

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 19TH DAY OF JUNE 2015/29TH JYASHTA, 1937

WP(C).No.6009 of 2015 (A)

PETITIONER'S:

1. **JOBY EAPPEN,S/O.EAPPEN,KUNNATH HOUSE,
KIZHAKKENMATTOM P.O.,KOTTAYAM,PIN:686652.**
2. **ABY EAPPEN,S/O.EAPPEN,KUNNATH HOUSE,
KIZHAKKENMATTOM P.O.,KOTTAYAM,PIN:686652.**

**BY ADVS.SRI.P.N.SANTHOSH
SMT.K.P.GEETHA MANI
SRI.P.N.APPUKUTTAN
SMT.ASWATHI APPUKUTTAN**

RESPONDENT:

**MELUKAVU GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY,
MELUKAVUMATTOM P.O.
KOTTAYAM DISTRICT,PIN:686 652.**

R1 BY ADV.SRI.SAJU JOHN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 19-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS:

**EXHIBIT P1:A TRUE COPY OF THE POSSESSION CERTIFICATE DATED 24.9.2010
ISSUED BY THE MELUKAVU VILLAGE OFFICER IN RESPECT OF THE
PROPERTY OWNED BY THE PETITIONERS.**

EXHIBIT P1(a):THE ENGLISH TRANSLATION OF EXHIBIT P1.

**EXHIBIT P2:A TRUE COPY OF THE BUILDING PERMIT DATED 6.12.2010 GIVEN BY
THE RESPONDENT TO THE PETITIONERS FOR CONSTRUCTING THE
BUILDING (GROUND FLOOR ONLY).**

**EXHIBIT P3:A TRUE COPY OF THE APPLICATION DATED 6.6.2011 SUBMITTED
BY THE PETITIONERS BEFORE THE RESPONDENT.**

EXHIBIT P3(a):THE ENGLISH TRANSLATION OF EXHIBIT P3.

**EXHIBIT P4:A TRUE COPY OF THE BUILDING PERMIT DATED 23.7.2011 GRANTED
BY THE RESPONDENT PANCHAYAT.**

**EXHIBIT P5:A TRUE COPY OF THE COMPLETION CERTIFICATE DATED 16.12.2013
COMBINED WITH THE COMPLETION CERTIFICATE DATED 14.12.2013
BY THE ENGINEER SUBMITTED BEFORE THE RESPONDENT.**

**EXHIBIT P6:A TRUE COPY OF THE SITE PLAN OF THE PROPOSED EXTENSION
TO THE BUILDING.**

**EXHIBIT P7:A TRUE COPY OF THE SITE PLAN OF THE OF THE COMPLETED
EXTENSION TO THE BUILDING.**

**EXHIBIT P8:A TRUE COPY OF THE PLAN OF THE GROUND FLOOR SUBMITTED
BY THE PETITIONERS FOR ASSESSMENT OF THE BUILDING.**

**EXHIBIT P9:A TRUE COPY OF THE PLAN OF THE FIRST FLOOR SUBMITTED BY
THE PETITIONERS FOR ASSESSMENT OF THE BUILDING.**

**EXHIBIT P10:A TRUE COPY OF THE PLAN OF THE SECOND FLOOR SUBMITTED
BY THE PETITIONERS FOR ASSESSMENT OF THE BUILDING.**

**EXHIBIT P11:A TRUE COPY OF THE PLAN OF THE FRONT ELEVATION OF THE
SUBMITTED B Y THE PETITIONERS FOR ASSESSMENT OF THE
BUILDING.**

**EXHIBIT P12:A TRUE COPY OF THE REPORT DATED 24.2.2014 SUBMITTED BY
THE OVERSEER, LSGD SECTION, MELUKAVU.**

**EXHIBIT P13:A TRUE COPY OF THE RECEIPT DATED 28.2.2014 EVIDENCING THE
REMITTANCE OF RS.252 BY THE PETITIONERS.**

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**EXHIBIT P14:A TRUE COPY OF THE COMMUNICATION DATED 13.11.2014 GIVEN
BY THE RESPONDENT TO THE PETITIONERS.**

EXHIBIT P14(a): ENGLISH TRANSLATION OF EXHIBIT P14.

