

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 7<sup>TH</sup> DAY OF FEBRUARY 2022 / 18TH MAGHA, 1943

WA NO. 874 OF 2017

AGAINST THE JUDGMENT IN WPC 21493/2012 OF HIGH COURT OF

KERALA

APPELLANT/S:

V.V.ABRAHAM

AGED 79 YEARS, S/O. CHERIAN

VARGHESE, VALUTHADATHIL, EDANADU, CHENGANNUR - 689  
121.

BY ADVS.

SRI.BABU KARUKAPADATH

SMT.AMRIN FATHIMA

SRI.K.M.FAISAL KALAMASSERY

SRI.MITHUN BABY JOHN

SRI.J.RAMKUMAR

SMT.M.A.VAHEEDA BABU

SRI.P.U.VINOD KUMAR

RESPONDENT/S:

- 1 CHENGANNUR MUNICIPALITY  
CHENGANNUR - 689 121, REPRESENTED BY ITS  
SECRETARY.
- 2 THE SECRETARY  
CHENGANNUR MUNICIPALITY, CHENGANNUR - 689 121.
- 3 PRADEEP KOSHI  
AGED ABOUT 45 YEARS, S/O. P.V. KOSHI, EBENSAR  
VEEDU, EDANADU P.O., CHENGANNUR - 689 121.

BY ADVS. SRI.S.HARIKRISHNAN, SC FOR R1 AND R2

SRI.C.B.SREEKUMAR, FOR R3

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON  
07.02.2022, ALONG WITH WA.2534/2017, THE COURT ON THE SAME  
DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 7<sup>TH</sup> DAY OF FEBRUARY 2022 / 18TH MAGHA, 1943

WA NO. 2534 OF 2017

AGAINST THE JUDGMENT IN WPC 21512/2012 OF HIGH COURT OF

KERALA

APPELLANT/S:

M/S. ADITYA BIRLA RETAIL LTD.  
FORMERLY KNOWN AS M/S. TRINETHRA SUPER RETAIL (P)  
LTD., HAVING ITS REGISTERED OFFICE AT 5TH AND 6TH  
FLOOR, SKYLINE ICON, 86/92, NEAR MITTAL  
INDUSTRIAL ESTATE, ANDHERI KURLA ROAD, ANDHERI  
EAST MUMBAI 400059, HAVING IT BRANCH OFFICE AT  
5/149/B, ALAYKKAPARAMBU, THURAVUR P.O.,  
CHERTHALA, ALAPPUZHA-688532, REPRESENTED BY ITS  
AUTHORISED SIGNATORY, MR. RANJITH CHANDRAN,  
COMMERCIAL HEAD.

BY ADVS.

SRI.P.RADHAKRISHNAN  
SRI.M.D.JOSEPH  
SRI.MADHU RADHAKRISHNAN  
SRI.NELSON JOSEPH

RESPONDENT/S:

- 1 CHENGANNUR MUNICIPALITY  
CHENGANNUR-689121, REPRESENTED BY ITS SECRETARY.
- 2 THE HEALTH INSPECTOR  
CHENGANNUR MUNICIPALITY,CHENGANNUR-689121.
- 3 PRADEEP KOSHY  
EBEBAZER, EDANADU P.O., CHENGANNUR, PIN-689123.
- 4 V. V. ABRAHAM  
VALUTHADATHIL, EDANADU P.O., CHENGANNUR, PIN-  
689123.  
BY ADVS. SRI.S.HARIKRISHNAN, SC FOR R1 AND R2  
SRI.C.B.SREEKUMAR, FOR R3

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON  
07.02.2022, ALONG WITH WA.874/2017, THE COURT ON THE SAME  
DAY DELIVERED THE FOLLOWING:

## **J U D G M E N T**

Shaji P. Chaly, J.

The captioned writ appeals are materially connected filed by the petitioners in W. P. (C) Nos. 21493 of 2012 and 21512 of 2012 challenging the common judgment of the learned Single Judge dated 16.02.2017 whereby the writ petitions were dismissed. The appellants are the landlord and tenant of a building bearing door No. XIV/536 of Chengannur Municipality respectively.

2. The subject issue raised in W. A. No. 874 of 2007 is in regard to the action initiated by the Secretary of the Chengannur Municipality, the 2<sup>nd</sup> respondent, under Section 406 of the Kerala Municipality Act, 1994 dealing with demolition or alteration of building works unlawfully commenced, carried on, or completed, and also challenging Exhibit P8 final order passed under Section 406 (3) of Act 1994 directing the revenue inspector, to take action to demolish the unauthorised construction, and other consequential actions thereto.

