

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 27TH DAY OF MAY 2015/6TH JYAISHTA, 1937

WP(C).No. 9239 of 2015 (D)

PETITIONER(S):

- 1. DR.TOMSON GEORGE, AGED 32 YEARS, S/O.GEORGE,
NANGELIMALIL HOUSE, PULLUVAZHY KARA,
RAYAMANGALAM VILLAGE, KUNNATHUNADU TALUK.**
- 2. DR.GOLFY JOSE,AGED 28 YEARS,
W/O.DR.THOMSON GEORGE, NANGELIMALIL HOUSE,
PULLUVAZHY KARA, RAYAMANGALAM VILLAGE,
KUNNATHUNADU TALUK.**

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

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 SMT. K.A.SANJEETHA
R2 BY ADV. SRI.V.M.KURIAN, SC, PERUMBAVOOR MUNICIPALITY**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 27-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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WP(C).No. 9239 of 2015 (D)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1:** TRUE COPY OF POSSESSION CERTIFICATE NO.10281097 DATED 4.2.15
ISSUED FROM PERUMBAVOOR VILLAGE OFFICE.
- EXT.P2:** TRUE COPY OF TAX PAID RECEIPT NO.4807229 DTD. 7.7.14 ISSUED
FROM PERUMBAVOOR VILLAGE OFFICE AND ENGLISH TRANSLATION.
- EXT.P3:** TRUE COPY OF POSSESSION CERTIFICATE NO.10281082 DTD. 4.2.15
ISSUED FROM PERUMBAVOOR VILLAGE OFFICE.
- EXT.P4:** TRUE COPY OF TAX PAID RECEIPT NO.4807228 DTD. 7.7.14 ISSUED
FROM PERUMBAVOOR VILLAGE OFFICE AND ENGLISH TRANSLATION.
- EXT.P5:** TRUE COPY OF ORDER B.A.NO.275/14-15 ISSUED BY 2ND
RESPONDENT DTD. 5.2.15 AND ENGLISH TRANSLATION.
- EXT.P6:** TRUE COPY OF JUDGMENT IN W.P.(C).9788/2013 DTD. 17.7.13 OF THIS
HON'BLE COURT.
- EXT.P7:** TRUE COPY OF JUDGMENT IN W.P.(C)11528/2013 DTD. 22.7.2013 OF
THIS HON'BLE COURT.
- EXT.P8:** TRUE COPY OF JUDGMENT IN W.P.(C).12098/2013 OF THIS HON'BLE
COURT DTD. 29.5.13.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

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A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 9239 of 2015

Dated this the 27th day of May, 2015

J U D G M E N T

Ext.P5, by which the petitioners' application for building permit was rejected, is under challenge.

2. The 1st petitioner is in possession of an extent of 16.62 Ares of land comprised in Re.Sy.Nos.120/3, 118/4, 118/5-1, 118/5-2, 118/5-3, 118/5-4 and 118/6 of Block No.28 of Perumbavoor Village and the 2nd petitioner is in possession of an extent of 13.89 ares of land comprised in Re.Sy.Nos.120/5, 120/4, 118/7, 120/2, 118/3, 12/1, 118/1 and 118/2 of Block No.28 of Perumbavoor Village within the local limits of the respondent municipality. They are husband and wife. They submitted an application seeking permit for constructing a commercial building, which was rejected by Ext.P5 on the ground that the plan is against the published master plan of the municipality. According to the 2nd respondent, the areas, where the petitioners propose to construct the building is included in the residential zone and as per the published master plan, construction of

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commercial building having plinth area of more than 50 m² is not permissible in an area earmarked as residential zone. According to the petitioners, the respondent municipality is not having any master plan as approved by the Government and hence, rejection of the building permit on that ground is incorrect, illegal and arbitrary. It is with this background, the petitioners have approached this Court.

3. Arguments have been heard.

4. The learned counsel for the petitioners, referring to Ext.P10 answer issued by the respondent municipality on a specific query put by the petitioners under the Right to Information Act, submitted that Ext.P10 reveals that the master plan has not been finalized and approved by the municipality till date. It was also argued that the master plan was prepared in the year 1998 and though the same was sent to the Government for approval, it has not been returned to the municipality. Subsequently, though the District Town Planner has prepared an approved master plan and submitted to the council, no action has been taken so far; it was argued.

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5. Further, the learned counsel for the petitioners 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 petitioners are entitled to get the reliefs prayed for.

Therefore, the writ petition is allowed.

Ext.P5 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/-