

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 3RD DAY OF DECEMBER 2015/12TH AGRAHAYANA, 1937

WP(C) .No. 25716 of 2013 (L)

PETITIONER(S) :

VINOD STEPHEN, AGED 43 YEARS,
S/O.STEPHEN, INCHANANIYIL HOUSE, MONIPPALLY P.O.
KOTTAYAM.

BY ADV. SMT.TISSY ROSE K. CHERIYAN

RESPONDENT(S) :

1. KOOTHATTUKULAM GRAMA PANCHAYAT,
KOOTHATTUKULAM P.O., ERNAKULAM DISTRICT,
REPRESENTED BY ITS SECRETARY, PIN-686 662.

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

R1 BY ADV. SRI.K.M.JAMALUDHEEN
R1 BY ADV. SMT.LATHA PRABHAKARAN
R2 BY GOVERNMENT PLEADER ANITHA RAVINDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 03-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

- P1. TRUE COPY OF THE SALE DEED NO.740/1994 DATED 23/3/1994 OF KOOHATTUKULAM, SRO.
- P2(A). TRUE COPY OF THE LICENCE ISSUED BY THE 1ST RESPONDENT IN THE NAME OF THE PETITIONER FOR THE PETITIONER DURING THE PERIOD 2002-2003.
- P2(B). TRUE COPY OF THE LICENCE ISSUED BY THE 1ST RESPONDENT IN THE NAME OF THE PETITIONER FOR THE PETITIONER DURING THE PERIOD 2003-2004.
- P3. TRUE COPY OF THE SALE DEED NO.2426/2006 DATED 7/12/2006 OF KOOHATTUKULAM, SRO.
- P4. TRUE COPY OF THE LAND TAX RECEIPT NO.4408961 DATED 12/5/2010 FOR THE PERIOD 2010-2011.
- P5. TRUE COPY OF THE POSSESSION CERTIFICATE ISSUED TO THE PETITIONER FROM THE KOOHATTUKULAM VILLAGE OFFICE.
- P6. TRUE COPY OF THE APPLICATION DATED 25/10/2011 SUBMITTED BEFORE THE 1ST RESPONDENT
- P7. TRUE COPY OF THE JUDGMENT IN WPC NO.12160/12 DATED 26/6/2012.
- P8. TRUE COPY OF THE LSGD REPORT DATED 29/12/2011.
- P9. TRUE COPY OF THE DEISION NO.5 DATED 18/1/2013 OF KOOHATTUKULAM GRAMA PANCHAYATH.
- P10. TRUE COPY OF THE APPLICATION DATED 4/4/2013 OF KOOHATTUKUALM GRAMA PANCHAYATH
- P11. TRUE COPY OF THE REPLY DATED 12/6/2013 OF THE KOOHATTUKULAM GRAMA PANCHAYATH.

RESPONDENT(S) ' EXHIBITS : NIL

OKB

// True copy //

P.A. to Judge

K.HARILAL, J.

W.P.(C) No.25716 of 2013

Dated this the 3rd day of December, 2015.

JUDGMENT

The petitioner was in possession of 2½ cents of land comprised in Sy.No.91/B of Koothattukulam Village by virtue of Ext.P1 and he constructed a building, which was numbered as 11/50-A by the 1st respondent Panchayat. Subsequently, the petitioner constructed two more floors and started a tourist home for his livelihood under Exts.P2(a) and Ext.P2(b) licences issued by the Panchayat. Subsequently, in the year 2006, the petitioner had sold away the ground floor of the building and retained the upper floors for continuing the tourist home. After the sale of the ground floor, the petitioner made Ext.P6 application before the 1st respondent requiring allotment of separate building number for the two floors owned and occupied by the petitioner. Since no effective steps

were taken on Ext.P6 application, the petitioner approached this Court by filing W.P(C) No.12160/12 and this Court directed the Panchayat to consider Ext.P6 application and pass orders accordingly. Thereafter, the Panchayat issued Ext.P8 letter to the petitioner stating that the building was constructed without leaving 5 metre from M.C. Road and also the required distance was not provided on the four sides of the building. But, later, on an application filed by the owners of the ground floor seeking exemption from demolition of the additions, which they have made on the ground floor, by Ext.P9, the Panchayat Committee has taken a decision, not to insist demolition of unauthorised constructions, on the reason that the unauthorised constructions were made long years back. Thus, the owners of the ground floor were allowed to retain the unauthorised constructions on the reason that those constructions were made long before the commencement of the Panchayat Buildings Rules. As against the alleged violation of the building rules, the petitioner filed Ext.P10, explaining and convincing the

