

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

WP(C) .NO. 9127 OF 2012 (M)

PETITIONER:

R.PARAMESWARAN,
PROPRIETOR, M/S KAMAKSHY CONSTRUCTIONS, TEMPLE TREES,
PAZHAYANDAKKAVU, THRISSUR

BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
LOCAL SELF GOVERNMENT DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM 695001

2. THE THRISSUR CORPORATION,
M.O. ROAD THRISSUR 680001 REPRESENTED BY ITS SECRETARY

BY GOVERNMENT PLEADER, SRI. T.J. MICHAEL
R BY SRI.BABU JOSEPH KURUVATHAZHA,SC,TSSR CO

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
13-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

- EXT. P1 COPY OF THE BUILDING PERMIT (REVISED) NO
DW3/PW7/BA/12/06-07 DATED 15-12-2009 (RENEWED TILL
11-05-2012), ISSUED TO THE PETITIONER.
- EXT. P2 COPY OF THE OCCUPANCY CERTIFICATE ISSUED BY THE
CORPORATION OF TRICHUR TO THE PETITIONER ON 25-01-2011.
- EXT. P3 COPY OF THE APPLICATION DATED 09-02-2012 SUBMITTED BY
THE PETITIONER ALONG WITH COMPLETION CERTIFICATE (DATED
06-02-2012) AS PROVIDED UNDER RULE 20 OF THE KERALA
MUNICIPALITY BUILDING RULES.
- EXT. P4 COPY OF THE RECEIPT DATED 10-02-2012 ISSUED BY THE 2ND
RESPONDENT EVIDENCING THE SUBMISSION OF EXT. P3
APPLICATION.

RESPONDENTS' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

DST

K. HARILAL, J.

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W.P. (C) No.9127 of 2012

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Dated this the 13th day of November, 2015

J U D G M E N T

The petitioner, who is a builder obtained Ext.P1 building permit on 11.05.2006, for construction of an apartment building, having 18 residential units, comprised in two blocks. Petitioner has completed the construction of the 1st block and extension of permit period was required for the completion of the 2nd block. As expiry of the period of permit was on 11.05.2012, he approached the 2nd respondent to renew the building permit for another period of three years. To the utter shock and surprise of the petitioner, the concerned officials of the 2nd respondent informed the petitioner that in order to consider the application for renewal of building permit, the petitioner would have to remit fee

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in terms of Rule 31 of the Kerala Municipality Building Rules, 1999 (*hereinafter referred to as ' the Rules'*) in addition to the building permit fee, as provided under Rule 15A(3) of the Rules. It was also informed that notwithstanding the completion of Block No.1, the fee would have to be remitted taking into account the entire area permitted under Ext.P1. According to the petitioner, under Rule 15A(3), the petitioner is not liable to pay fee, in terms of Rule 31 of the Rules. In this context, the petitioner filed this Writ Petition, seeking a declaration that for the extension of building permit, the permit holder is not liable to pay fee in terms Rule 31 of the said Rules and he is liable to pay fee prescribed under Rule 15A(3) and Schedule- II of the Rules.

2. Heard the learned counsel for the petitioner and learned Government Pleader.

3. Learned counsel for the petitioner submits that

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for extension of building permit, the permit holder is liable to pay permit fee in accordance with the requirements under 15A(3) only and he is not liable to pay any amount, as prescribed under Rule 31 of the Rules. So also, the building permit fee shall be calculated in accordance with Schedule-II of the Rules.

4. The short point that arises for consideration is, whether the insistence of remittance of fee under Rule 31 of the Rules is justified, in view of the fee prescribed under Rule 15A of the Rules. Going by the said provision, it is seen that under sub-rule 3, the statutory insistence is that for extension of period of permit, the permit holder shall pay 10% of the development permit fee or building permit fee, as the case may be. So also, it is seen that fee for additional floor area, the above ratio is specifically excluded by insertion of the said clause by SRO No. 80/2013 in KGEX No.325 dated 31.3.2013.

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5. Learned counsel for the petitioner further pointed out that the Government has clarified the said Rule, further by Circular dated 16.10.2012. Going by the said Circular, it is specifically stated that some of the Local Self Government Institutions have sought for clarification, whether additional fee based on FAR prescribed under Rule 31 of the Rules collected during the grant of permit need be levelled, while granting extension or renewal of the permit under Rule 15A(3) or Rule 15A(5) as the case may be of the said Rules. In clarification of the said query, the Government clarified that for extension of the period of permit 10% of permit fee as per Rule 15A(3) and for renewal permit 50% of the permit fee as per Rule 15A(5) need be charged. I am of the opinion that the ambiguity, if any, in Rule 15A is further clarified by the Government, by Circular dated 16.10.2012. If that is so, there is no room for any

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further doubt in this regard.

6. In the above view of the matter, the petitioner is at liberty to file an application, seeking extension of permit period and in that event, the respondents are liable to consider that application strictly, in accordance with Rule 15A and the clarification made by the Government in the circular dated 16.10.2012, if the application is otherwise in order.

This Writ Petition is disposed of accordingly.

Sd/-

**K. HARILAL,
JUDGE**

DST

//True copy//

P.A. To Judge