

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 2ND DAY OF JULY 2015/11TH ASHADHA, 1937

WP(C).No. 10388 of 2015 (W)

PETITIONER(S):

**P. ASHARAF, S/O.AHAMMEDKUTTY,
PARI HOUSE, MANGATTUPULAM,
KODOOR, MALAPPURAM DISTRICT.**

**BY ADVS.SRI.BABU S. NAIR,
SMT.SMITHA BABU.**

RESPONDENT(S):

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

BY ADV. SRI.ESM.KABEER, SC.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 02-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

WP(C).No. 10388 of 2015 (W)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1 COPY OF THE COMMUNICATION ISSUED TO THE PETITIONER
BY THE 2ND RESPONDENT DATED 16/03/2015.

EXT.P1A TRUE ENGLISH TRANSLATION OF EXT.P1.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No.10388 of 2015

Dated this the 2nd day of July, 2015.

JUDGMENT

Aggrieved by the rejection of the petitioner's application for building permit on the ground that a special policy scheme has to be framed under the Master Plan Zoning Regulation, the petitioner has come up before this Court.

2. The petitioner is the owner of a land in R.S.No.327/6 of the Panakkad Village, in which the petitioner wanted to construct a residential house. The petitioner alleges that he submitted an application for building permit with all necessary plans/sketches before the Municipality. The second respondent by Ext. P1, informed the petitioner that a special policy has to be framed under the Master Plan Zoning Regulation and therefore, the application cannot be considered now.

3. I have heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent

municipality in the matter.

4. The learned counsel for the petitioner would submit that the municipality has not bothered even after 21 years from the date of enactment of the Kerala Municipality Act to frame a special policy scheme. It is pointed out that the neighbouring properties of the petitioner, residential buildings have come up.

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 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.P1 is set aside and the respondent municipality is directed to reconsider petitioner's 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

Scl.