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W.A.No.1768 of 2024

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. NITIN JAMDAR

&

THE HONOURABLE MR. JUSTICE S.MANU

MONDAY, THE 3<sup>RD</sup> DAY OF MARCH 2025 / 12TH PHALGUNA, 1946

WA NO. 1768 OF 2024

AGAINST THE JUDGMENT DATED 4.1.2022 IN WP(C) NO.27833  
OF 2020 OF HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS 3 & 4 IN THE WRIT PETITION:

- 1 THE SECRETARY [IN CHARGE]  
THRIKKAKARA MUNICIPALITY  
KAKKANAD P.O., ERNAKULAM, PIN - 682030,  
REPRESENTED BY T.K. HARIDASAN.
- 2 THE ASST. EXECUTIVE ENGINEER  
THRIKKAKARA MUNICIPALITY  
KAKKANAD P.O.,  
ERNAKULAM., PIN - 682030.  
BY ADV S.JAMAL

RESPONDENTS/WRIT PETITIONER & RESPONDENTS 1 & 2 IN THE WRIT  
PETITION:

- 1 GRACE CHERIAN  
AGED 60 YEARS  
NEREVEETIL HOUSE  
VAZHAKKALA  
THRIKKAKARA P.O  
KOCHI, PIN - 682021



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- 2      STATE OF KERALA  
         REPRESENTED BY THE SECRETARY TO THE GOVERNMENT  
         LOCAL SELF GOVERNMENT DEPARTMENT  
         SECRETARIAT  
         THIRUVANANTHAPURAM, PIN - 695001
  
- 3      THE REGIONAL TOWN PLANNER  
         TOWN PLANNING OFFICE  
         CIVIL STATION  
         KAKKANAD  
         COCHIN, PIN - 682030

OTHER PRESENT:

SMT K P SANTHI- FOR R1  
SRI K P HARISH, SR.GP - FOR R2 & R3

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON  
10.02.2025, THE COURT ON 03.03.2025 DELIVERED THE  
FOLLOWING:



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NITIN JAMDAR, C.J.

&

S.MANU, J.

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Dated this the 03<sup>rd</sup> day of March, 2025

**JUDGMENT**

**S.MANU, J.**

Appellants are aggrieved by the judgment dated 4 January 2022 in W.P.(C)No.27833/2020 filed by the 1<sup>st</sup> Respondent and the order dated 8 April 2022 by which R.P.No.340/2022 filed by the Appellant seeking review of the judgment was rejected.

2. First Respondent owns property in Re.Sy.No.206/2 of Vazhakkala Village. She had a building having 664.83 sq.m. area on the property. Permit was sought in 2017 for constructing an additional 645.54 sq.m., a building having ground plus two floors under the 'Special Residential Building' category in the remaining extent of land available on the property.



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3. By Ext.P1 permit dated 22 February 2017, she was permitted to construct a total extent of 1310.37 sq.m. including the existing construction having an area of 664.83 sq.m. Sanctioned plan has been produced as Ext.P2 along with the writ petition. The 1<sup>st</sup> Respondent completed the construction in 2018. The Chief Town Planner, Vigilance received complaints that the building was constructed in violation of the sanctioned plan. Vigilance team conducted inspection, found some violations and directed the Municipality to take action.

4. While so, the 1<sup>st</sup> Respondent submitted application for completion certificate on 10 December 2018. When the Appellants inspected the building, violations of the provisions of the Kerala Municipality Building Rules, 1999 were noticed. Later, pursuant to an application submitted by the 1<sup>st</sup> Respondent in the Adalath conducted by the Appellants, a joint inspection was also conducted. Violations noticed during the inspection were conveyed to the 1<sup>st</sup> Respondent and later she submitted application dated 3 September 2019 for regularization. First Respondent produced the application for regularization along with the writ petition marked as Ext.P5. The 1<sup>st</sup> Appellant forwarded the application to the Regional Town Planner, the 3<sup>rd</sup> Respondent herein, by Ext.P6 dated 29 May 2020. Calculation of



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compounding fee leviable according to the Municipality was also enclosed with the letter. Basic compound fee was calculated as ₹79,980/-. Additional compound fee (parking) was calculated as ₹24,50,000/-. Total amount of ₹25,29,980/- has been thus shown as the compounding fee in the computation enclosed with Ext.P6 letter. The 3<sup>rd</sup> Respondent returned the application by Ext.P7 letter dated 29 September 2020 pointing out several defects.

