

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. 25788 of 2014 (W)

PETITIONER :

**ABDUL RAHIM, AGED 51 YEARS,
S/O.KOCHAHAMMED, MULLACKAL HOUSE,
PERUMBAVOOR VILLAGE, PERUMBAVOOR KARA,
KUNNATHUNADU TALUK.**

BY ADV. SRI.V.RAJENDRAN (PERUMBAVOOR)

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, 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:**

sts

WP(C).No. 25788 of 2014 (W)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: COPY OF SALE DEED NO.2339 DATED 2.5.14 OF PERUMBAVOOR SUB
REGISTRY OFFICE.**
- P2: COPY OF ORDER B.A.NO.71/2014-2015 ISSUED BY 2ND RESPONDENT DATED
17.9.14.**
- P3: COPY OF JUDGMENT IN WPC NO.9788/2013 DATED 17.7.13 OF THIS HON'BLE
COURT.**
- P4: COPY OF JUDGMENT IN WPC NO.11528/2013 DATED 22.7.2013 OF THIS
HON'BLE COURT.**
- P5: COPY OF JUDGMENT IN WPC NO.12098/2013 OF THIS HON'BLE COURT DATED
29.5.2013.**
- P6: COPY OF THE PETITION SUBMITTED BY ADVOCATE N.RAJESH BEFORE THE
PUBLIC INFORMATION OFFICER OF THE 2ND RESPONDENT ON 9/1/15**
- P7: COPY OF THE LETTER NO.PW2-A3(RIA)507/15 DATED 30/1/15 ISSUED TO
ADVOCATE N.RAJESH IS REPLY TO EXHIBIT P9**

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

/TRUE COPY/

P.A.TO JUDGE

sts

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 25788 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 was rejected, is under challenge.

2. The petitioner is the owner in possession of an extent of 4.05 ares of land comprised in Re.Sy. No.10/2 of Block No.103 of Perumbavoor Village within the local limits of the respondent municipality as per Ext.P1. 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 respondent municipality, as the said property is included in the residential zone, as per the published master plan, construction of commercial building having plinth area of more than 50 m² is not permissible. Another reason for rejecting the application is that sufficient open space is not shown in the plan for widening the A.M.Road to 21 meters, which is another proposal of the 2nd respondent in the

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master plan. The petitioner alleges that the respondent municipality is not having any master plan as 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 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.

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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 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/-