

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

WP(C).No. 14743 of 2015 (P)

PETITIONER:

**M.P.VARGHESE, AGED 60, S/O.POULOSE,
MATTAMANA HOUSE, KOMBANAD P.O.,
PANAMKUZHY, KOMBANAD VILLAGE,
KUNNATHUNADU TALUK.**

**BY ADVS.SRI.V.RAJENDRAN (PERUMBAVOOR)
SRI.GEORGE VARGHESE KIZHAKKAMBALAM
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 SRI.G.GOPAKUMAR
R2 BY ADV. SRI.V.M.KURIAN, SC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 03-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

mbr/

APPENDIX

PETITIONER(S)' EXHIBITS:

- P1 - TRUE COPY OF LAND TAX RECEIPT NO.5318343 DATED 4.9.13 ISSUED FROM PERUMBAVOOR VILLAGE OFFICE TO THE PETITIONER.
- P2 - TRUE COPY OF APPLICATION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT ON 24.2.15.
- P3 - TRUE COPY OF ORDER NO.PW2-3464/15 DATED 17.3.15 ISSUED BY 2ND RESPONDENT TO THE PETITIONER.
- P4 - TRUE COPY OF PETITION FILED BY THE COUNSEL FOR THE PETITIONER BEFORE THE PUBLIC INFORMATION OFFICER OF THE 2ND RESPONDENT ON 9.1.2015.
- P5 - TRUE COPY OF REPLY SENT BY THE PUBLIC INFORMATION OFFICER TO EXHIBIT P4 ON 30.1.15 BEARING NO.PW2-A3(RIA)507/15.
- P6 - TRUE COPY OF JUDGMENT IN WPC.9788/2013 DATED 17.7.13 OF THIS HON'BLE COURT.
- P7 - TRUE COPY OF JUDGMENT IN WPC.11528/2013 DATED 22.7.13 OF THIS HON'BLE COURT.
- P8 - TRUE COPY OF JUDGMENT IN WPC.12098/2013 OF THIS HON'BLE COURT DATED 29.5.13.
- P9 - TRUE COPY OF PETITION SUBMITTED BY ADVOCATE N.RAJESH BEFORE THE PUBLIC INFORMATION OFFICER OF THE 2ND RESPONDENT ON 9.1.15.
- P10 - TRUE COPY OF LETTER NO.PW2-A3(RIA)507/15 DATED 30.1.15 ISSUED TO ADVOCATE N.RAJESH IS REPLY TO EXHIBIT P9.

RESPONDENTS' EXHIBITS: **NIL.**

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 14743 of 2015

Dated this the 3rd day of July, 2015

J U D G M E N T

Ext.P3 order, by which the petitioner's application for change of occupancy of the building of the petitioner was rejected, is under challenge.

2. The petitioner is the owner in possession of an extent of 84 m² of property in R.S.No.28 of Block No.108 of Perumbavoor Village within the local limits of the respondent municipality. The petitioner alleges that there is a double storied building with a plinth area of 42.64 m² each for the floors in the said property and the ground floor is used as a commercial building. As the petitioner required commercial occupancy for the 1st floor also, he filed Ext.P2 application before the 2nd respondent, which was dismissed as per Ext.P3 on the ground that the area, where the building is situated, is a residential area and a commercial building exceeding a total plinth area of

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50 m² is not permissible in a residential area as per the master plan of the respondent university. According to the petitioner, there is no approved master plan for the municipality and hence, rejection of his application on the ground of non existent master plan is illegal. In support of his claim, he produced Exts.P6 to P8 judgments of this Court, which are rendered in similar instances. It is with this background, the petitioner has come up before this Court.

3. Arguments have been heard.

4. 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

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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 set aside 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

bka/-