



GOVERNMENT OF KERALA

Abstract

Kerala Panchayat Building Rules, 2019 - Application submitted to the Committee constituted under chapter IX for extension/renewal of building permit - Order of the Hon'ble High Court dated 10.09.2024 in WP(C) No.32722/2023 filed by Sri. Josey Jacob and others - Complied with - Orders issued.

LOCAL SELF GOVERNMENT (RB) DEPARTMENT

G.O.(Rt)No.2062/2024/LSGD Dated, Thiruvananthapuram, 29-10-2024

- Read 1. G.O.(Rt.) No.1638/2023/LSGD dated 11.08.2023
2. Order of the Hon'ble High Court of Kerala dated 10.09.2024 in WP(C) No.32722/2023 filed by Sri. Josey Jacob
 3. Minutes of the meeting of the committee constituted under chapter IX of Kerala Panchayat Building Rules, 2019 held on 03.10.2024.

ORDER

The Hon'ble High Court of Kerala as per the order in WP(C) No.32722/2023 filed by Sri. Josey Jacob, read as 2nd paper above, directed the Committee constituted under Chapter IX of the Kerala Panchayat Building Rules, 2019 to consider Ext. P9 application in the WP(C) strictly in accordance with the proviso to Chapter II, Rule 15. The Hon'ble Court also directed that the Committee is to consider whether the application was made within the time stipulated and whether it was genuine. Also as per the order, the Principal secretary (the 2nd respondent) was directed to place the Ext.P9 application before the Committee, which will take a decision in accordance with law within six weeks from the date of receipt of a copy of this judgment.

2) As per the order of the Hon'ble High Court, the Committee constituted under Chapter IX of the Kerala Panchayat Building Rules 2019 considered the Ext.P9 application in its meeting held on 03.10.2024. Ext.

P9 application dated 04.01.2023 was filed by Sri. P.C Usman requesting the Government/Committee constituted under chapter IX of the Kerala Panchayat Building Rules 2019 to grant necessary extension of permit or to issue directions for obtaining necessary permit to complete the remaining work of the housing project for which building permit was issued by the Keezhmad Grama Panchayat vide letter No. A6-PT-62/2010 dated 15.02.2010.

3) The Committee examined the Ext. P9 application in detail. As per the proviso to Rule 15(2), Chapter II of the Kerala Panchayat Building Rules 2019, in case the permit needs to be extended beyond the period of ten years, the applicant shall submit an application in writing to the Committee constituted under Chapter IX of these Rules and the Committee may, after having satisfied with the genuineness of the application, recommend for extension of period of the permit once, with or without condition(s) as it deems fit. The Committee examined the genuineness of Ext P9 application and noted that-

- i. Exhibit P9 application was submitted by Sri. Usman P.C on 04.01.2023 for the renewal of permit issued by the Secretary, Keezhmad Grama Panchayat vide No. A6-PT-62/2010 dated, 15.2.2010 to Marzook & 4 others for the construction of apartments in 3 blocks (one block with BF+GF+14 floors and two blocks with BF+GF+15 floors) and 9 villas comprising a total area of 37050.99 sq.m in survey No.22/1-2, 29/14, 29/4-3, 29/8, 29/7, 29/11-3, 29/5-2, 29/6, 29/9-1, 29/9-2 in Aluva East village in Keezhmad Grama Panchayat in Ernakulam district. The permit was issued in 2010, on the basis of G.O.(Ms) No.150/2007/LSGD dated 06.06.2007, through which KMBR 1999 was made applicable to all the Grama Panchayaths in the state.
- ii. The permit was issued to Marzook & 4 others and Exhibit P9 application for renewal of permit is submitted by Sri. Usman P.C. Even though it is mentioned in the footnote to the application that Sri.Usman P.C is the Power of Attorney of permit holder Marzook and others, documents in proof of the same have not been submitted along with the application.
- iii. The address of the applicant is not mentioned in the application.
- iv. The receipt of application fees paid as per Schedule I of KPBR 2019 was not enclosed.
- v. The original of permit and approved plan for renewal was not submitted

along with the application.

In view of the above findings, the Committee observed that Ext. P9 application submitted by Sri. Usman P.C. for the renewal of permit could not be considered genuine.

4) The Committee further observed that according to the proviso to Rule 15(4) of KPBR 2019, in case the permit needs to be renewed beyond the period of ten years, the applicant was mandated to submit an application in writing to the Committee constituted under Chapter IX of KPBR 2019, within three years from the date of expiry of the permit. The Committee noted that Rule 17(1) and 17(2) of KPBR Rules 2011 says as follows :

"17. Extension and renewal of periods of permit.- (1) A development permit or building permit issued under these rules shall be valid for three years from the date of issue."

" (2) The Secretary shall, on application submitted within the valid period of the permit, grant extension twice for a further period of three years each".

The Secretary, Keezhmad Grama Panchayat vide No. A6-PT-62/ 2010 dated 15.2.2010 initially granted permit to Marzook & 4 others for the construction of apartments in 3 blocks (one block with BF+GF+14 floors and two blocks with BF+GF+15 floors) which was further renewed till 14.02.2016 based on the RDO's Order No. K 629/2011 dated 31/01/2011. Further, application for renewing permit (No.A6-PT-62/2010) beyond 14.02.2016 was lawfully rejected in accordance with the KMBR 1999, Rule 15A (11) because there was a decrease in the total plot area mentioned in the application for permit extension as part of the plot in the approved plan was transferred. Application for further renewal of permit was not received from the permit holder within the valid period of permit. Later, Shri. Usman P.C who claimed as Power of Attorney holder for Marzook and others submitted the application for renewal only on 04.01.2023. Since the application for renewal of the permit for the consideration of the Committee constituted under Chapter IX of KPBR 2019 should have been submitted within 3 years starting from 14.02.2016 (i.e. within 13.02.2019) and since Exhibit P9 application was submitted on 04.01.2023 only, the Committee observed (i) that the permit can be considered to have expired on 14-02-2016 itself; and (ii) that the application was not filed within the time limit stipulated as per

rules.

