

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

WP(C).No. 19500 of 2015 (J)

PETITIONER(S):

1. JOY RAPHEL, AGED 40,
S/O. RAPHEL, MANIACHERI HOUSE, AIMURY KARA,
KOOVAPPADY VILLAGE, KUNNATHUNADU TALUK - 683 544.
2. MANJU JOY, AGED 33,
W/O. JOY RAPHEL, MANIACHERI HOUSE, AIMURY KARA,
KOOVAPPADY VILLAGE, KUNNATHUNADU TALUK - 683 544.

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.

R1 & R3 BY GOVERNMENT PLEADER SMT.K.A.SANJEETHA
R2 BY ADV. SRI.V.M.KURIAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
30-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 - TRUE COPY OF POSSESSION CERTIFICATE NO. 11189580 DT. 17.4.15 ISSUED TO THE 1ST PETITIONER FROM PERUMBAVOOR VILLAGE OFFICE.
- P2 - TRUE COPY OF TAX RECEIPT ISSUED TO THE 1ST PETITIONER FROM PERUMBAVOOR VILLAGE OFFICE BEARING NO. 4507624 DT. 17.4.15.
- P3 - TRUE COPY OF POSSESSION CERTIFICATE NO. 11189589 DT. 17.4.15 ISSUED TO THE 2ND PETITIONER FROM PERUMBAVOOR VILLAGE OFFICE.
- P4 - TRUE COPY OF TAX RECEIPT ISSUED TO THE 2ND PETITIONER FORM PERUMBAVOOR VILLAGE OFFICE BEARING NO. 4507625 DT. 17.4.15.
- P5 - TRUE COPY OF LOCATION SKETCH ISSUED FROM PERUMBAVOOR VILLAGE OFFICE BEARING NO. 258/15B DT. 03.3.15.
- P6 - TRUE COPY OF ORDER NO.BA 39/15-16 DT 25.6.15 ISSUED BY 2ND RESPONDENT TO THE PETITIONERS.
- P7 - TRUE COPY OF PETITION FILED BY THE COUNSEL FOR THE PETITIONER BEFORE THE PUBLIC INFORMATION OFFICER OF THE 2ND RESPONDENT ON 09.1.15.
- P8 - TRUE COPY OF REPLY SENT BY THE PUBLIC INFORMATION OFFICER TO EXT. P7 ON 30.1.15 BEARING NO. PW2-A3(RIA)507/15.
- P9 - TRUE COPY OF JUDGMENT IN WPC NO. 9788/2013 DT. 17.7.13 OF THIS HON'BLE COURT.
- P10 - TRUE COPY OF JUDGMENT IN WP(C) NO. 11528/2013 DT. 22.7.13 OF THIS HON'BLE COURT.
- P11 - TRUE COPY OF JUDGMENT IN WP(C) 12098/2013 OF THIS HON'BLE COURT DT. 29.5.13.
- P12 - TRUE COPY OF LETTER NO.PW1(RIA)4784-14-15 DT. 26.3.15 ISSUED BY 2ND RESPONDENT TO THE 1ST PETITIONER.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.19500 of 2015

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Dated this the 30th day of June, 2015

JUDGMENT

Ext.P6 by which petitioners' application for building permit was rejected is under challenge.

2. The petitioners are husband and wife. They are having properties within the limits of 2nd respondent municipality where they have proposed to construct a commercial building having a plinth area of 890.03M2. The respondent municipality by Ext.P6 order dismissed the application on the ground that as per the published master plan of the 2nd respondent, the area where the building is proposed to be constructed is included in residential zone and as per the master plan, the construction of commercial building having plinth area of more than 50 M2 is not permissible in a residential zone. The petitioners are seeking support of Exts.P9 to P11 judgments of this Court rendered in similar cases.

3. I have heard the learned counsel for the petitioners and the learned standing counsel for the respondent municipality.

4. The learned standing counsel for the respondent municipality on instructions submitted that there is a proposal for widening the adjoining road.

5. It was pointed out by the learned counsel for the petitioners that there is no approved master plan for the respondent municipality. The learned counsel has submitted Ext.P7 application before the Public Information Officer of the 2nd respondent on 9.1.2015 for getting information regarding the master plan and a reply was issued to Ext.P7 on 30.1.15 which would reveal that the municipality did not even finalise a draft master plan. Copy of the reply is produced as Ext.P8.

6. In this Connection, 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 future. 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.

7. 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.P6 is quashed and the respondent Municipality is directed to reconsider petitioners' application for building permit *de hors* Ext.P6 within a period of one month from the date of receipt of a copy of this judgment.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

krj