

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

WP(C).No. 19160 of 2012 (T)

PETITIONER(S) :

**K.P. ABDU RAHIMAN,
KAPPATTAKATHPOOPARAMBIL VETOM,
P.O., TIRUR, MALAPPURAM.**

**BY ADVS.SRI.B.S.SWATHY KUMAR
SMT.P.V.SOBHANA
SMT.V.BEENA**

RESPONDENT(S):

- 1. THE DEPUTY DIRECTOR OF PANCHAYATH,
MALAPPURAM-676 001.**
- 2. THE VETOM GRAMA PANCHAYATH,
VETOM, TIRUR, MALAPPURAM 676 102
REPRESENTED BY ITS SECRETARY.**
- 3. THE SECRETARY,
VETOM GRAMA PANCHAYATH, VETOM P.O., TIRUR
MALAPPURAM 676 102.**

**R1 BY ADV. GOVERNMENT PLEADER MR.A.MOHAMMED SAVAD
R2-R3 BY ADV. SRI.C.M.MOHAMMED IQUABAL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
25-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

VS

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXT.P1 : TRUE COPY OF THE ORDER NO.A4-6327/11 DATED 25-11-2011
- EXT.P2 : TRUE COPY OF THE REPLY DATED 20-11-2011 FILED BY THE PETITIONER BEFORE THE 3RD REESPONDENT.
- EXT.P3 : TRUE COPY OF THE COMMUNICATION NO.A4-6327/11 DATED 28-12-2011
- EXT.P4 : TRUE COPY OF THE ORDER LETTER NO.A3-3403-2011 DATED 3-1-2012
- EXT.P5 : TRUE COPY OF THE ORDER NO-A4-6327-2011 DATED 16-3-2012 OF THE 3RD RESPONDENT.
- EXT.P6 : TRUE COPY OF THE APPLICATION DATED 28-3-2012 FILED BY THE PETITIONER BEFORE THE PANCHAYATH COMMITTEE.
- EXT.P7 : TRUE COPY OF THE LETTER NO.A4-6327-2011 DATED 3.5.2012
- EXT.P8 : TRUE COPY OF THE RESOLUTION NO.5(2) DATED 26-4-2012 OF THE PANCHAYATH.
- EXT.P9 : TRUE COPY OF THE PETITION DATED 21-5-2012 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXT.P10 : TRUE COPY OF THE ORDER NO.D.7505/12 DATED 28-6-2012 OF THE 1ST RESPONDENT.

RESPONDENT(S)' EXHIBITS :

- EXT.R2(a) : THE TRUE COPY OF THE APPLICATION FOR REGULARIZATION ALONG WITH THE PROPOSED SITE PLAN DATED 20.7.2011 FILED BY THE PETITIONER.
- EXT.R2(b) : THE TRUE COPY OF THE REPORT DATED 30.11.2011 SUBMITTED BY THE OVERSEER OF THE VETOM GRAMA PANCHAYATH
- EXT.R2(C) : THE TRUE COPY OF THE REPLY SENT TO THE DEPUTY DIRECTOR OF PANCHAYATH, DATED 19.6.2012.

/TRUE COPY/

PA TO JUDGE

VS

A.M.SHAFIQUE, J

W.P.(C).No.19160 of 2012

Dated this the 25th day of June, 2015

JUDGMENT

The petitioner has approached this Court challenging Ext.P8, by which petitioner was directed to demolish the unauthorised construction.

2. Perusal of Ext.P8 would show that the Panchayat, after making enquiry, has formed an opinion that the petitioner is constructing the first floor of his building by violating Rule 28(1) of the Kerala Panchayath Building Rules, 2011 (hereinafter called the 'Rules' for short). Petitioner submits that an application for regularisaion of the construction made by him was rejected as per Ext.P7. An appeal was filed before the Panchayat committee, which was rejected in terms of Ext.P8. The petitioner therefore preferred Ext.P9 representation before the Deputy Director of Panchayath, who by Ext.P10 dated 28.06.2012 rejected the same by stating that it is not maintainable. Hence the petitioner approached this Court.

3. The learned Counsel appearing for the Panchayat having filed a counter affidavit submitted that the Overseer of the Panchayat had verified the construction being made by the petitioner and formed an opinion that the construction is in violation of Rule 28(1) of the Rules and accordingly notice had been given to the petitioner to demolish the said structure. It is stated that the petitioner ought to have maintained three metre distance from the road end.

4. Having regard the aforesaid factual issues, it is clear that the allegation of unauthorised construction has already become final. The petitioner if he wants to proceed with the construction will have to comply with the directions issued by the Panchayat. If any construction has been made, violating the Rules it has to be demolished. Hence the petitioner will have to take necessary steps for demolition of such construction, which is in violation of Rules.

In the result, this writ petition is disposed of as under:

On the petitioner demolishing such portion of the construction which is in violation of the Rules, it shall be open for him to apply to the Panchayat, either for regularisation or for reconstruction. This shall be done within a period of one month from the date of receipt of a copy of this judgment. Any such application submitted by the petitioner shall be considered by the Panchayat, in accordance with law.

Sd/-
A.M.SHAFFIQUE
JUDGE

VS