

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 2ND DAY OF JUNE 2015/12TH JYAISHTA, 1937

WP(C).No. 16354 of 2015 (T)

PETITIONER :

**ABDUL SALAM, AGED 47 YEARS
S/O. KUNHIMON, RESIDING AT UTTUMADATHIL HOUSE
KATTAKAMBAL- 680 544, WADAKKANCHERRY TALUK
THRISSUR DISTRICT.**

BY ADV. SRI.M.KRISHNA KUMAR

RESPONDENT(S) :

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

**2. THE SECRETARY
KUNNAMKULAM MUNICIPALITY,
KUNNAMKULAM - 680 503.**

R1 & R2 BY ADV. SRI.RAJIT, SC

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 02-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Mn

...2/-

WP(C).No. 16354 of 2015 (T)

APPENDIX

PETITIONERS' EXHIBITS :

EXT.P1 TRUE COPY OF THE NOTICE DATED 9/11/1983.

EXT.P2 TRUE COPY OF THE ORDER DATED 8/5/2015.

EXT.P3 TRUE COPY OF THE JUDGMENT IN W.P.(C) 5071/2012 DATED 26-3-2012.

EXT.P4 TRUE COPY OF THE JUDGMENT IN WPC 18027/2014 DATED 15-7-2014.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.16354 of 2015

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Dated this the 2nd day of June, 2015

JUDGMENT

Ext.P2 by which petitioner's application for building permit was rejected is under challenge.

2. The petitioner along with his brother is the owner in respect of 21.5 cents of land within the local limits of respondent municipality. The petitioner alleges that the respondent municipality published Ext.P1 notice of publication of draft scheme on 9.11.1983 in a local news paper as required under Section 8 of the town Planning Act, 1108 inviting objections from those who are affected by the proposal to make a draft schemes.

3. The petitioner submitted an application for building permit, which was rejected by Ext.P2 order stating that the site of the building is situated within the Detailed Town Planning (DTP) Scheme for central area of the respondent municipality reserved for

residential buildings and, therefore, no permission can be granted for any commercial activity. It is with this background, the petitioner has approached this Court. The petitioner points out that the DTP scheme for the year 1983 has never been notified by the Government as required under the Madras Town Planning Act, 1920.

4. I have heard the learned counsel for the petitioner and the learned standing counsel for the respondent Municipality.

5. It was pointed out by the learned counsel for the petitioner that Ext.P2 has so far remained as a mere proposal and it has not been implemented. In this Connection, the learned counsel 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.

6. Reliance was also placed on 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 quashed and the respondent Municipality is directed to reconsider petitioner's application for building permit de hors Ext.P1 within a period of one month from the date of receipt of a copy of this judgment and grant permit if the application is otherwise in order.

sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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