

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

MONDAY, THE 30TH DAY OF NOVEMBER 2015/9TH AGRAHAYANA, 1937

WA.No. 2046 of 2015 () IN WP(C).19160/2012

AGAINST THE ORDER/JUDGMENT IN WP(C) 19160/2012 of HIGH COURT OF KERALA
DATED 25-06-2015

APPELLANT(S) /APPELLANT/PETITIONER:

K.P. ABDU RAHIMAN,
KAPPATTAKATHPOOPARAMBIL, VETTOM.P.O, TIRUR
MALAPPURAM.

BY ADVS.SRI.B.S.SWATHY KUMAR
SRI.REMYA MURALI
SMT.T.RESHMA

RESPONDENT(S) /RESPONDENTS/RESPONDENTS:

1. THE DEPUTY DIRECTOR OF PANCHAYATH,
MALAPPURAM-676001.

2. THE VETTOM GRAMA PANCHAYATH,
VETTOM, TIRUR, MALAPPURAM-676102
REPRESENTED BY ITS SECRETARY.

3. THE SECRETARY,
VETTOM GRAMA PANCHAYATH, VETTOM.P.O, TIRUR
MALAPPURAM-676102.

R2,R3 BY ADV. SRI.C.M.MOHAMMED IQUABAL
R2,R3 BY ADV. SMT.ANJALI G.KRISHNAN
R1 BY SR.GOVERNMENT PLEADER SRI.SOJAN JAMES

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 30-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**THOTTATHIL B.RADHAKRISHNAN
&
ANU SIVARAMAN, JJ.**

W.A.No. 2046 of 2015

Dated this the 30th November, 2015

JUDGMENT

Thottathil B.Radhakrishnan, J.

This writ appeal is against the judgment of the learned single Judge issued in a writ petition filed in 2012.

2. We have heard learned counsel for the appellant, who is the writ petitioner, the learned counsel appearing for respondents 2 and 3 Grama Panchayat and the learned Government Pleader appearing for the first respondent Deputy Director of Panchayath.

3. Going by the materials on record, the petitioner has a single storeyed commercial building. He did not possess any permit to build the first floor. Though he says in the writ petition that on 21.7.2011 he had submitted a revised application to effect construction on top of the building, which was already constructed, Exhibit R2(a) produced by the Panchayat is an application for regularisation. That is dated 20.7.2011 and is shown to have been received by the Secretary of the Grama

Panchayat on 13.9.2011. Though reply affidavit is filed, the petitioner does not denounce Exhibit R2(a) and has not contended that there was any prior application for regular permit to build the first floor.

4. The learned single Judge took stock of the materials produced by the Grama Panchayat and directed that if the petitioner removes such portions of the first floor, which are in violation of the Building Rules, which apply to the area, the Panchayat will consider the application for regularisation in accordance with law. We do not see any legal infirmity or error in the appreciation of facts by the learned single Judge in that regard.

5. The petitioner had not resorted to the statutory remedy that was available to him before the Tribunal for Local Self Government Institutions in terms of the provisions of the Panchayt Raj Act. But, the learned single Judge did not turn down the writ petition on ground of alternate remedy, obviously because the writ petition was pending before this Court for nearly three years.

6. All that is required at this point of time while considering this writ appeal is to ensure that the petitioner is clearly told by the Grama Panchayat authorities as to what is the area or part of

the first floor of the building which has to be demolished for the purpose of obtaining regularisation.

In the result, in modification and in furtherance of the directions contained in the impugned judgment, it is directed that the competent authority in the second respondent Panchayat will inspect the site with notice to the petitioner and shall issue a written decision showing the portions to be demolished, to bring the building to be in conformity with the Building Rules. If the petitioner carries out such demolition to the satisfaction of the Panchayat, it will consider regularisation of the construction and issue occupancy certificate. Unless the building is numbered and occupancy certificate is issued, the appellant shall not occupy that part of the structure which is the first floor of the building in question. The writ appeal is ordered accordingly.

**THOTTATHIL B.RADHAKRISHNAN
JUDGE**

**ANU SIVARAMAN
JUDGE**

vgs30/11