

**(2021) 09 KL CK 0179**

**In the High Court Of Kerala**

**Case No : Writ Petition (C) No. 22432 Of 2013**

Pushpan @ Pushparajan Sree Bhagavathy

APPELLANT

Vs

State Of Kerala

RESPONDENT

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**Date of Decision : 23-09-2021**

**Acts Referred:**

Kerala Municipality Building Rules 1999 — Rule 88(5), 104(4)

**Citation : (2021) 09 KL CK 0179**

**Hon'ble Judges : Mohammed Nias C.P. J**

**Bench : Single Bench**

**Final Decision : Disposed Of**

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## **Judgement**

Mohammed Nias C.P.

1. The above writ petition is filed challenging the order of the Tribunal for Local Self Government Institutions, Thiruvananthapuram (for short 'Tribunal'), which dismissed the appeal preferred by the writ petition challenging the order of demolition passed by the Corporation.

2. The petitioner submits that he is residing in building No. MCRA-15/1 of Vattiyoorkavu, Thiruvananthapuram Corporation and his house is situated in a small plot having an extent of 2.98 cents which he purchased along with the house in the year 2011 and that he has not made any alteration or addition to the building existing then.

3. The 2nd respondent-Corporation issued a notice dated dated 14.10.2011 directing to demolish the toilet attached to the petitioner's house.

4. Though, the petitioner submitted a reply to the said notice denying the allegation, the provisional order was confirmed, and the same was challenged before the Tribunal.

5. The 2nd respondent-Corporation filed a written statement stating that on a complaint given by the 3rd respondent herein, a site inspection was conducted,

wherein, it was found that the petitioner had constructed a toilet abutting the compound wall of the 3rd respondent's property and the same was in violation of Rule 88(5) and 104(4) of the Kerala Municipality Building Rules (for short 'KMBR'). They further submit that the structure is not an old one and in view of the unauthorised construction there is no illegality in the proposed action.

6. The 3rd respondent herein got himself impleaded before the Tribunal and contended that the petitioner had demolished the existing toilet and constructed a new toilet illegally, adjoining to the compound wall of his property which could lead to the water in the well getting contaminated and prayed for dismissal of the appeal.

7. The Tribunal found that the toilet is on the north eastern corner of the property belonging to the 3rd respondent herein and further that the septic tank in the petitioner's property is located almost at the eastern side of the property of the 3rd respondent herein and from there the distance to the well in the said property is more than 7.50 meters and that it appears that there cannot be any violation of Rule 104(4) of the KMBR. However, the Tribunal confirmed the order passed by the Corporation and directed the petitioner to demolish the unauthorised construction of the toilet also with a direction to the Corporation to make an enquiry with respect to the sock pit, leach pit etc. in the property of the petitioner and also to see whether Rule 104(4) would be attracted to the said construction, and if so, take other appropriate action against the petitioner.

8. Before me, learned counsel for the petitioner would submit that the Tribunal having found that there cannot be a violation of Rule 104(4) of the KMBR, which finding was entered after holding that the distance of the septic tank would be more than 7.5 meters from the neighbouring property and thus a further direction to find out whether there is any violation of Rule 104(4) is clearly unnecessary. It is his specific case that he has not made any additional construction/structure after his purchase and that at that point of time, the area was a Panchayat area to which the provisions of the KMBR did not apply. He also submits that though KMBR was made applicable to the area in question much later, and thereafter, the said area was brought within the limits of Corporation itself. Thus, he assailed the order passed by the Tribunal which directed him to demolish the construction. He further submits that the property belonging to petitioner comes within the definition of a 'small plot' coming under Chapter VIII of the KMBR, and therefore, he is entitled for the protections available therein.

9. The learned counsel for the 3rd respondent, however contended that the construction of the toilet is in violation of the KMBR and that the well in his property is contaminated due to the existence of the septic tank adjacent to it.

10. On admission of the above writ petition, an interim order was granted on 09.09.2013, and which was extended from time to time. Obviously, the Corporation could not have taken any decision as directed by the Tribunal on account of the interim order passed in the writ petition.

11. It has to be noted that there is a specific contention of the petitioner that this is the only toilet which he has in his house.

12. Interest of justice will suffice if the Corporation takes a look into the entire facts and circumstances namely, whether the toilet in existence is the only one in the petitioner's house as alleged or whether the petitioner is entitled to the benefit of Chapter VIII of the KMBR since his property comes within the ambit of the said Rules dealing with 'small plots' and also whether any contamination/pollution is caused to the water in the well of the 3rd respondent herein, as the petitioner and his family has been using the toilet allegedly put up later, all these years at least from 2011.

13. In these matters the Corporation should take a practical view of the situation, taking into account the humanitarian consideration as well, of course, without doing violence to the applicable provisions of the KMBR. The Corporation will also hear the petitioner as well as the 3rd respondent before taking a final decision as aforesaid. The Corporation will also give a chance to the petitioner to rectify/cure any defects in the construction, so as to make it regular, before taking a final decision. The Corporation will be free to take the help of any person/authority so as to check the pollution/contamination, if any, caused to the water in the well of the 3rd respondent due to the alleged illegal construction of the toilet.

In the result, there will be a direction, in modification of the order of the Tribunal, to the 2nd respondent-Corporation to do the aforesaid exercise within a period of three months from today and communicate the decision taken to the petitioner.

The writ petition is disposed of as above.