

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

WP(C).No. 25236 of 2014 (D)

PETITIONER :

**AVARANKUTTY, AGED 52 YEARS,
S/O.MUHAMMED HAJI, CHENANGATTIL HOUSE, PARAPOOR
CHERIYAPARAMBU, MALAPPURAM DISTRICT.**

BY ADV. SRI.BABU S. NAIR

RESPONDENTS :

- 1. THE CHEEKKODE GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY, CHEEKKODE
MALAPPURAM DISTRICT, PIN-673640.**
- 2. THE SECRETARY,
CHEEKKODE GRAMA PANCHAYATH, CHEEKKODE
MALAPPURAM DISTRICT, PIN-673640.**

R1 & R2 BY ADV. SRI.P.K.MOHAMED JAMEEL

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 14-07-2015, THE COURT ON 22-07-2015 DELIVERED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: COPY OF THE CERTIFICATE ISSUED BY THE 2ND RESPONDENT DATED,11-11-2011 REGARDING THE EXISTENCE OF THE BUILDING
- EXT.P2: COPY OF THE RECEIPT SHOWING THE ACCEPTANCE OF BUILDING TAX BY THE 2ND RESPONDENT DATED,29-3-2014.
- EXT.P3: COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER FOR REGULARIZATION DATED,1-10-2011.
- EXT.P4: COPY OF THE ACKNOWLEDGMENT ISSUED TO THE PETITIONER BY THE 2ND RESPONDENT DATED,12-10-2011.
- EXT-P5: COPY OF THE RECEIPT SHOWING THE PAYMENT OF THE REGULARIZATION FEES BY THE PETITIONER DATED,18-11-2011.

RESPONDENT(S)' EXHIBITS :

- EXT.R2(1): COPY OF THE LETTER ISSUED TO OVERSEER ON 12/7/2012.
- EXT.R2(1)(a): COPY OF THE ENGLISH TRANSLATION OF EXT R2(1).
- EXT.R2(2): COPY OF THE REPORT OF THE OVERSEER DT 20/9/2012.
- EXT.R2(2)(a): COPY OF THE ENGLISH TRANSLATION OF EXHIBIT R2(2).
- EXT.R2(3): COPY OF THE GOVERNMENT ORDER G.O.(MS)150/2014/LSGD DT 21/8/2014.

//TRUE COPY//

P.A. TO JUDGE

bp

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No.25236 of 2014

Dated this the 22nd day of July, 2015.

JUDGMENT

The petitioner is seeking a direction to the respondents to number the rooms of the additional construction, according to the petitioner which was regularised by the second respondent

2. The petitioner had constructed a commercial building in his properties. The petitioner alleges that he had constructed only one floor having 9 shop rooms. After the construction of the building, the second respondent has numbered the building as XV/408 A, B, C, D, E, F, G, H and I. Subsequently, the petitioner had constructed the first floor of the building. As the construction of the additional floor was without obtaining the building permit, the petitioner had applied for regularization of additional construction by making Ext.P3 application to the second respondent. After the application, the overseer and the Assistant Engineer of the first respondent - Grama Panchayath, came and inspected the

building and found that the additional construction is in accordance with the KMBR and therefore, the construction of the first floor could be regularized. The said endorsement was also made in the application itself. After the inspection is over, the petitioner was directed to pay fees for the regularization of the additional construction. Accordingly, the petitioner has paid an amount of Rs.3,610/- as fee for additional construction. Ext.P5 is the receipt showing the payment of the regularization fees by the petitioner dated 18.11.2011. However, even after the payment of the regularization fees and even after the construction being regularized, so far, the building has not been numbered and though the petitioner had submitted an application for numbering the building, the same has not been done by the second respondent. The action on the part of the respondents in not numbering the building, is highly arbitrary and unjust; it is alleged. It is with this background, the petitioner has come up before this Court.

3. In the counter affidavit filed by the respondent

panchayat, it was contended that as per Section 235 W of the Kerala Panchayat Raj Act, the secretary is conferred with the power to regularise the construction only if the construction or alteration of the building does not contravene any of the criteria or specification mentioned in the Act or Rules. According to the respondent, as per Rule 38 of KPBR, 2011 for those building included in Group-F, there should be 15 sq. mtrs., car parking facility for every carpeting area having 75 sq. metres. Since the said construction of petitioner is in violation of said rule, the construction cannot be regularized as per law.

4. Arguments have been heard.

5. The learned counsel for the petitioner would submit that he has made an application for regularization of the additional construction effected by the petitioner. The concerned overseer and the Assistant Engineer came and inspected the additional construction and found that the same is in accordance with the building rules. It is only thereafter,

the petitioner was directed to pay the regularization fees and as per Ext.P5, the petitioner had paid the fees also. Therefore, according to the petitioner, now the panchayat cannot turn around and refuse numbering of the building, which is per se illegal and arbitrary. It was further pointed out that the petitioner has completed the additional construction as early as in the year 2011 and the same cannot be put in use because of the non-regularisation.

6. The learned counsel for the respondent panchayath per contra would submit that Rule 100 of KMBR does not provide any relaxation in car parking area for every building having 300 sq.metres or more. According to the respondent, as per the plan submitted by the petitioner, there is a total carpet area of 357.98 sq. metres. It is further submitted that Government had issued a G.O.(MS) 150/2014/25 LSGD on 21.8.2014 regarding the regularization of building in violation of building rules prior to 31.3.2013.

7. Admittedly, additional construction of the petitioner

was made before the said date and the additional construction is not according to the rules then in force. The said Government Order which is produced and marked as Ext.R2(3).

However, as the petitioner has already submitted the application for regularization and has submitted the required fee, the respondent panchayath shall forward the application for regularization with its remarks to the Government within two weeks from the date of receipt of a copy of this judgment. In the meantime, the respondent panchayath shall provisionally number the additional construction and to issue occupancy certificate provisionally which shall be subject to the order passed by the Government on the application for regularization.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.