
KOOVAPPADY VILLAGE, KUNNATHUNADU TALUK.**

**BY ADVS.SRI.V.RAJENDRAN (PERUMBAVOOR)
SRI.GEORGE VARGHESE KIZHAKKAMBALAM**

RESPONDENT(S) :

- 1. STATE OF KERALA,
REP. BY PRINCIPAL SECRETARY,
DEPARTMENT OF LOCAL ADMINISTRATION, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.**
- 2. PERUMBAVOOR MUNICIPALITY,
REP.BY ITS SECRETARY, MUNICIPAL OFFICE,
PERUMBAVOOR-683 542.**
- 3. CHIEF TOWN PLANNER,
SOUTH SANDWICH BLOCK, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.**

**R1 & R3 BY GOVERNMENT PLEADER SRI.T.R.RAJESH
R2 BY ADV. SRI.V.M.KURIAN, S.C**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 11-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT-P1:** TRUE COPY OF SALE DEED NO.3714 DATED 18.07.2011 OF PERUMBAVOOR SUB REGISTRY OFFICE AND ENGLISH TRANSLATION.
- EXHIBIT-P2:** TRUE COPY OF ORDER B.A.NO.211/14-15 ISSUED BY 2ND RESPONDENT DATED 27.12.2014 AND ENGLISH TRANSLATION.
- EXHIBIT-P3:** TRUE COPY OF JUDGMENT IN W.P.(C)NO.9788/2012 DATED 17.07.2013 OF THIS HON'BLE COURT.
- EXHIBIT-P4:** TRUE COPY OF JUDGMENT IN W.P.(C)NO.11528/2013 DATED 22.07.2013 OF THIS HON'BLE COURT.
- EXHIBIT-P5:** TRUE COPY OF JUDGMENT IN W.P.(C)NO.12098/2013 OF THIS HON'BLE COURT DATED 29.05.2013.
- EXHIBIT-P6:** TRUE COPY OF PETITION SUBMITTED BY ADVOCATE N.RAJESH BEFORE THE PUBLIC INFORMATION OFFICER OF THE 2ND RESPONDENT ON 09.01.2015.
- EXHIBIT-P7:** TRUE COPY OF LETTER NO.PW-2A3(RIA)507/15 DATED 30.01.2015 ISSUED TO ADVOCATE N.RAJESH IS REPLY TO EXHIBIT P6.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

A.V.RAMAKRISHNA PILLAI, J

WPC No.7902 of 2015

Dated this the 11th day of June, 2015

JUDGMENT

Ext.P2 by which petitioner's application for building permit was rejected is under challenge.

2. The petitioner is the owner of 2.16.50 Ares of land in Re.Sy.No.29/2 of Block No.36 of Perumbavoor Village within the local limits of respondent Municipality. The petitioner submitted an application for a permit, for construction of a new building before the respondents, which was rejected by the second respondent stating that the area where the petitioner proposes to construct the building is included in the residential zone and as per the published master plan, construction of commercial building having plinth area of more than 50 M2 is not permissible in the area earmarked as residential zone. It is with this background, the petitioner has approached this Court.

3. I have heard the learned counsel for the petitioner and the learned standing counsel for the respondent Municipality.

4. The learned counsel for the petitioner relying on Exts.P3 to P5 judgments of this Court submitted that the Municipality is not having an approved master plan and the Municipality is not entitled to reject the permit application on that ground.

5. The learned counsel for the petitioner also invited 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 Maharastra*** [(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 petitioner is 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 petitioner's application for building permit and grant permit within a period of one month from the date of receipt of a copy of this judgment.

**Sd/- A.V.RAMAKRISHNA PILLAI
JUDGE**

CSS/

true copy

P.S.TO JUDGE