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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 26TH DAY OF AUGUST 2022 / 28TH SRAVANA, 1944

WP(C) NO. 792 OF 2022

PETITIONER/S:

NOORUL ISLAM SAMSKARIKA SANGAM
THOTTEKKAD, AMARAMBALAM, REPRESENTED BY ITS SECRETARY
FARHAN K.T., AGED 35 YEARS, S/O. ALIKKUTTY,
KUNDANTHODIKA HOUSE, THOTTEKKAD, AMARAMBALAM, NILAMBUR
TALUK, MALAPPURAM DISTRICT, PIN-679332.

BY ADVS.
P.SAMSUDIN
M.ANUROOP
SHYAM NAIR
LIRA A.B.

RESPONDENT/S:

- 1 THE DISTRICT COLLECTOR
MALAPPURAM, CIVIL STATION-676505, MALAPPURAM DISTRICT.
- 2 THE DISTRICT POLICE CHIEF,
MALAPPURAM, UP HILL P.O.- 676505, MALAPPURAM DISTRICT.
- 3 AMARAMBALAM GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY, AMARAMBALAM P.O.- 679332,
NILAMBUR TALUK, MALAPPURAM DISTRICT.
- 4 THE SECRETARY,
AMARAMBALAM GRAMA PANCHAYATH, AMARAMBALAM P.O.- 679332,
NILAMBUR TALUK, MALAPPURAM DISTRICT.

5 SUB INSPECTOR OF POLICE,
POKKOTTUMPADAM, POKKOTTUMPADAM -679332, NILAMBUR TALUK,
MALAPPURAM DISTRICT.

6 ANNIE M. GEORGE,
W/O. M.E.GEORGE, MARUTHAMANDIRAM HOUSE, THOTTEKKAD,
POKKOTTUMPADAM-679332, NILAMBUR TALUK, MALAPPURAM
DISTRICT.

BY ADVS.
N.KRISHNA PRASAD
A.K.HARIDAS
N.ANAND

SR.G.P.SMT.DEEPA NARAYANAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
16.08.2022, THE COURT ON 26.8.2022 DELIVERED THE FOLLOWING:

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P.V.KUNHIKRISHNAN, J

W.P.(C) No.792 of 2022

Dated this the 26th day of August, 2022

JUDGMENT

The petitioner claims to be a Philanthropist Society. The Society is registered under the Societies Registration Act, 1969, as evident by Ext.P1 certificate. The Society obtained a property in Re.Sy.No.210/8-2 of Amarambalam Panchayat in Malappuram District with a commercial building in it. The petitioner Society want to change the commercial building to a Muslim place of worship. Admittedly there are about 36 Mosques within 5 kilometers radius of this building as per the Sanchaya Assessment Software of the 4th respondent Amarambalam Grama Panchayat. Even then the petitioner wants another place of worship for the reason that 'five times prayer' is necessary for a Muslim and

therefore, a prayer hall is necessary within the vicinity of every Muslim. If this is allowed then in every nook and corner of the State place of worship and prayer halls would be necessary. In such circumstances, a detailed consideration of this issue is necessary.

2. The petitioner obtained the above mentioned property based on Ext.P3 deed No.1718/1/2018 of Nilambur Sub Registrar Office. The property was given to the Society by its original owners free of cost (by Wakf) as per the Wakf deed as evident in Ext.P3. The erstwhile owners of the property was one Mr.Mohammed and Mr.Abdul Razaq. When the property was in the ownership of Mr.Mohammed and Mr.Abdul Razaq, they started to construct a building in it based on Exhibit P4 permit. At that time the 6th respondent herein filed WP(C) No.18986 of 2017 apprehending that the property owners are constructing a religious prayer hall in the above property without permit from the Panchayat and the competent authorities. This Court as per Ext.P5

order, directed the Sub Inspector of Police, Pookkottumpadam Police Station to ensure that no religious practices are carried out in the subject property if the building is constructed without permission from the appropriate authorities as provided in proviso to Rule 7(8) of the Kerala Panchayat Building Rules, 2011. The permit given to the erstwhile owners of the property was to construct a commercial building. The building was constructed based on the building permit issued for the commercial purpose. Subsequently, when there was reluctance from the Panchayat to issue occupancy certificate because of the pendency of WP(C) No.18986/2017, the erstwhile owners of the property approached this Court by filing WP(C) No.39075 of 2017. WP(C) Nos.18986 of 2017 and 39075 of 2017 came up for consideration before this Court together. WP(C) No.18986 of 2017 was dismissed as infructuous and WP(C) No.39075 of 2017 was disposed of as evident by Ext.P6 by directing the Secretary of the Panchayat to consider the application for occupancy certificate and building

