

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

WP(C).No. 25715 of 2014 (L)

PETITIONER :

**PRASANTH CHAND, AGED 35 YEARS,
S/O.RAMACHANDRAN, POORNIMA HOUSE, PERUMABVOOR VILLAGE,
PERUMBAVOOR KARA, KUNNATHUNADU TALUK.**

BY ADV. SRI.V.RAJENDRAN (PERUMBAVOOR)

RESPONDENTS :

- 1. STATE OF KERALA
REPRESENTED BY THE PRINCIPAL SECRETARY,
DEPARTMENT OF LOCAL ADMINISTRATION, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 2. PERUMBAVOOR MUNICIPALITY
REPRESENTED BY ITS SECRETARY, MUNICIPAL OFFICE,
PERUMBAVOOR - 683 542.**
- 3. THE 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, SC, PERUMBAVOOR MUNICIPALITY**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 01-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: TRUE COPY OF SALE DEED NO.4023 DTED 26/7/2013 OF PERUMBAVOOR SUB REGISTRY OFFICE.
- EXT.P2: TRUE COPY OF ORDER BANO.275/13-14 ISSUED BY THE 2ND RESPONDENT DATED 14/5/2014.
- EXT.P3: TRUE COPY OF JUDGMENT IN WPC NO.9788/2012 DTED 17/7/2013 OF THIS COURT.
- EXT.P4: TRUE COPY OF JUDGMENT IN WPC NO.11528/13 DATED 22/7/20143 OF THIS COURT.
- EXT.P5: TRUE COPY OF JUDGMENT IN WPC NO.12098/2013 OF THIS HONOURABLE COURT DATED 29/5/2013.
- EXT.P6: COPY F PETITION SUBMITTED BY ADVOCATE N. RAJESH BEFORE THE PUBLIC INFORMATION OFFICER OF THE R2 ON 9/1/2015.
- EXT.P7: COPY OF LETTER NO.,PW2-A3(RIA) 507/15 DT 30/1/2015 ISSUED TO ADVOCATE N. RAJESH IS REPLY TO EXHIBIT P9.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 25715 of 2014

Dated this the 1st day of July, 2015

J U D G M E N T

Ext.P2, by which the petitioner's application for building permit for construction of a commercial building was rejected on the ground that the area is ear marked as a residential zone, is under challenge in this writ petition.

2. The petitioner is the owner in possession of an extent of 2.85 ares of property comprised in Re.Sy.No.30 of Block No.81 of Perumbavoor Village within the local limits of the respondent municipality. The petitioner submitted an application seeking permit for constructing a commercial building, which was rejected by Ext.P2 on the ground that the plan is against the published master plan of the municipality. According to the 2nd respondent, as the said property is included in the residential zone, as per the published master plan, construction of commercial building is not permissible. The petitioner alleges that the respondent municipality is not having any master plan as

..2..

approved by the Government; and hence, rejection of the building permit on the that ground is illegal and arbitrary. He places reliance on Exts.P3 to P5 judgments of this Court, wherein it is found that the respondent municipality is not having an approved master plan and the municipality is not entitled to reject the permit application on that ground. It is with this background, the petitioner has approached this Court.

3. Arguments have been heard.

4. The learned counsel for the petitioner would argue that at present, though the application was rejected alleging that there is master plan, in fact, there is no master plan at all. In support of the same, the petitioner has produced Ext.P7, which is obtained by the petitioner under Right to Information Act. It reveals that no final master plan has been prepared. Therefore, the contention of the respondent municipality that the building permit cannot be granted on account of the master plan, loses its very legs to stand upon.

5. The learned counsel for the petitioner invited my

..3..

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 within a period of one month from the date of receipt of a copy of this judgment.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-