3. The appellant in the connected writ appeal, the tenant, had filed the writ petition challenging the cancellation of D & O license

granted to conduct a supermarket, by the Secretary of the Municipality, apparently invoking power under Section 447(3) of the Kerala Municipality Act, 1994, in consequence to the order passed against the landlord as above.

4. The learned Single Judge, after considering the factual and legal circumstances raised by the appellants, dismissed the writ petitions and thereby declined to interfere with the action initiated by the Secretary. It is thus challenging the legality and correctness of the common judgment the writ appeals are preferred.

5. The facts and documents contained in W. A. No. 874 of 2017 filed by the landlord are relied upon to dispose of the appeals.

6. The application of the appellant for construction of a three storied building within the limits of the Chengannur Municipality was forwarded by the Municipality to the Government for exemption from various provisions of the Kerala Building Rules, 1984, which was then in force in the State with regard to construction of buildings etc. within the Municipal and Corporation areas.

7. As per the Kerala Building Rules, 1984, the State Government was vested with powers to grant exemption from the

provisions of Act 1984. As per Ext. R2(a) Government Order dated 10.06.1993, the exemption sought for by the appellant from the area to be set apart for car parking was rejected holding that the width of 'M. C. Road' near the site is narrow and traffic is very high; the site is only about 150 meters away from the bus stand; hence the provision of adequate parking space is imperative; and permitting a major shopping cum office building in the site as proposed would attract more traffic problems in the area.

8. The case projected by the appellant is that, in the review application submitted by the appellant, the Government as per Ext P1 Order dated 03.12.1993, granted exemptions and relaxations inter alia in the matter of parking area as well. It appears a complaint was filed before the Secretary of the Municipality by the 3<sup>rd</sup> respondent namely one Pradeep Koshi who is a resident within the Municipal area that parking area provided for the building has been converted into a shop room and thereby violated the Building Rules, however no action was initiated.

9. Thereupon the 3<sup>rd</sup> respondent approached the Ombudsman for Local Self Government Institutions by filing O. P. No. 743 of 2009 which was disposed of as per order dated 25.11.2011 holding that the

Ombudsman did not find any special reason for condoning the delay in filing the petition. Anyhow it was observed by the Ombudsman that the 3<sup>rd</sup> respondent would submit that there had been some fabrication and forgery and if such a matter comes up before the Ombudsman by a separate application, certainly it will be considered depending upon the time factor.

10. To put a long story short, the Secretary of the Municipality issued a notice to the appellant dated 27.08.2012 presumably on the basis of a later direction issued by the Ombudsman in O. P. No. 170 of 2012, in regard to the conversion of the parking area into a building. This is evident from Ext. R2(e) notice dated 27.08.2012. From Ext. R2(g) produced by the Secretary dated 12.09.2012 it is evident that notice and provisional order were issued under Section 406(1) and (2) of the Kerala Municipality Act, 1994, specifying the illegal constructions carried out by the appellant in the parking area.

11. It is specified in Ext. R2(g) that the appellant converted to a 316m<sup>2</sup> parking area, after being raised by 20cms, improving the same, fixing with rolling shutters and giving it for conducting a supermarket. Therefore the appellant was thus directed to remove the six rolling shutters put up preventing entry of cars and the raised floors, as per

the powers vested under Section 406(1) and Section 406(2) of Act 1994. Therefore it was directed to remove the illegal constructions or to submit due explanation to the provisional order passed by the Secretary.

12. The appellant has thereupon submitted Ext. R2(h) objection dated 18.10.2012 basically contending that exemption was granted to the appellant by the State Government as per Ext. P1 Government Order dated 03.12.1993 on imposing certain conditions and that the construction carried out by the appellant was in accordance with the approved plan and permit issued by the Secretary of the Municipality.

13. The Secretary of the Municipality as per Ext. P8 order dated 10.09.2012 passed final orders apparently under Section 406(3) of the Kerala Municipality Act, 1994, and issued the following directions:-

“(i) In view of the discussion held above the Revenue Inspector, Chengannur Municipality is hereby directed to re-assess building No.XIV/536 and carryout corrections in the assessment descriptions as stair room having a plinth area of 30m<sup>2</sup> and assess the area of 316m<sup>2</sup> as unauthorised super market under section 242 Kerala Municipality Act.