number after hearing the erstwhile owners of the building and the 6th respondent herein. This Court made it clear that the Secretary shall ascertain the proposed use for which the petitioner in that case intend to put the building before issuing occupancy certificate to the petitioner. Accordingly, the Secretary of the Panchayat heard the parties and an undertaking was obtained from the erstwhile owners of the building that they will use the building only for the purpose stated in the permit. Ext.P7 is the affidavit dated 07.03.2018 sworn by the erstwhile owners of the building. Accordingly, occupancy certificate was issued by the Panchayat treating the building in 'F' category. Property tax was also received. Thereafter, the property was given to the Society by the erstwhile owners as per Ext.P3 Wakf deed. After getting the building, the petitioner herein submitted Ext.P9 request dated 23.06.2018 for permitting to use the building as a prayer hall. It is stated by the petitioner Society that they intend to use the commercial building as a prayer hall for offering five times prayers

by the members of the Muslim community since there is no mosque in Thottekad locality. The Society submitted application for change in the occupancy of the building from category 'F' to 'D' for using the building as a Muslim place of worship. Ext.P10 is the application for change of occupancy submitted before the Panchayat dated 21.07.2018. The Secretary of the Panchayat forwarded the application to the District Collector for his approval as provided in the Kerala Panchayat Building Rules 2011. Ext.P11 is the letter forwarded by the 4th respondent to the 1st respondent. When there was delay in considering Ext.P10 application and Ext.P11 recommendation for consideration by the District Collector, the petitioner approached this Court and this Court, as per Ext.P12 judgment, directed the District Collector to take appropriate decision after hearing all the parties. Consequently, the District Collector considered the matter in detail and dismissed the application as evident by Ext.P13. While considering the issue, the District Collector also considered Ext.P14 Police Report also.

Aggrieved by Ext.P13, this writ petition is filed.

3. Heard Adv.P.Samsudin for the petitioner and Adv.Deepa Narayanan, Senior Government Pleader for the official respondents. I also heard the counsel appearing for the 3rd and 4th respondent Panchayat. Adv.A.K.Haridas appeared for the 6th respondent, the contesting respondent.

4. The counsel for the petitioner submitted that alteration and conversion are defined in the Kerala Panchayat Building Rules, 2019 (Hereinafter mentioned as the Rules 2019). The counsel takes me through Rule 2(1)(f) and 2(1)(x) of the Rules 2019 and submitted that conversion and alteration is possible as per the Rules. The counsel also takes me through Rule 4(3) and Rule 5(4) of the Rules, 2019 and submitted that the Secretary of the Panchayat can change the occupancy of an existing building from one group to another after getting permission from the competent authority. The counsel for the petitioner submitted that Ext.P13 order passed by the District Collector is unsustainable. According

to the petitioner, the Muslim community is supposed to offer 'five times prayer' every day. Therefore, a Mosque/prayer hall is necessary within the vicinity of the members of the Muslim community. The counsel also relied on the verses of the 'Holy QUR-AN' to strengthen his contention about the importance of Mosques. Further, counsel also relied on the relevant portion of the "Hadees" of prophet which is compiled by Imam Nawawi by producing a malayalam version of the same by Mr.Abdulla Nadvi. The counsel relied on Chapter 191 of the above book to show the importance of 'five time prayers' by members of the Muslim community. The counsel also disputed the averments in Ext.P14 Intelligence Report of the District Police Chief.

5. When this writ petition came up for consideration, this Court directed the District Collector to file a statement about the averments in the writ petition. Consequently a detailed statement was filed by the 1st respondent – District Collector. The 1st respondent submitted that the building of the petitioner was

originally constructed for commercial purpose. But when the inner area of the building was inspected, it was found that it was arranged more for religious purpose than for commercial purpose. The District Collector also stated that as per the report of the Sub Collector, about 36 Mosques are situated within the vicinity of the petitioner's commercial building.

6. The counsel appearing for the respondents 3 and 4 submitted that a counter affidavit is filed by the 4th respondent. In the counter affidavit, Ext.R4(a) was produced to show that 36 Mosques are situated within 5 kilometers radius from the petitioner's commercial building as per the Sanchaya Assessment Software.

