

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 4TH DAY OF NOVEMBER 2015/13TH KARTHIKA, 1937

WP(C).No. 23698 of 2015 (J)

PETITIONER(S) :

**T.K.GOPALAKRISHNAN NAIR, AGED 67 YEARS,
S/O.(LATE) KESHAVAN NAIR, ASHWINI HOUSE,
KANNAMPRA P.O., ALATHUR, PALAKKAD DISTRICT -678 686.**

**BY ADVS.SRI.P.A.MOHAMMED SHAH
SRI.SOORAJ T.ELENJICKAL
SRI.K.NANDAKUMAR
SMT.V.A.HARITHA**

RESPONDENT(S) :

**1. VADAKKENCHERY GRAMA PACHAYAT,
REPRESENTED BY SECRETARY,
VADAKENCHERY GRAMA PANCHAYAT,
VADAKENCHERY P.O., PALAKKAD DISTRICT - 678 683.**

**2. SECRETARY,
VADAKENCHERY GRAMA PANCHAYAT, VADAKENCHERY P.O.,
PALAKKAD DISTRICT -678 683.**

BY ADV. SMT.VA.HANITHA

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 17-08-2015, THE COURT ON 04-11-2015 DELIVERED
THE FOLLOWING:**

Msd.

WP(C).No. 23698 of 2015 (J)

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXT.P1: TRUE COPY OF THE TITLE DEED NUMBERED AS 2406 OF 2014 OF VADAKKANCHERY SUB - REGISTRY DATED 19.09.2014.**
- EXT.P2: THE TRUE COPY OF THE ORDER PASSED BY THE TRIBUNAL LOCAL SELF GOVERNMENT INSTITUTION IN APPEAL NO.479/2015 DATED 25.05.2015.**
- EXT.P3: THE TRUE COPY OF THE CERTIFICATE ISSUED BY THE VILLAGE OFFICER, VADAKKANCHERY - 1 DATED 16.07.2015.**
- EXT.P4: THE TRUE COPY OF THE RENT DEED WITH SRI.RAMESHKUMAR DATED 29.04.2015.**
- EXT.P5: THE TRUE COPY OF THE RENT DEED ISSUED TO SMT.MANJU DATED 29.04.2015.**
- EXT.P6: THE TRUE COPY OF THE LICENSE APPLICATION SUBMITTED BY SRI.RAMESHKUMAR DATED NIL.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 23698 of 2015

Dated this the 4th day of November, 2015

J U D G M E N T

The petitioner is the title holder, who is in possession of two shop rooms comprising an area of 105 sq.ft. having building No.3/2340 situated in the ground floor of the Galaxy Tower, which has been constructed by Sri.Sesil Joseph in his property admeasuring 0.0885 hectares comprised in Re.Sy.No.105/3, Block No.45 of Vadakkenchery-1 Village, Alathur Taluk. The petitioner alleges that his shop room is the 8th one in ground floor of a multi-storied building. All the rooms in the ground floor were constructed as per the approved plan and on the basis of the same, occupancy certificate was issued and tax is being collected by the 2nd respondent; it is alleged. The building owner carried out certain additions to the construction above the first floor after numbering the ground and first floors. He also filed an application for regularization with regard to the additional construction

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above the first floor. During the pendency of the application, the 2nd respondent issued a notice to the building owner, which was stayed by the Tribunal for Local Self Government Institutions by Ext.P2 order. The petitioner rented out the rooms to one Rameshkumar and one Manju. The said Rameshkumar filed an application for licence before the 2nd respondent for a painting and designing office. The petitioner alleges that the 2nd respondent even declined to accept the above application stating that since the matter is pending before the tribunal with regard to the other portion of the building, no licence could be issued even to the building, which is already numbered. The 2nd respondent stated that even the name of the petitioner cannot be entered in the records of the panchayath as owner of the building, which he purchased as per Ext.P1 sale deed and evident to be owned by the petitioner as per revenue records. It is with this background, the petitioner has come up before this Court.

2. Though notice has been served on the respondent panchayath, they did not enter appearance.

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3. Heard the learned counsel for the petitioner.

4. The petitioner purchased the rooms as per Ext.P1. The ownership has been changed as per revenue records as evidenced by Ext.P3 certificate. A portion of the building has been constructed as authorized on the basis of a valid building permit. The occupancy was issued to the building and that particular room was numbered. The pendency of an appeal before the tribunal with regard to the additions made in the construction cannot be taken as a reason for declining the petitioner's right to change of ownership in the records of the panchayth and to issue licence to the shop rooms.

5. The learned counsel for the petitioner would point out that the building owner had already filed application for regularization for the additions made. It is also relevant to note that the notice issued by the 2nd respondent also is stayed by the tribunal. In the above circumstances, the petitioner or his tenant is entitled get the licence in the above shop room. The Kerala Panchayath Raj Act, 1994 or the Kerala Panchayath

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Building Rules, 2011 does not provide any provision to prohibit issue of licence or change of ownership to a shop room, which is constructed on the basis of a valid permit, occupancy has been issued and numbered after assessment of tax. If, at all, any demolition is required, that can only be to the additions made and not to the portion of the building, for which, occupancy has been issued already. Therefore, this Court is of the view that the petitioner is entitled to get the relief as prayed for.

In the result, the writ petition is allowed. The 2nd respondent is directed to change the name of ownership of the shop rooms purchased by the petitioner as per Ext.P1 title deed in favour of the petitioner in the records of the panchayath and, consequently, issue licence to the shop rooms covered by Ext.P1 title deed to the petitioner within a period of one month from the date of receipt of a copy of this judgment.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-