(ii) Initiate proceedings under Section 406 of Kerala Municipality Act against the unauthorisedly converted parking

space having a plinth area of 316 m<sup>2</sup>.

(iii) Since there is no parking space for the building issue notice to the party seeking show cause within 15 days why occupancy certificate in respect of building nos. XIV/534, XIV/536, XIV/565, XIV/537, XIV/566, XIV/567 shall not be revoked?

(iv) In view of the rejection of application cited as 6<sup>th</sup> above, the applicant is hereby directed to close the business and report before the undersigned within 3 days from the date of receipt of this order failing which Health Inspector of Chengannur Municipality is directed to lock and seal the trade on issuance of a proper authorisation from the undersigned under section 532 (5) of Kerala Municipality Act 1994.”

14. In that process, the D & O license application of the appellant in the connected writ appeal was rejected by the Secretary. It is thus challenging the legality and correctness of Ext. P8 order passed by the Secretary the writ petitions were filed by the appellants.

15. The learned Single Judge, after assimilating the factual and legal circumstances, has held as follows:-

“5. Perusal of Ext. P4 would show that the above matter came to be considered by the Secretary on the basis of the direction issued by the Ombudsman. The question considered was whether there was a conversion of the parking area into a



commercial complex. It is found that as per Rule 20(3) of the Kerala Building Rules, 1984, the building ought to have 11 parking spaces. No exemption was granted under Rule 20 of the Rules. The permit issued on 15/02/1994 is produced as Ext.R2(b) in W.P.C.No.21493/2012. It is observed that as per Government Order dated 22/01/1996, exemption has been granted to the third floor of the building since parking space was already provided to the existing ground floor plus two floors. From the assessment register also, it was noticed that the ground floor was having a hall without doors and windows. Further, the ground floor portion has been assessed only for Rs.7,007/- whereas the first floor was assessed at Rs.12,600/- and Rs.20,160/-.

6. Having taken note of all these factual aspects, it was observed that the area where the supermarket has been functioning was converted from parking area. Building number given to the ground floor area is XIV/536. Following are the directions issued in Ext.P4:

“(i) In view of the discussion held above the Revenue Inspector, Chengannur Municipality is hereby directed to re-assess building No.XIV/536 and carry out corrections in the assessment desc as stair room having a plinth area of 30 m<sup>2</sup> and assess the area of 316m<sup>2</sup> as unauthorised super market under Section 242 of the Kerala Municipality Act.

(ii) Initiate proceedings under section 406 of the Kerala Municipality Act against the unauthorisedly converted parking space having a plinth area of 316 m<sup>2</sup>.

(iii) Since there is no parking space for the building issue notice to the party seeking show cause within 15 days why occupancy certificate in respect of

building nos.XIV/534, XIV/536, XIV/565, XIV/537, XIV/566, XIV/567 shall not be revoked?

(iv) In view of the rejection of application cited as 6<sup>th</sup> above, the applicant is hereby directed to close the business and report before the undersigned within 3 days from the date of receipt of this order failing which Health Inspector of Chengannur Municipality is directed to lock and seal the trade on issuance of a proper authorisation from the undersigned under Section 532(5) of Kerala Municipality Act, 1994.”

7. Learned counsel for the petitioners would, however, submit that a proper opportunity was not granted before passing the impugned orders. But, perusal of the orders would show that sufficient opportunity had already been granted. Even otherwise, it is an instance where a complaint was filed before the Ombudsman for Local Self Government Institutions and as per directions issued by the Ombudsman, the Secretary of the Municipality had conducted an enquiry. Thereafter, necessary notice had been issued calling upon the petitioner to undo the damages that has already been caused. On a perusal of the factual and legal aspects involved in the matter, I do not think that any error had been committed by the Municipality in arriving at a conclusion in terms of Ext.P4 dated 10/09/2012.

8. The main contention urged by the petitioner is that this is an instance where already licence had been issued by the Municipality. But, it is relevant to note that if a building had been constructed in violation of the Rules, it is always open for the Municipality to take appropriate action, in accordance with law. There is no dispute about the fact that the area was shown as car

parking space in the plan and the assessment was also done accordingly. It is, without permission from the Municipality that it has been converted to a commercial space. Though the Municipality had granted licence, when the matter is enquired into on the basis of the directions issued by the Ombudsman and when it is found that there had been illegal conversion especially when no exemption was obtained by the land owner, the Municipality was bound to take further action in the matter. Such action by the Municipality cannot be termed as ultra vires or illegal. I do not find any illegality in the order passed warranting interference by this Court.”