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

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A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.6009 of 2015

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Dated this the 19th day of June, 2015

JUDGMENT

Aggrieved by the refusal of the respondent in numbering the petitioners' building on the ground that there is violation in the construction based on the provisions contained in Kerala Panchayat Building Rules, 2011, though the original building permit was granted under the Kerala Municipality Buildings Rules, the petitioners have come up before this Court.

2. The petitioners have constructed a residential building in accordance with the building permit sanctioned by the respondent panchayat. They allege that initially, application was submitted for constructing ground floor with a plinth area of 197m³ and permission was granted by order dated 6.12.2010 as per Kerala Municipality Building Rules, 1999. At that time, there was no specific Building Rules for village panchayats; it is alleged. Therefore, the Government

in exercise of the powers conferred by Section 274(1) of the Kerala Panchayat Raj Act, 1994 by order dated 16.6.2007 extended the application of Kerala Municipality Building Rule, 1999 to all village panchayats of the State.

3. The petitioners further allege that on completion of the ground floor, they have filed application for extension of the building to construct two more floors on 6.6.2011. By that time, the Kerala Panchayat Buildings Rules, 2011 came into force with effect from 14.2.2011. In the building permit given by the respondent, it was stated that the provisions of the Kerala Panchayat Buildings Rules, 2011 were to be complied with. The petitioners have completed the building in accordance with the building permit granted by the respondent. However, the respondent refused to number the building. It is with this background, the petitioners have approached this Court.

4. The respondent panchayat has filed a statement wherein it was contended that the petitioners have applied for numbering the

building on 30.12.2013 on which a site inspection was conducted by the Overseer. He filed a report pointing out certain defects for which building cannot be numbered. The report states that the petitioners have constructed 28 sq. metre in excess from the approved plan, which resulted in the increase of F.A.R and coverage.

5. As per Rule 19 of KPBR, if the applicants intends to make any change to the approved plan, it has to be informed to the panchayat and revised sanction has to be obtained. According to the respondent, the petitioners have filed to comply with this. The Overseer has also reported that the petitioners have constructed a well. It further says that a distance of 60 centimetres only was left between the road margin and the well whereas in the plan it is shown as 1.5 metres.

6. It was further stated that the plan was forwarded to the District Town Planner on 22.3.2014 and on inspection, it was seen that there was violation of Rules 28(1), 35, 38(5), 27(3), (4), (5) and

46. This was communicated to the petitioners on 9.6.2014. Thereafter the petitioners submitted another application on 13.10.2014 stating that they have rectified all the defects. Again on 29.10.2014, the Overseer had conducted another side inspection in which it was found that Rules 35, 27(4) and 46 are violated. This was communicated to the petitioners on 13.11.2014. The petitioners have so far not cured the above defects and the building constructed by them cannot be numbered due to the aforesaid reasons. Therefore, they prayed for a dismissal of the writ petition.

7. Arguments have been heard.

8. Rule 35 of the Kerala Panchayat Building Rules, 2011 deals with the coverage and floor area ratio. As per Table 2 under the said Rule, the maximum permissible coverage covered under Category II grama panchayats is 55% of the plot area. There is a corresponding provision in Kerala Municipality Building Rules 1999 as Rule 31 which states that maximum permissible coverage area is 65%. Here,

the petitioners' case is that the permit for constructing the ground floor was given under the Kerala Municipality Building Rules. Therefore, the area of coverage has to be taken in accordance with the provisions of Kerala Municipality Building Rules which allows upto 65%; so submitted the learned counsel for the petitioners.

9. From the completed plan, a copy of which is produced as Ext.P7, the coverage area taken for construction of a building is 57.5%. Therefore, the learned counsel for the petitioners is correct in saying that there is no violation as per coverage area is concerned. It is clear from Ext.P2 that the building permit was given under the Kerala Municipality Building Rules since on the date of issuance of the same, the Kerala Panchayat Building Rules is not in force. Therefore, the decision of the respondent that the provisions of the Kerala Panchayat Building Rules were not complied with under Rule 35 is not legally sustainable.

Therefore, the writ petition is allowed. Ext.P4 is quashed. The respondent panchayat is directed to number the building of the petitioners and to issue occupancy certificate to them. This shall be done within a period of three weeks from the date of receipt of a copy of this judgment.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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