

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 27TH DAY OF JULY 2015/5TH SRAVANA, 1937

WP(C).No. 22186 of 2015 (W)

PETITIONER(S):

**M.S.MANOJ, AGED 45,
S/O. SUBRAMANIAN, MOOLEKKUDY HOUSE, EDAVOOR KARA,
KOOVAPPADY VILLAGE, KUNNATHUNADU TALUK.**

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

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY PRINCIPAL SECRETARY,
DEPARTMENT OF LOCAL ADMINISTRATION, SECRETARIAT ,
THIRUVANANTHAPURAM-695 001.**
- 2. PERUMBAVOOR MUNICIPALITY,
REPRESENTED BY ITS SECRETARY MUNICIPAL OFFICE ,
PERUMBAVOOR- 683 542.**
- 3. CHIEF TOWN PLANNER,
SOUTH SANDWICH BLOCK,
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.**

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

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
27-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 22186 of 2015 (W)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXT.P1: TRUE COPY OF THE SALE DEED NO. 7919 OF PERUMBAVOOR SUB
REGISTRY OFFICE 17/10/06.**

**EXT.P2: TRUE COPY OF THE ORDER NO. B.A.101/15-16 DT. 17/7/15 ISSUED BY THE
2ND RESPONDENT TO THE PETITIONERS.**

**EXT.P3: TRUE COPY OF THE PETITION FILED BY THE COUNSEL FOR THE
PETITIONER BEFORE THE PUBLIC INFORMATION OFFICER OF THE
2ND RESPONDENT ON 9/1/15.**

**EXT.P4: TRUE COPY OF REPLY SENT BY THE PUBLIC INFORMATION OFFICER TO
EXT. P3 ON 30/1/15 BEARING NO. PW2-A3(RIA) 507/15.**

**EXT.P5: TRUE COPY OF JUDGMENT IN WPC(C) 9788/13 DT, 17/7/13 OF THIS HON'BLE
COURT.**

**EXT.P6: TRUE COPY OF THE JUDGMENT IN WPC 11528/13 DT. 17/7/13 DT. 22/7/13 OF
THIS HON'BLE COURT.**

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

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 22186 of 2015

Dated this the 27th day of July, 2015.

JUDGMENT

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

2. The petitioner and his brother jointly purchased Ext.P1 properties and the property belongs to the petitioner and legal heirs of his brother, who is now no more. The petitioner alleges that they decided to construct a commercial building in the property and applied for a building permit on 1.7.2015. The respondent vide Ext.P2 order dismissed the application on the ground that the area where the building situated is a residential area and a commercial building exceeding a total plinth area of 50 m² is not permissible in a residential area as per the master plan of the municipality. The contention of the petitioner is that there is no approved master plan for the municipality and hence rejection of his application on the ground of a non-existence of master plan is

illegal. He is seeking support of Exts.P5 to P7 judgments of this Court rendered in similar instances. It is with this background, the petitioner has come up before 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 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 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.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.