16. In the appeal the paramount contention advanced by the appellant is that as per Ext. P1 Government Order dated 03.12.1993, the Government granted exemption and relaxation with respect to various provisions of the Kerala Building Rules, 1984. It is also submitted that as per the first condition in Ext. P1 order, it is only stipulated that the front open space should be 12 meters from the edge of the road inter alia for parking of cars, indicating that relaxation was granted in respect of parking area.

17. It is also contended that as per the original plan submitted by the appellant, the open space was only four meters which was directed to be extended to 12 meters as per Ext. P1 Government Order as parking space to grant relaxation under the Kerala Building Rules,

1984 and therefore the finding of the Secretary of the Municipality as well as the learned Single Judge that relaxation was not granted in respect of parking space is erroneous and incorrect.

18. That apart it is contended that Ext. P2 building plan would show that the appellant was permitted to construct the ground floor with shop rooms having a total area of 449.49m<sup>2</sup> and so also the assessment register would show that the ground floor was assigned building No. 536 for the shop room portion and 537 for the back residential portion and the entire ground floor is having a total area as shown in Ext. P2 plan approved by the Secretary of the Municipality.

19. That apart it is contended that the appellant was paying tax for the ground floor area and therefore the Secretary of the Municipality at a later point of time cannot turn around and direct the appellant to demolish an area of 316m<sup>2</sup> constructed by the appellant in accordance with the approved plan.

20. On the other hand, the Secretary of the Municipality had filed a detailed counter affidavit explaining the facts and circumstances and also pointing out that there was no exemption granted as per Ext. P1 Government Order dated 03.12.1993 in regard

to the parking area for the purpose of carrying out the construction. It is also submitted that the relaxation granted by the Government as per Ext. P1 order is only from Rules 15(5), 17 and 33(c) of the Kerala Building Rules, 1984 and therefore the contention advanced that relaxation was given to the parking area deviating from Ext. R2(a) rejection order cannot be sustained.

21. It is also submitted that it is clear from Ext. R2(d) property tax assessment register that there is an open area provided in the ground floor of the building which is assigned with building No. 534 and it is clear from the assessment register that the 1<sup>st</sup> floor and the 2<sup>nd</sup> floor were assessed separately which were occupied by the State Bank of Travancore and having building Nos. 536 and 537.

22. Therefore according to the learned counsel for the Municipality, the Secretary of the Municipality was right in issuing the directions and the learned Single Judge has appreciated Ext. P8 impugned order in the right perspective and dismissed the writ petitions taking into account the attendant factual and legal circumstances involved in the subject matter.

23. We have heard, Sri. Babu Karukappadath and Sri. Madhu

Radhakrishnan, learned counsel for the appellants in the respective appeals, Sri. S. Harikrishnan for the Municipality and the Secretary and perused the pleadings and material on record.

24. In order to appreciate the rival submissions, it is better that Ext. P1 Government Order dated 03.12.1993 is extracted, and it reads thus:-

“GOVERNMENT OF KERALA  
Abstract

Building- Construction of ground floor + two upper floors of shop-cum-office building in Sy,No,190/1 of Chengannoor village Chengannur Municipality by Sri. V.V. Abraham- Exemption from Kerala Building Rules, 1984 - Granted – Orders - issued

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Local Administration (E) Department

G.O.(RT) 7357/93/LAD. Dated, Thiruvananthapuram, 3/12/93

- Read-1. Govt. letter No.23805/E3/93/LAD, dated. 10/6/93.  
2. Review petition dated 21/6/93 from Sri. V.V, Abraham Valuthadathil House, Edanadu P.O, Chengannoor.  
3. Letter No. D2/22024/93, dated 3/11/93 from the Chief Town Planner, Thiruvananthapuram.

ORDER

Under rule 5 of Kerala Building Rules, 1984 and in Consultation with the Chief Town Planner, Government on reconsideration of the orders issued in their letter read as first paper above are pleased to exempt the construction of ground floor + two upper floors of shop-cum-office building in Survey No.190/1 of Chengannur Village, Chengannur Municipality by

Sri. V.V. Abraham from rules 33 (c), 15(5), 17 of the said rules as per the plan submitted by him and approved by the competent authority subject to the following conditions.

