

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 29TH DAY OF SEPTEMBER 2015/7TH ASWINA, 1937

RP.No. 617 of 2015 (M)

JUDGMENT DATED 03-07-2015 IN WP(C) 3927/2015.
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REVIEW PETITIONER/PETITIONER:

**N.SURESH, AGED 53, S/O.N.C.KONDOOR,
KAVERI HOUSE, PUZHAVATHU,
CHANGANACHERRY P.O., KOTTAYAM DISTRICT,
KERALA, PIN: 686 101.**

**BY ADVS.SRI.P.CHANDRASEKHAR
SRI.P.A.MOHAMMED SHAH
SRI.SOORAJ T.ELENJICKAL
SMT.P.M.MAZNA MANSOOR**

RESPONDENT(S)/RESPONDENTS:

- 1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
LOCAL SELF GOVERNMENT DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM, PIN: 695 001.**
- 2. CHIEF TOWN PLANNER,
OFFICE OF CHIEF TOWN PLANNER, PALAYAM,
THIRUVANANTHAPURAM, PIN: 695 033.**
- 3. TOWN PLANNER,
OFFICE OF DISTRICT PLANNING OFFICE,
STANTONY'S COMPLEX, NEAR MUNICIPAL BUS STAND,
NAGAMPADOM, KOTTAYAM, PIN: 686 011.**
- 4. THE MUNICIPALITY OF CHANGANACHERRY,
REPRESENTED BY SECRETARY
CHANGANACHERRY MUNICIPALITY, CHANGANACHERRY,
KOTTAYAM DISTRICT, PIN: 686 101.**
- 5. THE SECRETARY, CHANGANACHERRY MUNICIPALITY,
CHANAGANACHERRY, KOTTAYAM DISTRICT, PIN: 686 101.**

**R1 TO R3 BY GOVT. PLEADER SMT.ANITHA RAVINDRAN
R4 & R5 BY ADV.SRI.M.PASHOK KUMAR**

**THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 03-08-2015,
THE COURT ON 29-09-2015 PASSED THE FOLLOWING:**

mbr/

A.V. RAMAKRISHNA PILLAI, J.

R.P. No. 617 of 2015
in
W.P.(C) No. 3927 of 2015

Dated this the 29th day of September, 2015

ORDER

The writ petitioner is in review.

2. This Court passed the judgment impugned declaring that as per Rule 3A of the Municipality Building Rules, 1999, any Town Planning Scheme in force under Town Planning Act shall prevail over the respective provisions of the Municipality Building Rules wherever such schemes exists; and therefore, the provisions of Town Planning Scheme as stipulated in Ext.P6 has to be followed. Therefore, it was directed to consider the petitioner's application in consonance with the provisions contemplated in Ext.P6 and also the conditions stipulated in Ext.P4 issued by the Chief Town Planner. According to the review petitioner, an error apparent on the face of the record has occurred while issuing such a direction.

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According to the petitioner, condition No.3 stipulated in Ext.P4 is not in consonance with the provisions of Ext.P6 and the same has been incorporated after misinterpreting the provisions of the scheme as well as the Municipality Building Rules, 1999. It was pointed out that the same has been incorporated after misinterpreting the provisions of the scheme and as per the Municipality Building Rules, 1999.

3. Arguments have been heard.

4. The petition is seriously opposed by the respondent municipality.

5. The condition stipulated in Ext.P6, Table 24 (Zoning Regulations) of the Development Plan for Changanacherry, is that, "Auditorium/Wedding Halls/Community Halls above 1000 m² (subject to the condition that minimum access width to the plot shall be 12 meters) can be permitted as restricted use". The learned counsel for the petitioner points out that in Ext.P4, the third condition imposed is that 12 meter gate

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and pathway be constructed from AC Road to the plot. It was pointed out that the scheme provides 12 meter access width to the plot and not a 12 meter gate and 12 meter pathway from the access road to the plot within the plot.

6. Here, it is profitable to have a look at Rule 33 of the Municipality Building Rules, which specifies the 'access' on different occupancies. In Rule 33(1), it is stated that the minimum clear width of access to a building and plots as well as the width of the street giving access to the plot from the main street shall be as shown in Table 4. The required width stipulated in Table 4 is 5 m as far as the petitioner's construction is concerned. However, in Ext.P6, the restrictive condition stipulated is the access width of 12 meters to the plot and not the access width to the building or not the access width of the street giving access to the plot from the main street. The definite case of the petitioner is that his plot is having more than 32 meters frontage to AC Road, which

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is having a road width of 30 meters and is the direct access to the review petitioner's plot. To convince this, the petitioner has produced photographs of the entry to the petitioner's plot. However, in Condition No.3 of Ext.P4 issued by the 2nd respondent, a requirement was raised by the 2nd respondent to make sure that the width of the gate should be 12 meters. As the existing width of the plot as far as the petitioner's property concerned is 30 meters, though the access width to the building is less than 12 meters, it is much more than 5 meters as stipulated in Rule 33 of the Municipality Building Rules, 1999. As Condition No.3 of Ext.P4 is not in consonance with the provisions of Ext.P6 Town Planning Scheme, the direction in the judgment to follow the scheme as well as Condition No.3 of Ext.P4 cannot go simultaneously as rightly pointed out by the learned counsel for the petitioner. Therefore, the judgment requires a correction in this regard.

In the result, the review petition is disposed of

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permitting the petitioner to approach the respondent municipality with an application for regularization; and in the event of filing such an application, the same shall be considered and appropriate orders shall be passed by the respondent municipality within a period of one month thereafter in the light of what has been stated in this order. This order of review shall form part of the judgment.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-