



GOVERNMENT OF KERALA
Abstract

Local Self Government Department – Judgment dated 04/01/2019 of Hon'ble High Court of Kerala in W.P. (C) No.31575 of 2016 filed by M/S. Sanketham Investments - Court direction complied with - Orders issued.

LOCAL SELF GOVERNMENT (RB) DEPARTMENT

G.O.(Rt) No.884/2019/LSGD.

Dated, Thiruvananthapuram, 26/04/2019

- Read: -
1. Judgment dated 4/1/2019 in WP(C) No. 31575/2016 of High Court filed by M/s.Sanketham Investments, Choondy, Aluva, Ernakulam.
 2. Report No. B.A.112/95-96 dated 25/2/2019 of Secretary, Aluva Municipality.
 3. Note dated 26/2/2019 of Chief Town Planner, Thiruvananthapuram.

ORDER

The Hon'ble High Court of Kerala in its judgment read as 1st paper above, quashed Ext.P26 Order and directed the 1st respondent, ie, Secretary, Local Self Government Department to reconsider the regularisation application submitted by the petitioner, taking into account the notification issued by the State Government in the year 2010, to regularise the unauthorised construction within three months from the date of the receipt of copy of the Judgment, after providing an opportunity of hearing to the petitioner, Municipality and any other interested persons. Ext.P26 is the order passed by the 1st respondent, declining the regularisation application submitted by the Petitioner in respect of the construction carried out based on Ext.P3 building permit and Ext.P1 and P2 exemption granted by the State Government.

2) The petitioner was heard in accordance with the direction of the Hon'ble High Court by the Government. The President and office bearers of the Periyar Residency Owners Association were also heard as per their request, in the presence of Secretary, Aluva Municipality, Senior Town Planner and Deputy Town Planner, Ernakulam and Town Planner, Office of the Chief Town Planner.

3) As per G.O. (Rt) No. 2904/96/LAD dated 23.07.1996 exemption from the provisions of KBR 1984 was granted for the construction of a five storeyed Residential apartment building in Sy. No. 204/1&2 and 203/12B of Aluva Municipality subject to certain conditions. As per G.O.(Rt) No. 1752/97/LAD dated 24.05.1997 Govt. issued a revised order permitting the petitioner to construct an 11 storeyed Residential apartment building, subject to an additional condition that the road is to be widened to 5.5 m before the completion of the

project. Secretary, Aluva Municipality granted sanction for the construction of a 13 storeyed Residential apartment building vide permit No. BA-112/95-96 dated 26.08.2006 – which is not in order as it has violated the above Government order. The completion plan submitted by the petitioner was not approved by the Secretary as the construction does not satisfy the condition insisted in the exemption order that the access should have 5.5 m width. The regularisation application submitted to Govt. was rejected three times stating the reason that the construction does not satisfy the required access width of 5.5 m as per the exemption order.

4) The petitioner submitted a detailed argument note in which it is stated that, at present the access to the residential building from the street is 7.70 meters. The road leading to the building is having enough width for two way traffic and it is only to a length of 40 meters that the road is not having the required width of 5.50 meter access. He has requested to regularise the construction completed as per the approved plan issued by the Aluva Municipality, in the interest of justice. The Secretary, Aluva Municipality in his report read as 2nd paper above, has stated that the completed construction does not satisfy the conditions specified in the building permit which was based on an exemption order from Government. It is reported that the street giving access to the building is having a width of 3.7m only and the required access width is 5.5m as per the exemption order. It is also reported that the completed construction is not as per the building permit issued by the local body. The office bearers of the Periyar Residency Owners Association stated that the purchasers of the residential apartment are the real aggrieved parties in this case. They (54 in number) purchased the building in 2008 without knowing the stipulations regarding the width of the road in the building permit. As per their submission the possibility of widening the approach road from the existing 3.7 metres to 5.5 metres is impracticable and improbable, as there are buildings on either side of the road, which are owned by the Kerala Water Authority (K.W.A.) and also by other private persons.

5) The completed construction is not as per the building permit issued by the local body and hence occupancy was not granted as per G.O. No.167/2014/LSGD dated 27.09.2014. Vide letter no.410169/RB1/16/LSGD dated 18.03.16, Government issued an order (Ext.P26) stating that the occupancy certificate cannot be granted since the construction does not satisfy the condition insisted in the exemption order that the access have 5.5m width.

6) The Honourable High Court of Kerala directed to consider the application with respect to the criteria as per Appendix 1 of the Kerala Building (Regularization of unauthorised construction) Rules 2010. In accordance to the directions in the judgment, Government have examined the matter in detail after hearing the petitioner and the officers concerned. As per regularisation criteria no 9 of Appendix I of the 2010 regularisation rules, Highrise buildings as defined in rule 110 of the Building Rules shall satisfy the

safety provisions contained in rule 112 to 119 of the Building Rules. Hence, the building must compulsorily conform to rules 112 to 119 as applicable on 31.12.2008. Furthermore, as per regularisation criteria no.13, the construction shall conform to the safety and security provisions in the building rules.

7) As per rule 117, every high rise building, if it does abut on two or more motorable roads, shall be provided with a minimum of 5 metres wide open space on any one of its sides contiguous to the road abutting it to facilitate fire fighting. The proviso of this rule states that if a road is available on the side which can be made motorable by providing sufficient open space to make its width to not less than 5 metres wide, and space on that side is kept open by not constructing any compound wall, fence or structure, then no separate open space as specified above need be provided. Hence to facilitate the fire fighting open space near the building as required in rule 117 and an access of minimum 5m is required to reach the building. A minimum access of 3.7m is not sufficient to facilitate fire fighting thus endangering the fire rescue service. Hence, considering the safety aspect related to fire fighting, the concerned high rise building requires minimum 5m access. Thus, it is seen that the building does not conform to the safety provision criteria in Appendix I of the Regularisation rules.

8) In the above circumstances, the application for regularising the Residential Apartment Building with respect to the criteria as per Kerala Building (Regularisation of Unauthorised Construction) Rules 2010 is rejected. The petitioner is directed to rectify the violations and to submit fresh regularisation application to Secretary, Aluva Municipality as per Rule 143 of Kerala Municipality Building Rules, 1999.

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) Shri. Boban Joseph,
Managing Partner, M/s. Sanketham Investment, "Pranaamam Complex",
Choondy, Aluva – 683 112.
- 2) Mr. P.N.V. Nair,
President, Periyar Residency Owners Association,
Periyar Residency Apartment, Chempakassery Temple Road,
Aluva P.O., Ernakulam – 683 101.

- 3) The Advocate General, Ernakulam. (with C/L)
- 4) The Secretary, Aluva Municipality
- 5) The Chief Town Planner, Thiruvananthapuram
- 6) The Senior Town Planner, Ernakulam
- 7) ✓ The Executive Director, Information Kerala Mission, Thiruvananthapuram.
(for publishing this order in website)
- 8) Stock File/ Office Copy.

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Section Officer