- i. Front open space should be increased to 12 M from the edge of M.C. road to facilitate future widening of the road and parking of car.
- ii. Open space on either side should be increased to 1.5 M with only 75cms sun shade projection
- iii. Straight flight fire escape staircase should be constructed as per rules.
- iv. No further addition or exemption of floors will be allowed in future.
- v. Rear open space may be reduced to 3 M.

2. This order is not a sanction to start work. Before building permit from Chengannur Municipality should be obtained.

(BY ORDER OF THE GOVERNOR)

K.M. GOPALAKRISHNAN NAIR  
Under Secretary to Government”

25. The basic contention advanced by learned counsel for the appellant relying upon Ext. P1 Government Order dated 03.12.1993 extracted above is that when exemption is granted by directing to increase front open space to 12 meters from the edge of 'M. C. Road'

to facilitate future widening of road and parking of cars, the requirement with respect to the parking of cars provided under Rule 20 of the Kerala Building Rules 1984 is given exemption.

26. We are unable to agree with the same because it is categoric and clear that exemption is granted only from Rules 15(5), 17 and 33(c), of the Kerala Building Rules, 1984. The said Rules read thus:-

**“15 (5) Open spaces for buildings above 10 metres height.-**The open spaces given under sub-rules (3) (a), (b), (c) and (4) are for buildings upto 10 metres in height. For buildings above 10 metres height in addition to the minimum front, rear, side and interior open spaces required for height of 10 metres there shall be an increase in such minimum open space at the rate of 0.5 metre per every 3 metres height exceeding 10 metres or fraction thereof. The set backs so calculated shall be provided from the ground level.”

**“17. Coverage and floor area ratio (F. A. R.) (1) General.-**The maximum percentage coverage permissible for each occupancy shall limit the plinth area of a building. The floor area ratio or F. A. R. value shall limit the total floor area. F. A. R.; shall be calculated as below:-

$$\text{F.A.R.} = \frac{\text{Total Floor Area On All Floors}}{\text{Plot area}}$$

(2) Notwithstanding the provisions of rule 15 the percentage of coverage and the F. A. R. value of buildings under



different occupancies shall not exceed the maximum permissible values stipulated in table below:

Provided that the F. A. R. values so specified may be exceeded only in cases where there are specific provisions or otherwise contained in the development plan of the town or city or in the detailed town planning scheme for the locality:

Provided further that in case of buildings with more than one occupancy, the most restrictive value of any of these occupancies shall apply.

**TABLE**  
**Coverage and Floor area ratio (F.A.R.)**

Sl. No.	Building use of occupancy	Maximum permissible (Coverage Percentage of plot area)	Maximum permissible F.A.R.
(1)	(2)	(3)	(4)
1.	Residential	50	1.50
2.	Special Residential	50	1.50
3.	Educational	30	1.20
4.	Institutional (Medical)	25	1.00
5.	Assembly	40	0.70
6.	Governmental or semi- public business	30	1.50
7.	Mercantile (Commercial)	60	2.00
8.	Industrial	40	1.20
9.	Storage	70	2.00
10.	Hazardous	25	0.70”

**“33(c) Open Spaces.-** All buildings with floor area exceeding 75 square meters shall have open spaces not less than those prescribed below:

<b>Open Spaces</b>	<b>Value</b>
Front yard	7.5 Metres
Side yard on either side	3.0 Metres
Rear yard	7.5 Metres”

27. Evidently, parking area is guided by Rule 20 of the Kerala Building Rules 1984, which reads thus:-

**“20. Parking and loading/unloading space-(1)** Each off-street parking space provided for parking motor cars shall not be less than 18 sq. metres are (6x3 metres) and for scooters and cycles the parking spaces provided shall not be less than 3 sq. metres and 1.4 sq. metres, respectively.

(2) For buildings of different occupancies off-street parking spaces for motor cars shall be provided within the plot as stipulated in Table below:

Provided that the requirement regarding parking space can be reduced to 75% of the above provision for 2<sup>nd</sup> grade Municipalities and to 50% for 3<sup>rd</sup> grade Municipalities, township and Panchayats where these rules are made applicable.

