

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 16TH DAY OF DECEMBER 2015/25TH AGRAHAYANA, 1937

WP(C) .NO. 9437 OF 2007 (W)

PETITIONER:

KADAVATH CHERIYAPARAMBIL MAJEED,
S/O.AHAMMED, PACHATTIRI AMSOM, PARIYAPURAM DESOM,
P.O., PACHATTIRI, REPRESENTED BYT HE POWER OF
ATTORNEY HOLDER KADAVATH CHERIYAPARAMBIL HAMZA,
S/O.AHAMMED, PACHATTIRI AMSOM, PARIYAPURAM DESOM
P.O PACHAATTIRI, MALAPPURAM DISTRICT.

BY ADVS.SRI.P.V.SURENDRANATH
SRI.P.V.DIBU

RESPONDENT(S) :

1. STATE OF KERALA REPRESENTED BY SECRETARY TO
LOCAL SELF GOVT. DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001
2. DEPUTY DIRECTOR OF PANCHAYATH,
MALAPPURAM DISTRICT.676501
3. VETOM GRAMA PANCHAYATH,REPRESENTED
BY ITS SECRETARY, P.O VETOM, MALAPPURAM DISTRICT.
676102.
4. SECRETARY VETOM GRAMA PANCHAYTH,
P.O. VETOM, MALAPPURAM DISTRICT.676102

R3-4 BY ADV. SRI.T.KRISHNAN UNNI (SR.)
R3-4 BY ADV. SRIC.M.MOHAMMED IQUABAL
BY GOVERNMENT PLEADER, SRI. ABDUL KHADER E.M.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
16-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXT.P1: A TRUE COPY OF THE POWER OF ATTORNEY EXECUTED BY THE
PETITIONER IN THE NAME OF KADAVATH CHERIYAPARAMBIL HAMZA
- EXT.P2: A TRUE COPY OF THE ORDER DATED 9.12.2004 PASSED BY THE
4TH RESPONDENT
- EXT.P3: A TRUE COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE
THE PANCHAYATH
- EXT.P4: A TRUE COPY OF THE RESOLUTION/ORDER DATED 26.9.2006.
- EXT.P5: A TRUE COPY OF THE REVISION PETITION BEFORE THE 2ND
RESPONDENT.

RESPONDENT(S) ' EXHIBITS: NIL

//TRUE COPY//

P.A. TO JUDGE

DST

K. HARILAL, J.

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W.P. (C) No.9437 of 2007

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Dated this the 16th day of December, 2015

J U D G M E N T

The petitioner is the absolute owner in possession of the landed property measuring an extent of 2 cents comprised in R.Sy. No.325/6 of Tirur Taluk, within the limits of the 3rd respondent Panchayat. He has constructed a shop room in the said property and thereafter, applied for numbering the building, before the 3rd respondent Panchayat. The 3rd respondent Panchayat by Ext.P2 order, rejected the said application, stating that the building was constructed in violation of Section 220 (b) of the Kerala Panchayat Raj Act, 1994 (*hereinafter referred to as 'the Act'*). Aggrieved by Ext.P2, the petitioner had preferred a statutory appeal before the Panchayat Committee and the

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Panchayat Committee also confirmed Exts.P2 by Ext.P4. This is the grievance highlighted in this Writ Petition and the petitioner has filed this Writ Petition with a prayer to issue a writ of certiorari or any other writ or order calling for all records and to quash Exts.P2 and P4.

2. Heard the learned counsel for the petitioner and learned Standing Counsel appearing for the respondent Panchayat.

3. Learned counsel for the petitioner advanced arguments, challenging the finding that the petitioner has violated the provisions of Section 220(b) of the Act by not providing a distance of three metres from its northern Panchayat road. According to the learned counsel, the said provision is not applicable to the instant case, as the said road was not a notified road, as provided under Section 220(b) of the Act.

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4. Learned counsel appearing for the respondent Panchayat on instructions submits that the said road is not a notified road under Section 220(b) of the Act. Thus, it stands admitted that the road in question is not a notified road coming under Section 220(b) of the Act.

5. Going by Section 220(b) of the Act, the statutory mandate is that no person shall construct any building or structure other than a compound wall in any land abutting any National Highway, State Highway, District roads or other roads notified by the Village Panchayat, within a distance of three metres from the boundary of his land abutting the road. Here the Panchayat has no case that the disputed property of the petitioner is situating by the side of a National Highway or State Highway or District road. If that be so, a notification provided under the said provision is required to

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make the said provision applicable to any other road in the Panchayat. In the absence of such a notification, with respect to the road passing through the northern side of the petitioner's property, there cannot be any violation of the provisions under Section 220(b) of the Act.

6. In this analysis, I find that Exts.P2 and P4 are illegal, unsustainable and liable to be quashed and I do so. The 4th respondent is directed to number the building constructed by the petitioner forthwith.

This Writ Petition is disposed of accordingly.

Sd/-

**K. HARILAL,
JUDGE**

DST

//True copy//

P.A. To Judge