7. The counsel appearing for the 6th respondent submit that, the intention of the petitioner and the erstwhile owner of the building was to construct a Mosque and that is clear from the report of the District Collector to the effect that the inner side of the building is arranged as if it is a religious place. The counsel

submitted that the 6th respondent filed a writ petition against the erstwhile owners when the building was being constructed by them apprehending that, it will be used as a religious place. The Panchayat granted occupancy certificate on an assurance that the building will be used only for commercial purpose. The counsel also submitted that the erstwhile owners filed a counter affidavit before this Court in W.P.(C)No.18986/2017 in which it is stated that "the building constructed in the private property of these respondents are not for Mosque or other religious purposes." The counsel submitted that the affidavit was filed on 28.11.2017 in the above writ petition and thereafter they transferred the property to the petitioner and immediately the petitioner submitted the application for using the building as a prayer hall. The ulterior motive of the petitioner and the erstwhile owners is clear from the above conduct is the contention of the 6th respondent. The counsel submitted that, there are a lot of mosques situated within the short distance from the building of the petitioner and

establishment of another mosque in this area will create communal disharmony among the people. The counsel also submitted that, it is an area where Hindus and Christians are residing in majority, when compared to the Muslim community. Therefore, it is submitted that, there is nothing to interfere with Ext.P13 order passed by the 1st respondent.

8. This Court considered the contentions of the petitioner and the respondents. The first point to be decided is whether a conversion or alteration of the occupancy of an existing building from one group to another group is possible. Rule 25 of the Kerala Panchayat Building Rules, 2019 deals with the occupancy of buildings. The buildings are classified according to their use or character of the occupancy as Group A1, Group A2, Group B to Group F, Group G1, Group G2 and Group H to Group J. Group D deals with assembly. The Assembly building shall include any building or part of a building exceeding 200 sq. metres of built-up area where people congregate or gather for amusement,

recreation, social, religious, patriotic, political, civil, travel and similar purposes such as theatres, motion picture houses or cinemas, assembly halls for educational, dramatic or theatrical presentations etc. Rule 2 (j) of the Rules, 2019 defines assembly building. Rule 2(1)(f) deals with alteration and Rule 2(1)(x) deals with conversion. Conversion means the change from one occupancy to another occupancy or any change in building structure or part thereof resulting in a change of space and use requiring additional occupancy certificate. Rule 4(3) says that, no person shall change the occupancy of an existing building from one group to another, without first obtaining the permit from the Secretary. Rule 5(4) says that, Panchayat is the authority for issuing permit for buildings/places for religious purpose or worship. From a combined reading of the above Rule, it is clear that, an occupancy of an existing building from one group to another is possible only after getting permission from the Secretary of the Panchayat. Therefore, there is no prohibition in obtaining change

of occupancy of an existing building from one group to another.

9. The next point to be decided is whether any interference with Ext.P13 order, passed by the District Collector, is required. The Government of Kerala framed The Manual of guidelines to prevent and control communal disturbance and to promote communal harmony - 2005 as per G.O.(P) No.217/05/Home dated 25.07.2005 (In short Manual of Guidelines). As per Clause 23 of the above Manual of Guidelines, any construction of religious place is to be made only with the prior approval from the District Authorities. Clause 23 and 23 (a) (i) were amended as per G.O.(P) No.19/2021/Home dated 14.02.2021. As per the amended provisions, instead of the District Authorities, the Local Self Government authority has to grant approval for the construction of religious place. Admittedly, in this case, the application submitted by the petitioner to the District Collector and to the Panchayat was before the amendment of Clause 23 and 23(a)(i) of the Manual of Guidelines. Therefore, the District Collector

considered this application as per the unamended Manual of Guidelines as per G.O.(P) No.217/05/Home dated 25.07.2005 based on the date of application. Therefore the unamended Manual of Guideline is applicable in this case. It will be better to extract the unamended Clauses 23 and 23(a)(i) of the above Manual hereunder:

"23. Any construction of religious place should be made only with prior approval of the District Authorities and at the earmarked place. Cases of construction of unauthorised religious places should be dealt with severely under, existing laws. Negligence on the part of the District Administration in implementing this direction should be seriously viewed and the guilty dealt with.

23. (a) (i) Renovation of existing places of worship can be undertaken after informing the matter to the District Administration. However, any addition or expansion to the existing structure should be done only with the previous permission and concurrence of the District Administration. This addition or expansion should not in any way cause any inconvenience to the public, should not obstruct traffic, should not be an impediment to the future expansion of roads and other public amenities. Any addition or expansion can be undertaken only with observing the building rules and with the prior

permission of Town Planning Department or Local Self Government, as the case may be.”