(3) In addition to the parking spaces provided under sub-rule (2) 25% additional parking area shall be provided within the plot for parking other types of vehicles except item (1) to (3) of table below:

**TABLE**  
**Off-street parking Space**

Sl. No.	Occupancy	One parking space for every fraction of
(1)	(2)	(3)
7.	Group-F. Mercantile (Exceeding 60 sq.m. of carpet area)	100 sq. m. Of carpet area”

28. Rule 15(1) deals with building line and open spaces; which specifies that every room intended for human habitation shall abut on an exterior or interior open space or verandah open to such exterior or open space and that such open space shall be maintained for the benefit of such building exclusively and entirely within the owners own premises and shall be open to the sky and is barred from being subdivided, partitioned or legally bifurcated or transacted in any manner whatsoever, till such date when the structure itself is demolished, and shall be kept free from any erection thereon, subject to the provisions in sub rules (6) and (7).

29. The provisions of Rule 15 deals also with minimum distance between street and building, exterior open spaces that is to say a) front yard, b) rear yard, c) side yard, interior open spaces, open spaces for building about 10 meters height, projection into street and projections

into and constructions on open spaces.

30. Rule 17 deals with coverage and floor area ratio which specifies that the maximum percentage coverage permissible for each occupancy shall limit the plinth area of a building, whereas Rule 33 deals with special provisions in the case of certain occupancy groups and it deals with the plot requirements, usage of plot, open spaces, habitable rooms, kitchen, store, record room, laundry etc.

31. Therefore it can be seen that those Rules are not dealing with the requirement of parking at all but on the other hand they are dealing with other circumstances mandatorily necessitated to be maintained by a plot owner for the construction of a building. Therefore the contention advanced by the learned counsel for the appellant that as per Ext. P1 the requirement of Rule 20 as per Rules 1984 is also met with cannot be sustained under law. For the purpose of construction of the 2<sup>nd</sup> floor of the building, admittedly, exemption was given from Rule 20 of the Kerala Building Rules, 1984 which is clearly spelt out in Ext. P8 impugned order passed by the Secretary.

32. As we have pointed out above, Ext. R2(a) Government Order clearly declined permission to exempt the provisions with

regard to parking area holding that adequate parking area is imperative since the property is abutting Main Central Road passing through the Municipal area.

33. That apart, it is clear from the property tax assessment that there is a clear ground floor area with partial completion bearing building No. 534 and in the property tax assessment register the first floor area and the second floor area are clearly mentioned, apart from a residential building and a staircase room separately numbered in the ground floor.

34. Therefore the contentions advanced by the appellant that the construction in question was existing originally cannot be sustained under law. In fact every aspect of the issues raised by the petitioner in the objection was considered by the Municipal Secretary in Ext. P8 impugned order and has held that the construction is put up in an extent of 316m<sup>2</sup> area left apart for parking by enclosing the said area by putting up doors, windows, rolling shutters etc.

35. In that view of the matter, it cannot be said that the findings rendered by the Secretary are bad in any manner enabling the writ court to have interfered with the impugned order passed by the

Secretary.

36. We also find that there is a clear procedure prescribed under Section 406 of the Kerala Municipality Act, 1994 to deal with unauthorized constructions and the Secretary has absolutely followed the procedure contemplated thereunder before passing Ext. P8 final order under Section 406(3) of Act 1994 taking into account the factual circumstances also.

37. Even though learned counsel for the appellant has invited our attention to Ext. P5 intimation dated 21.12.2010 imposing a fine of Rs. 1,020/- for regularization of temporary constructions put up as per Rule 10 of the Kerala Municipality Building Rules, 1999, it is also clear from the said intimation that the appellant has constructed walls, plastered the same, increased the area of the toilet, and internal alteration work was done fixing three shutters without intimating the Secretary of the Municipality.

38. Anyhow on a perusal of Rule 10 it is clear that exemption is granted only for (i) providing or removing of windows or doors or ventilators; (ii) providing inter communication doors; (iii) providing (or removing of) partitions; (iv) gardening excluding any permanent

structure; (v) white or colour washing; (vi) painting; (vii) petty repairs to the building and pitched roof; (viii) plastering and patch work; (ix) interior decoration without any structural alterations and (x) changing of the location of the building or construction within the plot.

39. The proviso thereto makes it clear that so far as the works as per clause (ix) of Rule 10 in regard to interior decoration without any structural alterations, it shall be intimated to the Secretary within at least 10 days before the commencement of such work, with particulars regarding the existing conditions in full so as to enable him to make an assessment of the nature of the work.

