



GOVERNMENT OF KERALA
Abstract

Local Self Government Department – Judgment dated 28.06.2018 of Hon'ble High Court of Kerala in W.P. (C) No.28290/2009 filed by Gaanam Hotels (P) Limited - Court direction complied with - Orders issued.

LOCAL SELF GOVERNMENT (RB) DEPARTMENT

G.O.(Rt) No.52/2019/LSGD.

Dated, Thiruvananthapuram, 10/01/2019.

- Read: -
1. Judgment dated 28/6/2018 in WP(C) No. 28290/09 of High Court filed by M/s. Gaanam Hotels(P) Ltd. Chittoor, Kochi.
 2. Report No. D -3113/18 dated 22/11/2018 of Senior Town Planner, Ernakulam.
 3. Report No. ISO/MOP4/281/97 dated 21/11/2018 of Secretary, Kochi Corporation.

ORDER

The Hon'ble High Court of Kerala in its judgment read as 1st paper above directed the 1st respondent ie, Additional Chief Secretary, Local Self Government Department to reconsider Ext.P8 and P21 after affording an opportunity of being heard to the petitioner within four months. Ext.P8 is a Government Letter (27133/M1/2005/LSGD dated 11.5.2006) rejecting the regularisation request of unlawful construction of Sri. E.K.Paul, Managing Director, Gaanam Hotels (P) Limited and Ext.P21 is a Government Order (G.O. (Rt) No.2121/09/LSGD dated 19.8.2009) rejecting the regularisation request of Ganam Hotels (P) Limited.

2) The argument of the petitioner in the W.P.(C) is that Exts.P8 and P21 orders have been issued by the Authorities rejecting their request for regularisation, relying upon Rule 117 of the Kerala Municipality Building Rules (KMBR), 1999. The primary assertion of the petitioner in this Writ petition against these orders is that, since Rule 117 of the KMBR, 1999 was brought into the statute books much after the construction has been completed, its rigour could not have been made applicable to them. According to them, this issue has not been considered by the Authorities either in Ext.P8 or in Ext.P21. The Hon'ble Court observed that this was a specific issue that ought to have been considered by the Authority before issuing Exts.P8 and P21 and these orders required to be re-considered by the same Authority, taking note of this specific legal contention.

3) As directed by the Hon'ble High Court, Government heard the petitioner along with the Assistant Town Planner, Kochi and the representatives of Kochi Corporation on 23.11.2018. During the time of hearing the petitioner informed that he has constructed a six storeyed building on the basis of a building permit issued by the Corporation of Kochi. But one more floor ie 7th floor, was also constructed without any building permit and the construction of that building was completed on 20.12.2018 and at that point of time the Building Rules in force were Kerala Building Rules 1984. Hence the safety precaution contained in KBR 1984, as regard Fire

Safety were included in the approved plan and the construction has been effected strictly in accordance with the approved plan. Hence Kerala Municipality Building Rule 1999 is not applicable to his building. The only addition of the 7th floor to the building in question deviating from the approved building plan resulted in non issuance of occupancy certificate and non numbering of the building. This has caused serious prejudice and hardship to him. Hence he has requested to pass an order for the regularisation of the building and direct the Kochi Corporation to numbering the building.

4) As per the 2nd paper read above, the Senior Town Planner, Ernakulam reports that at the time of issuance of permit, Kerala Building Rule was existing there, in that the fire and security provisions were not mentioned. But the fire and security provisions were explained in Rule 117 of KMBR 1999. GO (Ms) No.196/99/LSGD dated 14.10.99 of regularisation of unauthorised construction and Land Development Rules 1999 also stipulates the rules regarding the Regularisation of unauthorised Building on or before 31.12.1998. In this, rule 5(7) states that "no unauthorised construction shall be regularised if the construction grossly violates any safety provisions in the building rules for the time being in force or any safety condition specified in the exemption order or permit." The application for regularisation did not either comply with the safety provisions in Chapter 17 of Kerala Municipality Building Rules or high rise building, Rule 117 of KMBR. Hence, the regularisation application was rejected.

5) The Senior Town Planner, Ernakulam has also pointed out that, if there is a change in the building Rules within the period of building permit issued, then also existing rule during the permit period will prevail. But in this case, deviating from the building permit issued the petitioner constructed an additional 7th floor. Hence Building Rule 1999 is applicable to this construction.

6) The Secretary, Kochi Corporation in the letter read as 3rd paper above reports that as the construction was completed before 1998, the regularisation application of the petitioner was rejected, vide G.O. (Rt) No.2121/09/LSGD dated 19.8.09 (Ext.P21). As per the Kerala Municipality Building Rule 1999 (Regularisation Unauthorised Construction and land development), the regularisation application of the petitioner cannot be considered because it deviates from the existing safety provisions. The building permit was issued to the petitioner during 25.01.97 and 24.09.1999. After every three years the building permit has to be renewed. The maximum period for the renewal of building permit is 9 years. Eventhough the application for renewal was submitted, the building permit was not renewed as there was an additional construction carried out which is deviated from the approved plan. It is seen that, the Kerala Municipality Building Rule 1999 is applicable to this construction. Also on examination it is found that the building violates Kerala Municipality Building Rules- Rule 54(3)(1), 54(2), 24(8), 31(1), 34(5), and 117. The construction deviates from the safety provisions, final fire NOC and therefore the construction was not regularised.

7) Government have examined the matter in detail, whether KMBR 1999 is applicable to this building. Based on the reports of Senior Town Planner, Ernakulam and Secretary Kochi Corporation it is observed that;

(i) As per Ext.P8 order the application for regularisation is seen submitted to

Government on 9.2.2000, well after the Building Rule 1999 has come into existence and hence building Rule 1999 is applicable to the building.

(ii) As per Ext.P21 the Review Petition dated 7.6.2006 submitted is seen disposed off on 19.8.2009 as per the judgment of the Hon'ble High Court in W.P(C) No. 18888/09 dated 14.7.2009. In this case also the Building Rule 1999 is applicable to the building.

(iii) Both Ext.P8 & P21 are fair & proper and as per rule and no natural justice is denied to the petitioner.

(iv) The petitioner has to rectify the irregularities mentioned in the said Exts. in order to get his building regularised.

8) In the above circumstances, Government are pleased to inform the petitioner that Since the unlawful construction carried out in the existing building in Survey No. 700 of Ernakulam village in Kochi Corporation violates the provisions/Rules of Kerala Municipality Building Rules 1999, the unlawful construction cannot be regularised and both Ext.P8 & Ext.P21 are fair & proper and in accordance with Kerala Municipality Building Rule, 1999.

The judgment of the Hon'ble High Court is thus complied with.

(By Order of the Governor)
K. GOPALAKRISHNA BHAT
SPECIAL SECRETARY TO GOVERNMENT

- 1) Shri. E.K. Paul, Managing Director,
Gaanam Hotels (P) Limited, Chittoor Road, Kochi – 16.
- 2) The Advocate General, Ernakulam. (with C/L)
- 3) The Chief Town Planner, Thiruvananthapuram
- 4) The Senior Town Planner, Ernakulam
- 5) The Secretary, Kochi Corporation
- 6) The Executive Director, Information Kerala Mission, Thiruvananthapuram.
(for publishing this order in website)
- 7) Stock File/ Office Copy.

Forwarded/By Order

Section Officer

