

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. 7903 of 2015 (K)

PETITIONER(S):

1. PAREETH, AGED 60,
S/O.ABOOBACKER, KAROTHUKUDY HOUSE, VENGOLA KARA,
VENGOLA VILLAGE, KUNNATHUNADU TALUK.
2. PATHUKUTTY, AGED 55,
W/O.PAREED, KAROTHUKUDY HOUSE, VENGOLA KARA,
VENGOLA VILLAGE, KUNNATHUNADU TALUK.

BY ADVS.SRI.V.RAJENDRAN (PERUMBAVOOR)
SRI.RAJESH N.

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,
PARUMBAVOOR - 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, SC

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

msv/

WP(C).No. 7903 of 2015 (K)

APPENDIX

PETITIONER(S)' EXHIBITS

**P1: TRUE COPY OF SALE DEED NO.5725 DATED 22/12/80 OF PERUMBAVOOR SUB
REGISTRY OFFICE.**

**P2: TRUE COPY OF BUILDING PERMIT NO.21/2010-2011 DATED 26/9/11 ISSUED BY
2ND RESPONDENT TO THE PETITIONERS.**

**P3: TRUE COPY OF ORDER B.A.NO.21/10-11 ISSUED BY 2ND RESPONDENT
DATED 24/2/2015.**

**P4: TRUE COPY OF JUDGMENT IN WPC 9788/2012 DATED 17/7/13 OF THIS HON'BLE
COURT.**

**P5: TRUE COPY OF JUDGMENT IN WPC 11528/2013 DATED 22/7/2013 OF THIS
HON'BLE COURT.**

**P6: TRUE COPY OF JUDGMENT IN WPC 12098/2013 OF THIS HON'BLE COURT
DATED 29/5/13.**

**P7: TRUE COPY OF PETITION SUBMITTED BY ADVOCATE N.RAJESH BEFORE THE
PUBLIC INFORMATION OFFICER OF THE 2ND RESPONDENT ON 9.1.2015.**

**P8: TRUE COPY OF LETTER NO.PW2-A3(RIA) 507/15 DTD.30.1.2015 ISSUED TO
ADVOCATE N.RAJESH IS REPLY TO EXT.P7.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.V.RAMAKRISHNA PILLAI, J

WPC No.7903 of 2015

Dated this the 11th day of June, 2015

JUDGMENT

Ext.P3 by which petitioners' application for change of occupancy of a building constructed by them on the strength of Ext.P2 was rejected is under challenge.

2. The petitioners are the owners in respect of 28.34 Ares of land in Re.Sy.No.20p of Block No.59 of Perumbavoor Village corresponding to old Sy.No.310/17/1 within the local limits of respondent Municipality. The petitioners submitted an application for change of occupancy of a portion of the ground floor of the building as a commercial building, which was rejected by the second respondent stating that the area where the building is situated is classified as residential area as per the master plan and in a residential area, a commercial building exceeding 50 M² is not permissible. The petitioners are already

permitted to occupy 50M² of their ground floor as a commercial building and hence, the remaining portion cannot be permitted to be used as a commercial area.

3. According to the petitioners, the building was originally constructed as a residential building and an area of 50 M² in the ground floor is already constructed as commercial building. The application of the petitioners is to change the occupancy of the remaining portion of the ground floor also as commercial. According to the petitioners, the Perumbavoor Municipality is not having any master plan as approved by the Government. It is with this background, the petitioners have approached this Court.

4. I have heard the learned counsel for the petitioners and the learned standing counsel for the respondent Municipality.

5. The learned counsel 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 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 petitioner is entitled to get the reliefs prayed for. Therefore, the writ petition is allowed. Ext.P3 is quashed and the respondent Municipality is directed to reconsider petitioner's application for change of occupancy 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