5. Petitioner approached this Court in W.P.(C)No.27833/2020 seeking the following reliefs:-

- “(i) issue a writ of certiorari or such other writ, direction or order quashing Exhibit P6 as arbitrary, illegal and unjust;*
- (ii) compelling the 3<sup>rd</sup> respondent to number the building of the petitioner within a time frame to be fixed by this Honourable Court;*
- (iii) issue such other writ, direction or order as is deemed just and necessary in the facts, features and circumstances of the case.”*

6. Appellants entered appearance and resisted the writ petition. A statement and an additional statement were filed disputing the contentions of the 1<sup>st</sup> Respondent. The learned Single Judge after hearing all parties disposed the writ petition by judgment dated 4



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January 2022. The learned Single Judge held that the assessment of additional compound fee contained in Ext.P6 was illegal and set aside Exts.P6 and P7 to that extent. The Appellants filed R.P.No.340/2022 seeking review of the judgment dated 4 January 2022. The review petition was rejected by order dated 8 April 2022.

7. Both sides have no dispute regarding the fact that regularization sought by the 1<sup>st</sup> Respondent would be governed by the Kerala Municipality Building (Regularization of Unauthorized Construction) Rules, 2018. Rule 6 deals with the procedure for disposal of applications for regularisation. Application received by the Secretary of the Municipality needs to be processed as provided under Rule 6. If the application received is in order, the Secretary shall forward the documents mentioned under Rule 6(2) to the Town Planner within 60 days from the date of receipt of the application. The Town Planner at his level has to scrutinize the application and documents. The Town Planner may reject and return the same to the Secretary if it is not in order. If the same is in order the Town Planner shall place the matter before the Committee constituted by the Government within 60 days. The Committee shall be convened by the District Town Planner. Decision regarding regularization shall be taken by the Committee.



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Elaborate procedure for handling application for regularization has been laid down under Rule 6. Under Rule 10, any person aggrieved by an order issued under the provisions of the Rules may file a petition for review to the Government.

8. We have heard the learned Standing Counsel for the Appellants and the learned counsel for the 1<sup>st</sup> Respondent. The learned Senior Government Pleader was also heard.

9. We find that the 1<sup>st</sup> Respondent approached this Court challenging Exts.P6 and P7 which were two communications between the Secretary of the Municipality and the Town Planning Office, Ernakulam. By Ext.P6, the application for regularization of the 1<sup>st</sup> Respondent was forwarded along with documents including a computation statement of compound fee. By Ext.P7, the Senior Town Planner returned the application to the Secretary pointing out certain defects. As we have noted in the preceding paragraphs, forwarding of the application with necessary documents to the office of the Town Planner from the Municipality is a preliminary step in the procedure laid down under Rule 6 of the Regularization Rules. The Town Planner has the authority to scrutinize the proposal and to return it to



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the Municipality in case defects are noticed. No final decision regarding regularization or imposition of compound fee has been taken in the case of the 1<sup>st</sup> Respondent. The communications challenged in the writ petition were not even officially issued to the 1<sup>st</sup> Respondent. They are internal communications between the office of the Municipality and the office of the Town Planning Authority, with no copy marked to the 1<sup>st</sup> Respondent. It is not revealed in the writ petition as to how the 1<sup>st</sup> Respondent obtained copies of these communications. On an analysis of the scheme of the Regularization Rules, particularly, Rule 6, communications in the nature of Exts.P6 and P7 can be reckoned only as formal communications which do not finally decide anything adversely affecting the 1<sup>st</sup> Respondent. Even the calculation of compound fee by the 1<sup>st</sup> Appellant is not final as the same will be scrutinized by the Town Planner and also by the Committee under the Rules. In case the 1<sup>st</sup> Respondent has any grievance regarding the final decision taken on the basis of Ext.P6, remedy is provided under Rule 10 of the Regularization Rules, 2018.

10. In the above view of the matter, the writ petition filed by the 1<sup>st</sup> Respondent can be considered only as a premature one. We are therefore of the view that the writ petition ought not have been



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entertained. We hence set aside the impugned judgment dated 4 January 2022 in W.P.(C)No.27833/2020 and consequently, the order dated 8 April 2022 in R.P.No.340/2022 shall also stand set aside. Writ Petition is dismissed.

11. However, all contentions of the 1<sup>st</sup> Respondent and the Appellants on merits are left open and the 1<sup>st</sup> Respondent shall be free to invoke all remedies available under law in case the final decision on her application, including compound fee fixed, is unacceptable.

12. Writ Appeal is disposed of as above.

Sd/-

**NITIN JAMDAR**  
**CHIEF JUSTICE**

Sd/-

**S.MANU**  
**JUDGE**

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