



**GOVERNMENT OF KERALA**  
**Abstract**

Local Self Government Department – Judgment dated 2.11.2018 of the Hon'ble High Court of Kerala in W.P. (C) No. 25971/2018 filed by M/s. Kairali Granites - Court direction complied with - Orders issued.

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**LOCAL SELF GOVERNMENT (RB) DEPARTMENT**

G.O.(Rt) No.206/2019/LSGD.

Dated, Thiruvananthapuram, 31/01/2019.

Read: - 1) Judgment dated 2/11/2018 in W.P.(C) No.25971/2018 of High Court filed by M/s. Kairali Granites, Vytilla, Kochi.  
2) Report No.E5/7570/2018 dated 17/12/2018 of Secretary, Maradu Municipality.

**ORDER**

The Hon'ble High Court of Kerala as per judgment read as 1<sup>st</sup> paper above, quashed Exts.P9 (Government letter dated 22.3.2018) and directed the 3<sup>rd</sup> respondent, ie Additional Chief Secretary, Local Self Government Department to reconsider the regularisation application submitted by the petitioner at the earliest and at any rate, within two months from the date of the receipt of copy of the judgment, after affording an opportunity of hearing to the petitioner as well as the Municipality.

2) The brief history of the case is that, M/s. Kairali Granites has submitted an application for the regularisation of an unauthorized commercial building with plinth area of 9012.12sq.m in a plot of 10855.13m comprised in a survey number 132/4, 132/5, 127/4, 126/6, 127/2, 127/4, 127/8, 132/3, 127/3 and 127/9 of Maradu Municipality in Ernakulam District. The above application has been scrutinized by the Chief Town Planner, for its conformity to the safety and security provisions required to be strictly complied with for regularisation of the unauthorised construction of the Kerala Municipality Building (Regularisation of unauthorized construction) rules, 2014, vide G.O.(MS) No.39/2014/LSGD dated 14/2/2014. As per the Technical recommendation of Chief Town Planner, Thiruvananthapuram, the unauthorized construction violates the proviso of 5(2)(ii) (violation of sanctioned Town Planning Scheme, and Appendix II Criteria 2 (Rule 40 A- Facilities for person with disabilities) of the Kerala Municipality Building (Regularisation of unauthorized construction) rules, 2014. In the above circumstances, the Chief Town Planner, Thiruvananthapuram has not recommended the proposal for regularisation. While the above application was under process by Government, G.O.(P) No. 11/18/LSGD dated 15.2.2018 came into force. Hence Government (vide Ext.P9 letter) informed the petitioner that as the new rule had come into existence, application of the petitioner cannot be considered.

3) Against the order, the petitioner filed this WP(c) and thus the judgment. In the judgment, the Hon'ble High Court observed, that "the petitioner has submitted an application seeking regularisation, when Rules 2014 was in force. Rules 2018 came into force on and with effect from 20.2.2018. There is no transitory provisions contained under the aforesaid rules in order to tackle the situations with respect to an

application pending before a statutory authority in accordance with Rules, 2014. Therefore, the application pending under Rules, 2014 ought to have been considered in accordance with the rules in force, when the application was admitted. Further, Rules 2018 is a perspective legislation, under which unauthorised construction completed up to 31.7.2018 can be regularised. It is true notification 2014 is superseded by the notification 2018 on and with effect from the introduction of Rules, 2018. So much so, the applications pending consideration under Rules, 2014, will have to be considered in accordance with Rules, 2014. In that view of the matter and taking into account theory of substantial justice, Ext.P9 suffers from the vice of arbitrariness and illegality, liable to be interfered with by this Court exercising the discretionary power conferred under Article 226 of the Constitution of India." In this circumstances, the Hon'ble High Court of Kerala pronounced the above judgment.

4) As per the direction of the Hon'ble High Court, Government heard the Advocate representing the firm along with Secretary, Maradu Municipality and Assistant Town Planner, Ernakulam on 18/12/18. Senior Town Planner, Ernakulam reported that if there is violation of Town Planning Scheme under Section 6(4)(ii) of G.O. (Ms) 11/18/LSGD dated 15/2/2018, the building cannot be regularised.

Government examined the matter in detail. The only condition of the petitioner was that the application should be processed as per G.O. (Ms) No. 39/2014/LSGD dated 14/2/2014. But the new regularisation Rule G.O. (P) No. 11/2018/LSGD dated 15.2.2018 supersedes the Rules 2014 and the application must be processed as per Rule 2018. But the Hon'ble High Court has directed Government to process the case as per Rule 2014. The main violation as per Rule 2014 is that as per Rule 5(2) (ii) the maximum coverage exceeds to 83.02% than the maximum permissible coverage of 50% allowed in that zone. As this violation is against the approved Town Planning Scheme, the building cannot be regularised as per Rule 2014.

5) In the above circumstances, Government are pleased to order that the application for regularisation of unauthorised construction is rejected and the building cannot be regularised, as it violates section 5(2)(ii) in Rule 2014.

The Judgment of the Hon'ble High Court read above, is thus complied with.

(By Order of the Governor)  
**SABITHA S.D.**  
**Deputy Secretary to Government**

- 1) Mr. V.R. Narayanan Embran,  
M/s. Kairali Granites, N.H. Bye Pass, Vytilla, Kochi.
- 2) The Advocate General, Ernakulam. (with C/L)
- 3) The Secretary, Maradu Municipality.
- 4) The Chief Town Planner, Thiruvananthapuram
- 5) The Senior Town Planner, Ernakulam
- 6) The Executive Director, Information Kerala Mission, Thiruvananthapuram.  
✓ (for publishing this order in website)
- 7) Stock File/ Office Copy.

Forwarded/By Order

  
Section Officer