

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.25786 of 2014 (W)

PETITIONER:

**ALIAGED 64 YEARS,S/O.SAIDULLA,ETTUKATTIL HOUSE,
EDATHALA KARA,ALUVA EAST VILLAGE,ALUVA TALUK.**

BY ADV.SRI.V.RAJENDRAN (PERUMBAVOOR)

RESPONDENTS:

- 1. STATE OF KERALA,REP. BY PRINCIPAL SECRETARY,
DEPARTMENT OF LOCAL ADMINISTRATION,
SECRETARIAT,THIRUVANANTHAPURAM-695001.**
- 2. PERUMBAVOOR MUNICIPALITY,
REP. BY ITS SECRETARY,MUNICIPAL OFFICE,
PERUMBAVOOR-683542.**
- 3. CHIEF TOWN PLANNER,SOUTH SANDWICH BLOCK,
SECRETARIAT,THIRUVANANTHAPURAM-695001.**

**R1 & R3 BY GOVT. PLEADER SMT.K.A.SANJEETHA.
R2 BY 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:**

pk

WP(C).No.25786 of 2014 (W)

APPENDIX

PETITIONER'S EXHIBITS:

**EXHIBIT P1-TRUE COPY OF THE TAX RECEIPT ISSUED FROM PERUMBAVOOR
VILLAGE OFFICE BEARING NO.4964672 DATED 4-4-14.**

**EXHIBIT P2-TRUE COPY OF TAX RECEIPT ISSUED FROM PERUMBAVOOR
VILLAGE OFFICE BEARING NO.4964673 DATED 4-4-14.**

**EXHIBIT P3-TRUE COPY OF ORDER B.A.NO.108/2009-2010 ISSUED BY THE 2ND
RESPONDENT DATED 14-5-14.**

**EXHIBIT P4-TRUE COPY OF THE JUDGMENT IN WPC 9788/2013 DATED 17-7-13
OF THIS HON'BLE COURT.**

**EXHIBIT P5-TRUE COPY OF JUDGMENT IN WPC 11528/2013 DATED 22-7-2013 OF
THIS HON'BLE COURT.**

**EXHIBIT P6-TRUE COPY OF JUDGMENT IN WPC 12098/2013 OF THIS HON'BLE
COURT DATED 29-5-2013.**

**EXHIBIT P7:TRUE COPY OF PETITION SUBMITTED BY ADVOCATE N.RAJESH
BEFORE THE PUBLIC INFORMATION OFFICER OF THE 2ND
RESPONDENT ON 9.1.2015.**

**EXHIBIT P8:TRUE COPY OF LETTER NO.PW2-A3(RIA)507/15 DATED 30.1.2015
ISSUED TO ADVOCATE N.RAJESH IS REPLY TO EXHIBIT P9.**

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

pk

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 25786 of 2014

Dated this the 1st day of July, 2015

J U D G M E N T

Ext.P3, by which the petitioner's application for building permit was rejected, is under challenge.

2. The petitioner is the owner in possession of an extent of 4.33 ares of land comprised in Re.Sy. Nos.21/2-2, 21/2-3 & 20 of Block No.79 of Perumbavoor Village within the local limits of the respondent municipality. The petitioner submitted an application seeking permit for constructing a tourist home, which was rejected by Ext.P3 on the ground that the plan is against the published master plan of the municipality. According to the respondent municipality, as the said property is included in the commercial zone, as per the published master plan, construction of tourist home under the category of residential purpose is not permissible in the commercial zone. He places reliance on Exts.P4 to P6 judgments of this Court, wherein it is found that the respondent

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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 submitted that the respondent municipality is not having any master plan as approved by the Government.

5. The learned counsel for the respondent municipality, per contra, would submit that there is a proposal for road widening. However, on a specific query put forward by this Court as to whether any acquisition proceeding has been initiated, the learned counsel for the respondent municipality answered in the negative.

6. 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

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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.P3 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/-