10. A reading of the above Clauses will show that the permission from the District Authorities are necessary only for the construction of religious place and renovation of an existing place of worship. Here is a case where the petitioner wants to change the occupancy. A strict reading of Clause 23 and 23(a)(i) of the Manual of Guidelines will show that, even for a change of occupancy, the permission from district authorities (now after the amendment, from the Local Self Government Authorities) is necessary. If such an interpretation is not given, anybody can construct a building in one category and thereafter change the occupancy to Group D for religious purpose without the approval from the District Authorities or from the Local Self Government Authorities. Therefore, it is declared that, even for a change of occupancy of a building to a religious place, the Manual of Guidelines is applicable and the approval from the competent

authority as per the Manual of Guidelines is necessary.

11. This Court perused Ext.P13 order passed by the District Collector. The District Collector considered the matter in detail. The District Collector observed that the petitioner submitted an application before the Grama Panchayat for changing the ownership of the property on an undertaking that, it will be used only for commercial purpose. It is also stated that the Perinthalmanna Sub Collector reported that there are about 36 Muslim prayer places within 5 kilometer radius from the petitioner's commercial building. It is also stated that, there are about 3990 Muslim families, 1164 Christian families and 3498 Hindu families residing within the vicinity of the petitioners commercial building. The District Collector also considered the fact that the number of Hindu and Christian families residing in this area is more than the Muslim families residing and therefore, if a Muslim prayer hall is approved after changing the occupancy from commercial to religious purpose, there will be communal

disharmony. The report of the District Police Chief was also considered. The District Collector also relied on the report of the Additional Director General of Police (Intelligence) dated 18.09.2020 in which it is stated that, if the buildings which are constructed for commercial purpose is allowed for religious purpose, there will be communal disharmony between religions. The District Collector also found that, the owners of the property, knew well that, if an application is filed for constructing a religious prayer hall, the same will be rejected, thus a building permit application was filed for commercial purpose with an intention to change it subsequently. Considering all these facts, Ext.P13 order was passed by the District Collector dismissing the request for conversion. After going through the order passed by the District Collector which considered the report of the Sub Collector, District Police Chief and the Additional Director General of Police (Intelligence), this Court is of the considered opinion that, there is nothing to interfere with the same. The jurisdiction of this Court to

interdict with an order passed by the competent authority as per the Manual of Guidelines is very limited, unless there are patent illegalities. The authorities as per the Manual of Guidelines are fact finding authority. They considered the facts based on the Police report, Intelligence report and other ground realities after inspecting the properties. Under such circumstances, this Court need not interfere with such orders by invoking the powers under Article 226 of the Constitution of India, unless there are patent illegalities and violation of fundamental rights of the citizen.

12. Moreover, the conduct of the petitioner in submitting the application for the change of occupancy is also doubtful. The following events and the date of its occurrence will show that the intention of the parties are not to construct a commercial building, but to construct a religious place.

1	The erstwhile owners of the property namely Mr.Mohammed s/o Kunjammad and Mr.Abdul	05/04/17
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	Razaq obtained Ext.P4 building permit for commercial purpose	
2	The 6 th respondent filed writ petition as W.P.(C.) No. 18986/2017 apprehending that the building is going to be constructed for religious purpose and this Court passed Ext.P5 order	08/06/17
3	The writ petition filed by the erstwhile owners for getting the occupancy certificate as a commercial building (W.P.(C.) No. 39075/2017) was disposed directing the Panchayat to consider the application.	09/01/18
4	The erstwhile owners of the property filed an affidavit before the Panchayat to the effect that the building is constructed for commercial purpose and as long as the building is in their possession it will be used only for commercial purpose	07/03/18

5	The occupancy certificate was issued by the Panchayat as 'F' category and building No.2/256 was allotted and property tax was received treating the building as a commercial building.	12/03/18
6	The erstwhile owners transferred the property to the petitioner-Society as per Ext.P3	28/04/18
7	The petitioner submitted request to the District Collector for change of category (Ext P9).	23/06/18
8	The petitioner submitted an application for change of occupancy before the Panchayat(Ext P10)	21/07/18

13. Therefore, it is clear that after filing the affidavit before the Panchayat on 7.3.2018 by the erstwhile owners that the building will be used only for commercial purpose, the Panchayat issued the occupancy certificate as directed by this Court in Ext.P6 judgment and property tax was also accepted. After filing the

affidavit before the Panchayat on 7.3.2018, the erstwhile owners transferred the property to the petitioner-society on 28.4.2018. That means even before completing two months after the affidavit was filed by the erstwhile owners before the Panchayat, the property was transferred and an application was filed by the petitioner-Society to change the occupancy from commercial to religious purpose. The conduct of the petitioner is suspicious. Under such circumstances, this Court has to presume that the apprehension of the 6th respondent that it was not to construct a building for commercial purpose, but for religious purpose is true. Since the erstwhile owners are not parties in this case, I do not want to make any further observations with respect to their intention.

