

**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. 9160 of 2015 (T)**  
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**PETITIONER(S):**  
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**DEMINA VARGHESE, AGED 40 YEARS,  
W/O. VARGHESE, PYNADATH HOUSE, PERUMBAVOOR KARA,  
PERUMBABOOR VILLAGE, KUNNATHUNADU TALUK.**

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

**RESPONDENT(S):**  
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- 1. STATE OF KERALA,  
REP. BY PRINCIPAL SECRETARY,  
DEPARTMENT OF LOCAL ADMINISTRATION SECRETARIAT,  
THIRUVANANTHAPURAM 695001.**
- 2. PERUMBAVOOR MUNICIPALITY REP. BY ITS SECRETARY,  
MUNICIPAL OFFICE, PERUMBAVOOR 683542.**
- 3. ASSISTANT EXECUTIVE ENGINEER,  
PERUMBAVOOR MUNICIPALITY,  
MUNICIPAL OFFICE, PERUMBAVOOR 683 542.**
- 4. CHIEF TOWN PLANNER,  
SOUTH SANDWICH BLOCK, SECRETARIAT,  
THIRUVANANTHAPURAM 695 001.**

**R2 BY ADV. SRI.V.M.KURIAN, SC, PERUMBAVOOR MUNICIPALITY  
R1,3 & 4 BY GOVERNMENT PLEADER SRI.T.R.RAJESH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11-06-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**PJ**

**WP(C).No. 9160 of 2015 (T)**  
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**APPENDIX**

**PETITIONER(S)' EXHIBITS**  
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- EXHIBIT-P1- TRUE COPY OF THE POSSESSION CERTIFICATE NO.8798335 DATED 31/10/2014 ISSUED FROM PERUMBAVOOR VILLAGE OFFICE.**
- EXHIBIT-P2- TRUE COPY OF THE B.A NO. 368/14-15 ISSUED BY THE 2ND RESPONDENT DATED 12/03/2015 AND ENGLISH TRANSLATION.**
- EXHIBIT-P3- TRUE COPY OF THE JUDGMENT IN W.P(C) 9788/2012 DATED 17/07/2013.**
- EXHIBIT-P4- TRUE COPY OF THE JUDGMENT IN W.P(C) 11528/2013 DATED 22/07/2013.**
- EXHIBIT-P5- TRUE COPY OF THE JUDGMENT IN W.P(C) 12098/2013 DATED 29/05/2013.**
- EXHIBIT-P6- TRUE COPY OF PETITION SUBMITTED BY ADVOCATE N.RAJESH BEFORE THE PUBLIC INFORMATION OFFICER OF THE R2 ON 9/1/15**
- EXHIBIT-P7- TRUE COPY OF LETTER NO.PW2-A3(RIA)507/15 DATED 30/1/15 ISSUED TO ADVOCATE N.RAJESH IS REPLY TO EXHIBIT P6.**

**RESPONDENT(S)' EXHIBITS**  
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**NIL.**

**/ TRUE COPY /**

**P.S. TO JUDGE**

**PJ**

**A.V.RAMAKRISHNA PILLAI, J**

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WPC No.9160 of 2015  
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Dated this the 11<sup>th</sup> 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 in possession of an extent of 3 Ares of properties in Re-sy.No.27 of Block No.108 of Perumbavoor Village. The petitioner submitted an application for a permit, for construction of a commercial building in her property, 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 M<sup>2</sup> is not permissible in 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 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 to 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**