40. Therefore it can be seen that the nature of constructions carried out by the appellant would not come under the category of permit not necessary as per rule 10. Anyhow we are not expressing any opinion on the same, since it is immaterial in view of the imperative nature of the order impugned; but we place on record that the Secretary has clearly doubted the correctness of the said order in the Ext P8 impugned order.

41. Be that as it may; we are of the view that when it is found that illegal construction is carried out in violation of the provisions of

the Building Rules, 1984 or the Kerala Municipality Act, 1994 and the Kerala Municipality Building Rules, 1999, the Secretary is vested with ample powers to issue notice in contemplation of law and take appropriate action irrespective of the regularisation of the petty work as per Ext P5.

42. The learned Single Judge has also taken into account the entire aspects with respect to the constructions carried out by enclosing an open hall in the ground floor which was set apart for 11 parking space and it was after understanding the true import of the Rules 1984, the exemption granted and other legal aspects involved in the subject matter alone, the writ petition filed by the appellant in W. A. No. 874 of 2017 was dismissed.

43. Therefore we do not really think that the appellant has made out any case warranting interference in the judgment of the learned Single Judge.

44. Insofar as W. A. No. 2534 of 2017 is concerned, it is only a proceeding instituted by the tenant, a company incorporated under the Companies Act; but the tenant cannot put forth any case over and above the contentions put forth by the landlord in regard to



unauthorised constructions. However it has a contention that the power invoked by the Secretary under Section 447(3) of the Kerala Municipality Act, 1994 to terminate the D & O license cannot be legally sustained for the reason that the said license is granted by the Municipal Council.

45. We find force in the said contention; however we are of the view that once it is found that there is an unauthorized construction, then the procedure contemplated under Section 242 of the Kerala Municipality Act, 1994 has to be followed, which reads thus:-

**“242. Levying of tax for the building constructed unlawfully.-** (1) Notwithstanding anything contained in this Act or the rules made thereunder, where any person has unlawfully constructed or reconstructed any building, such building shall without prejudice to any action that may be taken against that person, be liable to pay the sum of property tax that would have been paid, had the said building been constructed lawfully, together with twice the amount, towards property tax of the building constructed unlawfully with effect from the date of completion or utilisation of that for any of the purpose mentioned in sub-section (2) of section 233, whichever is earlier, till the date of demolition of that building.

(2) Nothing contained in sub-section (1) shall preclude the Secretary from proceeding against such person under Section 406 of the Act and the owner shall not have the right to get any

compensation due to any action taken by the Secretary under this section.

(3) No building number as provided under section 380 shall be affixed to the building constructed unlawfully and they shall be given special number as prescribed. Any delay in giving special number shall not be a bar to levy property tax retrospectively under sub section (1).

(4) Secretary shall maintain ward-wise special registers recording the survey number of the land on which the building has been constructed unlawfully, name and particulars of the owner of the land, special number given to the building, details of property tax levied and collected for the building.

(5) The Municipality shall not grant permit or licence to use the building constructed unlawfully and given a special number as provided in sub-section (3) and liable to be proceeded against under Section 406, for any trade, commerce or industrial purposes or any other purposes and if the Municipality has granted any permit or licence, that shall be reconsidered and cancelled after giving notice to the owner of the building and the licensee.”

46. Therefore on a clear scrutiny of Ext. P8 impugned order passed by the Secretary, it can be seen that the directions contained therein with respect to the unauthorized construction is in accordance with law. However as per sub section (5) of Section 242, the Secretary of the Municipality was bound to give a notice to the licensee, that is the occupier of the building. That exercise was not undertaken by the

Secretary and instead the Secretary usurped the powers of the Council conferred under Section 447(3) of Act 1994, which is illegal.

47. Therefore to that extent, the tenant appellant is entitled to succeed, and consequently there will be a direction to the Secretary of the Municipality to follow the procedure contemplated under Section 242 (5) of the Act 1994 and proceed in accordance with law. We are also of the opinion that at this distance of time the order impugned has become inconsequential to be quashed.

The upshot of the discussion is that W. A. No. 874 of 2017 is dismissed and W. A. No. 2534 of 2017 is disposed of with direction to the Secretary of the Chengannur Municipality to provide a notice cancelling the license as provided under Section 242(5) of Act 1994 and thereafter proceed in accordance with law.

**Sd/-  
S. MANIKUMAR  
CHIEF JUSTICE**

**Sd/-  
SHAJI P. CHALY  
JUDGE**

Eb

///TRUE COPY/// P. A. TO JUDGE