

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE SMT. JUSTICE P.V.ASHA**

**MONDAY, THE 17TH DAY OF AUGUST 2015/26TH SRAVANA, 1937**

**WP(C).NO. 8832 OF 2012 (D)**  
-----

**PETITIONER(S):**  
-----

**ST.MARY'S ORTHODOX CHURCH  
KARUVATTA, ADOOR, PATHANAMTHITTA DISTRICT  
REP.BY ITS TRUSTEE, MR.C.O.MATHEW  
S/O.LATE C.M.OOMMAN.**

**BY ADVS.SRI.S.SHARAN  
SRI.A.D.SHAJAN**

**RESPONDENT(S):**  
-----

- 1. STATE OF KERALA  
REP.BY SECRETARY TO GOVERNMENT  
LOCAL ADMINISTRATION DEPARTMENT, SECRETARIAT  
THIRUVANANTHAPURAM.695 001.**
  - 2. THE DIRECTOR OF MUNICIPALITIES  
O/O.THE DIRECTOR OF MUNICIPALITIES  
THIRUVANANTHAPURAM.695 001.**
  - 3. ADOOR MUNICIPALITY  
ADOOR. 691 523.**
  - 4. THE CHIEF TOWN PLANNER  
O/O.CHIEF TOWN PLANNER, THIRUVANANTHAPURAM.695 001.**
  - 5. THE DISTRICT TOWN PLANNER  
O/O.THE DISTRICT TOWN PLANNER  
PATHANAMTHITTA.691 523.**
  - 6. MARIAMMA VARGHESE  
CHEPPALIL SUNIL BUILDING, KARUVATTA, ADOOR  
PATHANAMTHITTA-691 523.**
- R3 BY ADV. SRI.V.M.SYAM KUMAR  
R3 BY ADV. SMT.KRIPA ELIZABETH MATHEWS  
R6 BY ADV. SRI.M.P.SREEKRISHNAN  
R6 BY ADV. SMT.SHAHNA KARTHIKEYAN  
R1 & 2 BY SENIOR GOVERNMENT PLEADER SRI. S. ABDUL SALAM**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17-08-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S) EXHIBITS

EXT.P1- COPY OF THE REPORT PUBLISHED IN MALAYALA MANORAMA DAILY DTD.28.8.2006.

EXT.P2- JUDGMENT DTD.17.9.1976 IN ORIGINAL SUIT NO.215/1973 OF THE MUNSIFF COURT, ADOOR.

EXT.P3- NOTICE NO.F2-7561/2000 DTD. 10.10.2000 ISSUED BY THE 3RD RESPONDENT.

EXT.P4- JUDGMENT DTD. 31.1.2008 IN O.S.NO.412/2000 OF THE MUNSIFF COURT, ADOOR.

EXT.P5- JUDGMENT DTD.31.8.2010 IN A.S.NO.53/2008 OF THE ADDL. DISTRICT JUDGE, PATHANAMTHITTA.

EXT.P6- JUDGMENT DTD. 8.4.2011 IN IN A.S.NO.20/2005 OF THE ADDL. DISTRICT JUDGE, PATHANAMTHITTA.

EXT.P7- LETTER NO.PIO-1380/2012 DTD. 18.2.2012 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.

EXT.P8- ORDER NO.G.O.(RT.) NO.632/2012/LSGD. DTD.1.3.2012 ISSUED BY THE GOVT.OF KERALA.

EXT.P9:TRUE COPY OF THE MAHAZAR PREPARED BY THE 6<sup>TH</sup> RESPONDENT.

EXT.P10:TRUE COPY OF THE COMMISSION REPORT PREPARED BY ADVOCATE COMMISSIONER, B.JYOTHIS DATED 16.10.2000.

EXT.P11:A TRUE COPY OF THE SECRETARY'S LETTER NO.BA.408/2010-2011 DATED 28/2/2011 TOGETHER WITH THE ENCLOSURES.

EXT.P12:TRUE COPY OF THE LETTER NO.448/11 DATED 22/9/2011 ISSUED BY THE TOWN PLANNER, PATHANAMTHITTA TO THE CHIEF TOWN PLANNER, THIRUVANANTHAPURAM

EXT.P13:COPY OF THE LETTER NO.15233/R.A1/12/LOCAL SELF GOVT. DATED. 19.7.2013. ISSUED BY LOCAL SELF GOVERNMENT DEPARTMENT TO THE SECRETARY, ADOOR MUNICIPALITY.

RESPONDENTS' EXHIBITS

EXT.R6(A):TRUE COPY OF THE RECEIPTS OF THE ADOOR MUNICIPALITY FOR A SUM OF RS.9,030/-

EXT.R6(B):TRUE COPY OF THE PAYMENT RECEIPT OF GOVERNMENT OF KERALA FOR RS.1,58,250/-

EXT.R6-3:- THE TRUE COPY OF THE APPROVED PLAN REFERRED TO IN PARAGRAPH 6 OF THE COUNTER AFFIDAVIT DATED 23.5.2012

/TRUE COPY/

P.V.ASHA, J.

=====

W.P.(C). No.8832 OF 2012

=====

Dated this the 17<sup>th</sup> day of August, 2015

JUDGMENT

The grievance of the petitioner is against Ext.P8 order by which Government accorded sanction to the Secretary, Adoor Municipality to regularise unlawful construction of a three-storied commercial building of the 6<sup>th</sup> respondent, on condition that a sum of Rs.1,58,250/- should be remitted to Government Treasury towards compounding fee. Petitioner seriously opposes this Regularisation. At the same time, the 6<sup>th</sup> respondent points out that what is done by Government is strictly in accordance with the Kerala Building (Regularisation of Unauthorised Construction) Rules 2010 and that the violation which was found was only negligible. The respondents have filed counter affidavit supporting Ext.P10. At the same time, petitioner points out that Government did not even mention any reason for according sanction. It is also pointed out that the petitioner is highly aggrieved by the unauthorised construction carried out by the 6<sup>th</sup> respondent and he should have been heard before any orders were passed.

2. It is seen that Rule 7 of Kerala Building (Regularisation of Unauthorised Construction) Rules 2010 provides for a review before Government against the orders passed granting sanction for regularisation.

3. In view of these circumstances, it is only just and proper that Government reconsider the matter with notice to all the parties and pass fresh orders on the same.

4. Therefore Ext.P8 order is quashed for the limited purpose of reconsidering the matter under Rule 7 of Kerala Building (Regularisation of Unauthorised Construction) Rules 2010. The 1<sup>st</sup> respondent is directed to reconsider the question of regularisation in respect of the unauthorised construction carried out by the petitioner, after hearing the petitioner, 6<sup>th</sup> respondent, Municipality and all other statutory authorities necessary in the matter and to pass reasoned orders within a period of 3 months from the date of receipt of a copy of this judgment.

Accordingly this writ petition is disposed of.

Sd/-  
P.V. ASHA, JUDGE