defects alleged against the petitioner, to allot the building number and prayed for regularising the 1st and 2nd floors constructed without getting approved plan and permit invoking power of regularisation under the Kerala Panchayat Buildings Rules. On receipt of Ext.P10, the 1st respondent, without exercising the power of regularisation under Rule 134, purposefully rejected Ext.P10 by Ext.P11 stating that “on verification of the above said application by the Panchayat Committee there is violation of the KPBR”. To the knowledge of the petitioner as per Section 220B proviso of Kerala Panchayat Buildings Rules the set back limit of 3 metres shall not be applicable for the construction of 1st and 2nd floors as those floors were constructed before the commencement of KPBR. Where there is a decision vide Ext.P9 to regularise the alterations towards road frontage, made without keeping the vacant space at the ground floor, the denial of numbering of the 1st and 2nd floors constructed on the ground floor is unjust and unreasonable. It is with this circumstance the

petitioner filed this writ petition with a prayer to issue a writ of mandamus or any appropriate writ or direction commanding the 1st respondent to consider Ext.P6 application and allot building numbers to the 1st and 2nd floors of the building situated in Sy.No.91/B of Koothattukulam Village.

2. The respondent filed a counter affidavit denying the allegations levelled against the respondent as regards the alleged withholding of building numbers, to the 1st and 2nd floors and contended that the 1st and 2nd floors were constructed without obtaining building permit and thereby those floors were constructed in violation of the Kerala Panchayat Buildings Rules. According to the respondent, the 1st and 2nd floors were constructed without leaving 3 metres of distance from the boundary of the property and, thereby, the same are not entitled to get numbered, even though ground floor was exempted under Ext.P9 resolution. Even though the constructions were made earlier, the law prevailing at the time of considering the application is applicable

to such cases. The application for regularisation came for consideration after the commencement of the Kerala Pachayat Buildings Rules, with effect from 14.2.2011 and hence the order of the authority rejecting the application is legal and sustainable.

3. Heard the learned counsel for the petitioner and the learned Standing Counsel for the 1st respondent. The respective counsel advanced arguments in support of their rival pleas and I have given my anxious consideration to the submissions made at the Bar.

4. Going by the materials on record, it appears that the numbering of the 1st and 2nd floors was withheld on the reason that those constructions were made without obtaining building permit and without leaving 3 metres at the frontage as open space from the boundary. At the same time, it stands admitted by the 1st respondent Panchayat that the Panchayat has granted exemption to the ground floor, with which alterations were made without leaving 3 metres at the frontage from the boundary. It is not disputed that

the 1st and 2nd floors were also constructed on the same ground floor for which exemption has been granted under Ext.P9. In that view of the matter, I am of the opinion that the denial of such exemption to the 1st and 2nd floors, which stand on the ground floor, is arbitrary and unreasonable and discriminatory. If the exemption can be given to the ground floor, then the 1st and 2nd floors, which stood constructed on the ground floor, are also entitled to get the same benefit, and the said reason for withholding the numbering of the 1st and 2nd floors would stand rejected.

5. Another reason stated by the 1st respondent is that the 1st and 2nd floors were constructed without obtaining building permit under the approved plan. Going by Ext.P10, it is seen that the petitioner himself admitted such construction without obtaining building permit; but, he prayed for regularising the 1st and 2nd floors invoking the power of regularisation under the Kerala Panchayat Buildings Rules. Going by Rule 134 of the Kerala Panchayat Buildings Rules, the Panchayat is empowered to regularise and number the

constructions which were made without obtaining building permit under the approved plan, if those constructions were not made in violation of the building rules. It follows that the Panchayat is liable to consider the application for regularisation in accordance with Rules and it is incumbent upon the Panchayat to point out violation, if any. But, going by Ext.P11, it is seen that the 1st respondent has not applied its mind on Ext.P10 application in its correct perspective as mandated under Rule 134 of the Kerala Panchayat Buildings Rules. In Ext.P11, the 1st respondent has not made mention anything about the alleged violation. If there was any violation other than the alleged omission to leave 3 metres at the frontage, the Panchayat ought to have brought the same to the notice of the petitioner, enabling him to give explanation or to cure the same. In this view, the denial of regularisation and numbering, on the basis of a vague allegation, is arbitrary and unreasonable. Consequently, Ext.P11 will stand quashed.

6. The 1st respondent Panchayat is further

directed to consider afresh Ext.P10 application seeking regularisation, within a period of two months from the date of receipt of a copy of this judgment. It is made clear that the petitioner is also entitled to get the benefit of Ext.P9 resolution passed by the Panchayat and the Panchayat cannot insist 3 metres open space at the frontage in the case of the 1st and 2nd floors also, as the same are built up on the ground floor, for which exemption has been granted under Ext.P9.

This writ petition is disposed of accordingly.

Sd/-
K. HARILAL, JUDGE

okb.