

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 2ND DAY OF JUNE 2015/12TH JYASHTA, 1937

WP(C).NO. 6866 OF 2015 (G)

PETITIONER(S):

**JAYAKUMAR MENON, "MANAKKAL",
'KODUVELI' HOUSE, NEAR SHANKARAPURAM TEMPLE,
MULAMKUNNATHUKAVU P.O., THRISSUR - 680 581.**

**BY ADVS.SRI.M.H.HANIL KUMAR,
SMT.M.R.JAYALATHA,
SRI.M.R.DHANIL.**

RESPONDENT(S):

- 1. MULAMKUNNATHUKAVU GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY,
MULAMKUNNATHUKAVU P.O., THRISSUR, PIN - 680 581.**
- 2. THE SECRETARY,
MULAMKUNNATHUKAVU GRAMA PANCHAYATH,
THRISSUR DISTRICT - 680 581.**
- 3. DISTRICT TOWN PLANNER,
THRISSUR CIVIL STATION, AYYANTHOLE,
THRISSUR - 680 003.**

**R1 & R2 BY ADV. SRI.SHEEJO CHACKO.
R3 BY GOVT. PLEADER SRI.JUSTIN JACOB.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 02-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

APPENDIX

PETITIONERS' EXHIBITS:

- EXHIBIT P1- A TRUE COPY OF THE NO OBJECTION CERTIFICATE ISSUED BY THE ADDITIONAL DISTRICT MAGISTRATE THRISSUR DATED 12.02.2014.
- EXHIBIT P2- A TRUE COPY OF THE LICENCE ISSUED BY THE JOINT CHIEF CONTROLLER OF EXPLOSIVES FOR THE POSSESSION AND SALE OF CHINESE CRACKERS DATED 04.07.2014.
- EXHIBIT P2(A)- A TRUE COPY OF THE LICENCE ISSUED BY THE JOINT CHIEF CONTROLLER OF EXPLOSIVES FOR THE POSSESSION AND SALE OF FIREWORKS/SPARKLES DATED 04.07.2014.
- EXHIBIT P3- A TRUE COPY OF THE APPLICATION SUBMITTED BY THE APPLICANT TO THE FIRST RESPONDENT PANCHAYATH DATED 22.09.2014 ALONG WITH ENGLISH TRANSLATION.
- EXHIBIT P3(A)- A TRUE COPY OF THE APPLICATION SUBMITTED BY THE APPLICANT TO THE FIRST RESPONDENT PANCHAYATH DATED 22.09.2014 ALONG WITH ENGLISH TRANSLATION.
- EXHIBIT P4- A TRUE COPY OF THE SITE PLAN OF THE PROPOSED SITE SUBMITTED BY THE PETITIONER TO THE FIRST RESPONDENT PANCHAYATH.
- EXHIBIT P5- A TRUE COPY OF THE NO OBJECTION CERTIFICATE ISSUED BY THE DIVISIONAL OFFICER OF FIRE AND RESCUE DEPARTMENT DATED 22.12.2014 ALONG WITH ENGLISH TRANSLATION.
- EXHIBIT P6- A TRUE COPY OF THE NOTICE ISSUED TO THE PETITIONER BY THE 2ND RESPONDENT DATED 30.01.2015 ALONG WITH ENGLISH TRANSLATION.
- EXHIBIT P7- A TRUE COPY OF THE COMMUNICATION ISSUED BY THE OFFICE OF DEPUTY CHIEF CONTROLLER OF EXPLOSIVES TO THE PETITIONER DATED 30.01.2015.
- EXHIBIT P8- A TRUE COPY OF THE REPORT SENT BY THE THAHSILDAR, THRISSUR THALUK TO THE DISTRICT COLLECTOR ON 12.08.2013.
- EXHIBIT P9- A TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT DATED 21/03/2015.
- EXHIBIT P10- A TRUE COPY OF THE REPORT SUBMITTED TO THE 1ST RESPONDENT BY THE ASSISTANT ENGINEER, LSGD MULAMKUNNATHUKAVU GRAMA PANCHAYATH DATED NIL.

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**EXHIBIT P11- A TRUE COPY OF THE CONSENT ISSUED BY THE SECRETARY
OF SHANKARAPURAM SREEKRISHNA TEMPLE
DATED 27/10/2014.**

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.6866 of 2015

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Dated this the 2nd day of June, 2015

JUDGMENT

The petitioner has approached this Court seeking directions to the respondent panchayat to process Ext.P3 application for licence without insisting for the approval of the third respondent within the time fixed by this Court after quashing Ext.P6 proceedings.

2. The petitioner alleges that he has obtained licence from the Explosive Controller to store and sell manufactured fire works in the shop room bearing nos.XIII/52C, XIII/52/D in Ward No.XIII of Mulankunnathukavu Grama Panchayat. The petitioner further alleges that he has obtained NOC from the Additional District Magistrate, Thrissur for the above purchase. Thereafter he submitted applications for licence to sell and store manufactured fire works in the above shop rooms. He has also produced the NOC from the Fire and Rescue Department as directed by the panchayat. The sanitation

facility was also made. However, the panchayat has not issued a notice to him to produce 5 copies of plans and sketches to forward the same to the Town Planner for obtaining approval.

3. The petitioner points out that Rule 61 of the Kerala Panchayat Building Rules has exempted Even Type C Magazines from getting approval of Town Planner. The Type C Magazines are used to store high explosives whereas manufactured fire works is stored in store rooms. Therefore, according to the petitioner, approval of the town Planner is not at all necessary and the same would further delay the licence issuing process. The Explosive Controller also clarified in Ext.P7, the difference of Type C Magazine and store house for fire house.

4. In the counter affidavit filed by the respondent panchayat, they have contended that as per Rule 61(4) of the Rules, the minimum width of access to a building and plot as well as the width of the street giving access to the plot from the main street shall be 7

metres and shall be motorable. According to them, the building in the plot is having more than 300 sq. metres and the road is having only 4.30 metres width. It was also contended that sufficient sanitation facilities are also not provided as required under Rule 61 (8)(a). They would further contend that no proper application is filed and the petitioner is bound to submit a plan as per the scale prescribed in the building rules.

5. The petitioner has filed reply affidavit.

6. Arguments have been heard.

7. The petitioner's application for licence is not processed by the respondents on account of Rule 61 of the building rules which insists for 7 metres wide road for hazardous occupancy. It was pointed out that by the amendment brought to sub rule (4) of the buildings rules in 2014, only 3 metre width is required if the floor area does not exceed 300 sq. metre. This amendment was as per SRO 26 of 2014 with effect from 13.1.2014. Admittedly the total

area of the store house and sale rooms is less than 70 sq. mts. Therefore, the only 3 metres wide road is required as the floor area does not exceed 300 sq. metres as per amended rules.

8. Evidently, the impugned order was passed before the amendment and therefore, the petitioner is entitled to succeed.

In the result, the writ petition is disposed of quashing Ext.P6 and directing the respondent panchayat to reconsider the issue in the light of what has been stated above and pass formal orders in the matter within a period of two weeks from the date of receipt of a copy of this judgment.

Sd/-
A.V.RAMAKRISHNA PILLAI
JUDGE

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