

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 11TH DAY OF JUNE 2015/21ST JYAISHTA, 1937

WP(C).No. 16539 of 2015 (N)

PETITIONER(S) :

SANDHYA,
AGED 45 YEARS, D/O.SULOCHANA,
VATTOLI HOUSE, IRINGOLE KARA,
PERUMBAVOOR VILLAGE, KUNNATHUNADU TALUK,
PRESENT ADDRESS: YESAM BUILDING ALINCHUVADU,
VENNALA - 682 028.

BY ADVS.SRI.V.RAJENDRAN (PERUMBAVOOR) &
SRI.GEORGE VARGHESE KIZHAKKAMBALAM.

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.

BY GOVERNMENT PLEADER SRI.T.R.RAJESH &
BY ADV. SRI.V.M.KURIAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 11-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

EXT. P1: TRUE COPY OF PARTITION DEED NO.1474 DATED 7/5/90 OF PERUMBAVOOR SUB REGISTRY OFFICE.

EXT. P2: TRUE COPY OF ORDER BA NO.14/15-16 ISSUED BY 2ND RESPONDENT DATED 30/4/2015.

EXT. P3: TRUE COPY OF PETITION FILED BY THE COUNSEL FOR THE PETITIONER BEFORE THE PUBLIC INFORMATION OFFICER OF THE 2ND RESPONDENT ON 9/1/2015.

EXT. P4: TRUE COPY OF REPLY SENT BY THE PUBLIC INFORMATION OFFICER TO EXHIBIT P4 ON 30/1/15 BEARING NO.PW2-A3(RIA) 507/15.

EXT. P5: TRUE COPY OF JUDGMENT IN WPC 9788/2013 DATED 17/7/13 OF THIS HON'BLE COURT.

EXT. P6: TRUE COPY OF JUDGMENT IN WPC 11528/2013 DATED 22/7/2013 OF THIS HON'BLE COURT.

EXT. P7: TRUE COPY OF JUDGMENT IN WPC 12098/2013 OF THIS HON'BLE COURT DATED 29/5/13.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V.RAMAKRISHNA PILLAI, J

WPC No.16539 of 2015

Dated this the 11th day of June, 2015

JUDGMENT

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

2. The petitioner is the owner in possession of an extent of 7 Ares of property in Re.sy.No.28 of Block No.114 of Perumbavoor Village corresponding to 7.29 Ares in Old Sy.No.189/9D. The petitioner submitted an application for a permit, for construction of a commercial building in the said property before the respondents, which was rejected by the second respondent stating that the area where the petitioner proposes to construct the building is included in the residential zone and as per the published master plan, construction of commercial building having plinth area of more than 50 M² is not permissible in the area earmarked as residential zone. It is

with this background, the petitioner has approached this Court.

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

4. The learned counsel for the petitioner relying on Exts.P5 to P7 judgments of this Court submitted that the Municipality is not having an approved master plan and the Municipality is not entitled to reject the permit application on that ground. 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 quashed and the respondent Municipality is directed to reconsider petitioner's application for building permit and to grant permit within a period of one month from the date of receipt of a copy of this judgment.

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

CSS/

TRUE COPY

p.s.to judge