

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

WP(C).No. 14903 of 2015 (K)

PETITIONER(S) :

1. FRANCY.M.L.,
AGED 49 YEARS
S/O.LAZER, RESIDING AT MURINGATHERY HOUSE, CHOVVANNUR,
KUNNAMKULAM, TRICHUR DISTRICT-680 517.
2. BABU M. VARGHESE.,
AGED 47 YEARS,
S/O.VARGHESE, RESIDING AT MUTTATH HOUSE, KOTTAPPADY,
KUNNAMKULAM, THRISSUR DISTRICT-680 505.

BY ADV. SRI.M.KRISHNAKUMAR

RESPONDENT(S) :

1. KUNNAMKULAM MUNICIPALITY,
REPRESENTED BY ITS SECRETARY,
KUNNAMKULAM-680 503.
2. THE SECRETARY,
KUNNAMKULAM MUNICIPALITY,
KUNNAMKULAM-680 503.

BY ADV. SRI.RAJIT.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 21-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

EXT. P1- TRUE COPY OF THE NOTICE DATED 09/11/1983.

EXT. P2- TRUE COPY OF THE ORDER DATED 07/05/2015.

EXT. P3- TRUE COPY OF THE JUDGMENT IN WPC 5071/2012

EXT. P4- TRUE COPY OF THE JUDGMEWNT IN WPC 18027/2014 DATED
15/07/2014.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 14903 of 2015

Dated this the 21st day of May, 2015

J U D G M E N T

Ext.P2, by which the petitioners' application for building permit was rejected, is under challenge.

2. The petitioners, who are teachers, are in possession of 6.2 cents of land comprised in R.S.No.46/11 (Old Sy.No.1097) within the local limits of the respondent municipality. They submitted an application for building permit before the respondent municipality for constructing a commercial building for a tutorial. The said application was rejected by the respondent municipality as per Ext.P2, stating that the aforesaid land is situated within the Detailed Town Planning Scheme for Central Area of the respondent municipality and is reserved for residential buildings alone and, therefore, no permission can be granted for any commercial activity. According to the petitioners, they cannot be prevented

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from putting their property to any use on the ground that there is an old proposed DTP Scheme. The petitioners have now come to understand that the alleged DTP Scheme of the year 1983 has never been notified by the Government as required under the Madras Town Planning Act, 1920. The petitioners further pointed out that this aspect was submitted before this Court on behalf of the Government and on that basis, similar writ petitions were allowed by this Court. Therefore, according to the petitioners, the municipality is bound to reconsider their application ignoring the DTP Scheme as done in the other cases. It is in this context, the petitioners have approached this Court.

3. Arguments have been heard.

4. 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

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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.P2 is set aside 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/-