

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 11TH DAY OF AUGUST 2015/20TH SRAVANA, 1937

WP(C).No. 23444 of 2015 (E)

PETITIONER:

**DINESH V., S/O.NANU, AGED 48 YEARS,
VALLIL HOUSE, PUTHUPPANAM P.O, VATAKARA-5,
KOZHIKODE DISTRICT, REPRESENTED BY POWER
OF ATTORNEY HOLDER MURALEDHARAN, S/O. GOVINDAN,
AGED 50 YEARS, RESIDING AT ETYADIYIL HOUSE,
PUTHUPPANAM P.O, KOZHIKODE DISTRICT.**

BY ADV. SRI.ZUBAIR PULIKKOOL

RESPONDENT(S):

- 1. SECRETARY, VATAKARA MUNICIPALITY,
VATAKARA, KOZHIKODE, PIN - 673 101.**
- 2. VATAKARA MUNICIPALITY,
REPRESENTED BY ITS SECRETARY,
VATAKARA P.O, KOZHIKODE, PIN - 673 101.**

BY ADV. SRI.NAVEEN.T

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 11-08-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

mbr/

WP(C).No. 23444 of 2015 (E)

APPENDIX

PETITIONER(S)' EXHIBITS:

**EXHIBIT P1 : TRUE COPY OF THE REJECTION LETTER DT.6.8.2014 ISSUED BY THE
RESPONDENTS.**

**EXHIBIT P2 : TRUE COPY OF THE REFERENCE SUBMITTED BY THE PETITIONER
ON 18-11-2014.**

EXHIBIT P3 : TRUE COPY OF THE REJECTION MEMO DT. 16-02-2015.

RESPONDENT(S)' EXHIBITS: **NIL**

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.23444 of 2015

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Dated this the 11th day of August, 2015

JUDGMENT

The petitioner is aggrieved by the rejection of his application for building permit and approval of the plan on the ground that there is a proposal for widening of the road as per the DTP Scheme.

2. In order to construct a residential building, the petitioner submitted an application on 21.5.2013, which was rejected on 6.8.2014 by Ext.P1 stating that the proposed construction is in the road widening area as per the Master Plan of the respondent municipality. The petitioner alleges that no notification was issued, no acquisition was made and the proposal made in the year 1984 remains in paper only.

3. The petitioner has submitted Ext.P2 reference on 18.11.2014 before council through his wife. However, it was also rejected by Ext.P3 memo dated 16.2.2015 stating that the remedy available for

the party is before the Tribunal. It is with this background, the petitioner has come up before this Court.

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 the Master Plan 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.

7. 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.P1 is quashed. The respondent Municipality is directed to reconsider the application submitted by the petitioner, after affording him an opportunity of being heard and pass appropriate orders, within a period of one month from the date of receipt of a copy of this judgment.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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