5) The Committee also noted that the Chief Town Planner Vigilance, has reported vide report No. CTPVIG/802/2023, CTPVIG/822/2023 dated 21.09.2023 to the Government that another permit vide No. A6-PT/382/2010 dated 21.12.2010 was issued from Keezhmad Gramapanchayat to Marzook & 8 others for the construction of villas comprising a total area of 1037.58 sq.m in survey nos. 22/1-6-2, 22/13-2-2, 22/13- 3-2 in Keezhmad Panchayat. This is also stated in the report of the Secretary, Keezhmad Grama Panchayat. (Letter No. SC3/3512/2024 dated, 01.10.2024) submitted to the meeting of the Committee, constituted as per Chapter IX of KPBR 2019, held on 03.10.2024. As per Rule 6 (1)(a)(1) of KMBR 1999 any contiguous land belonging to the owner shall be shown in the site plan submitted for obtaining permit. As the approved plan and other details are not submitted along with the Ext.P9 application, the location of the proposed villas is not clear with respect to the construction proposed in the initial permit (A6-PT-62/ 2010 dated 15.2.2010.) Further it is also stated in the report of Chief Town Planner, Vigilance dated 21/09/2023 and in the report of the Secretary Keezhmad Grama Panchayat the Second permit was renewed to 20.12.2016.

6) Further, the permit No.A6-PT-62/2010 dated 15.2.2010 was issued on the condition that NOC from the Fire Department, Pollution Control Board and Airports Authority of India shall be produced before the commencement of the construction. The Secretary, Keezhmad Grama Panchayat has reported that the NOCs were not submitted. It is also observed that permit should have been issued only after obtaining the mandatory NOCs as per the provisions in the Building Rules.

7) The number of dwelling units in Block A accounts to 84 numbers and Block B & C accounts to 144 numbers. Hence as per Rule 53(1) of KMBR 1999 (Amended vide G.O(Ms) No. 249/2009/LSGD dated 16.12.2009) which was in force while issuing and renewing the permit, the layout approval of Chief Town Planner was required, but the same had not been obtained. As per rule 30 of KPBR 2019 lay out approval from District Town Planner is required if the number of dwelling unit exceeds 100. In Ext. P9 Application, the applicant is seeking permit extension of only one block of 84 Flats. However, the permit is issued for Block A, B, C with total number of dwelling units exceeding 100 and hence, layout approval from the District Town Planner is required as per KPBR 2019 also. Considering the

nature of land, the Secretary, Keezhmad Grama Panchayat expressed concerns regarding the structural stability of the building. But structural stability certificate was also not submitted.

8) The permit issued vide No.A6-PT-62/ 2010 dated 15.2.2010 was based on Order No. 4988/8/KDS dated 16.02.2009 of the RDO, as the land included in several survey numbers in the permit are mentioned as "Nilam" in the revenue records. The said order of the RDO was valid for a period of one year but was extended vide Order No. K629/2011 dated 31.01.2011 till the periodic renewal of the permit is effective. Based on this, the permit was extended up to 14.02.2016 only.

9) The application for extension of permit was again submitted on 04.02.2016 to the Keezhmad Grama Panchayat. Since a part of the plot in the approved plan was transferred, there was a decrease in the total plot area mentioned in the application for permit extension and hence in accordance with Rule 15A(11), KMBR 1999 the permit was not renewed further and rejected on 8.2.2017

10) The applicant has not intimated the Secretary, Keezhmad Grama Panchayat regarding the transfer of part of the plot in the approved plan as required under Rule 19, KPBR 2019. As per Rule 15(11), KPBR, if the plot or part of the plot concerned has been transferred, the application for extension or renewal of permit shall not be accepted and acted upon until provisions of Rule 19 has been fully complied with. Hence this application does not comply with rule 15(11) of KPBR 2019.

11) The Committee convened on 03.10.2024 decided to recommend to reject Ext.P9 Application on the basis of the above findings.

12) Government having considered the recommendation examined the matter in detail and accepting the observations and findings of the Committee, reject Exhibit P9 application submitted by Sri. Usman P.C for the renewal of permit issued vide No. A6-PT-62/2010 dated 15.2.2010 by the Keezhmad Grama Panchayath, as the application is not genuine in nature and is not submitted within the time limit stipulated in Kerala Panchayat Building Rules 2019.

13. The Order of the Hon'ble High Court dated 10.09.2024 in WP(C) No.32722/2023 is complied herewith.

(By order of the Governor)
H MUHAMMED FAISAL
DEPUTY SECRETARY

To

The Advocate General, Ernakulam (with covering letter)

Sri. Josey Jacob, "Varuna" , Panakkal House, Kadamakkudi P. O ,
Moolampilly , Kochi, PIN- 682027.

Sri. P.C Usman, P.C Manzil, Classic Leathers, Shanmugham Road P.O. ,
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The Chief Town Planner, Thiruvananthapuram.

The District Town Planner, Ernakulam.

The Secretary, Keezhmad Grama Panchayath, Aluva, Ernakulam.

~~The Director, Information Kerala Mission (for publishing in the website
of LSGD)~~

Information Officer (Web & New Media), Information and Public
Relations Department

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Signed by

Rajesh N

Date: 29-10-2024 16:51:19
Section Officer