

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

WP(C).No. 16027 of 2015 (C)

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PETITIONER(S) :

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SAYYID IBRAHIMUL KHALEELUL BUKHARI THANGAL,  
MAUDINAL SAKHAFATHUL ISLAMIYA,  
MUDIPPADI, MELMURI P.O.,  
MALAPPURAM DISTRICT.

BY ADV. SRI.K.ABDUL JAWAD.

RESPONDENT(S) :

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1. THE MALAPPURAM MUNICIPALITY,  
REPRESENTED BY ITS SECRETARY,  
MALAPPURAM P.O.,  
MALAPPURAM DISTRICT - 676 505.
2. THE SECRETARY,  
MALAPPURAM MUNICIPALITY, MALAPPURAM P.O.,  
MALAPPURAM DISTRICT - 676 505

BY ADV. SRI.ESM.KABEER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 08-06-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

ivs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

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EXT. P1 - TRUE COPY OF THE BUILDING PERMIT ISSUED BY THE 2ND  
RESPONDENT FOR THE CONSTRUCTION ON 08.3.12.

EXT. P2 - TRUE COPY OF THE ORDER DT. 12.5.15 ISSUED BY THE 2ND  
RESPONDENT.

RESPONDENT(S) ' EXHIBITS :

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NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

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

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W.P.(C) No.16027 of 2015  
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Dated this the 8<sup>th</sup> day of June, 2015.

**JUDGMENT**

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

2. The petitioner is in possession of certain extent of land in Sy.No.459/1B2, 2, 3, 458/6, 18 and 17 of Melmuri Village in Malappuram District. The petitioner owns the said land on behalf of the institution, namely, Maudinal Sakhafathul Islamiya. The petitioner alleges that he sought permission from the second respondent for the construction of a school building and the commercial building in the said land and the same was granted by the second respondent. After the completion of the construction, the petitioner submitted completion certificate and applied for an occupancy certificate by an application dated 20.4.2015. However, the second respondent rejected the application, stating that there are certain defects in the application, that are to be cured and the

application is to be resubmitted. The petitioner further alleges that the defect stated was that by virtue of the provisions in the master plan, the petitioner ought to surrender certain land free of cost to the municipality for the purpose of widening a drain (thodu) and that he should construct a permanent wall demarcating the boundary after surrender of land, which he did not oblige. It is in this context, the petitioners have approached 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 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 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 in the light of what has been stated above without insisting for free surrender of his land.

**Sd/-**  
**A.V. RAMAKRISHNA PILLAI**  
**JUDGE**

Scl.