14. Moreover in Ext.P13, it is clearly stated that there are about 36 Muslim prayer halls within 5 kms vicinity from the building of the petitioner. If that is the case, why another prayer hall to the Muslim community in this area is a question to be decided. The counsel for the petitioner submitted that as per the

religious beliefs of Muslim community, five times prayer a day is mandatory. The importance of Mosque and the importance of the prayers in the Mosque itself is elaborated by the counsel by relying quranic verses. The counsel relied Juz 10 Surah 18 of the Holy Qur-an. It will be beneficial to quote the English translation of the above verse which was made available by the learned counsel, which is a book printed and completed at: King Fahd Holy Qu-ran Printing Complex, AL-Madinah Al-Munawarah under The Auspices of The Ministry of Hajj and Endowments, The Kingdom of Saudi Arabia. The english verses relied by the petitioner from the above book are extracted hereunder :

18. The mosques of Allah
Shall be visited and maintained
By such as believe in Allah
And the Last Day, establish
Regular prayers, and
Pay Zakat, and fear
None (at all) except Allah
It is they who are expected
To be on true guidance.”

15. The counsel also relied Juz 1 Surah 114. The same is also extracted hereunder :

“114. And who is more unjust
Than he who forbids
That in places for the worship
Of Allah, His name should be
Celebrated?- whose zeal
Is (in fact) to ruin them?
It was not fitting that such
Should themselves enter them
Except in fear. For them
There is nothing but disgrace
In this world, and in the world
To come, an exceeding torment”

16. The above verses of the Holy Qur-an, clearly highlights the importance of Mosque to the Muslim community. But, it is not stated in the above verses of the Holy Qur-an that Mosque is necessary in every nook and corner. The counsel also relied on the compilation of Imam Nawawi which is know as “Riyadussaliheen”. The counsel made available the book which translate the above into Malayalam by Abdulla Nadwi. Chapter 191 of the above book says about the importance of praying together. It will be better to

extract Chapter 191, Clauses 1064 and 1065.

“1064. ഇബ്നു ഉമർ(റ)ൽ നിന്ന് പ്രവാചകൻ (സ) പറഞ്ഞു: ഒറ്റക്ക് നമസ്കരിക്കുന്നതിനേക്കാൾ സംഘടിത നമസ്കാരത്തിന് ഇരുപത്തേഴ് മടങ്ങ് ശ്രേഷ്ഠതയുണ്ട്. (ബുഖാരി 645) (മുസ്ലിം 650).

1065. അബൂഹുറൈറ:(റ)ൽ നിന്ന് : പ്രവാചകൻ(സ) പറഞ്ഞു: ഒരാൾ സ്വന്തം ഭവനത്തിലും അങ്ങാടിയിലും വെച്ച് ഒറ്റക്ക് നമസ്കരിക്കുന്നതിനേക്കാൾ സംഘടിതമായുള്ള നമസ്കാരത്തിന് ഇരുപത്തിയഞ്ച് ഇരട്ടി പ്രതിഫലമുണ്ട്. കാരണം, അയാൾ നല്ല പോലെ വുള്ളൂത്ത് ചെയ്ത് പള്ളിയിലേക്ക് പുറപ്പെടുന്നു. ഇങ്ങനെ നമസ്കാരം മാത്രം ഉദ്ദേശിച്ച് അയാൾ പുറപ്പെടുമ്പോൾ അയാളുടെ ഓരോ ചവിട്ടിടിലും അയാൾക്ക് ഓരോ പദവി ഉയർത്തപ്പെടുകയും ഓരോ പാപങ്ങൾ മായ്ക്കപ്പെടുകയും ചെയ്യുന്നു. ഇനി അയാൾ നമസ്കരിച്ചു കഴിഞ്ഞാലോ, ശുദ്ധിയോടു കൂടി നമസ്കരിച്ച സ്ഥലത്ത് തന്നെ ഇരിക്കുമ്പോഴെല്ലാം മലക്കുകൾ അയാൾക്ക് വേണ്ടി പ്രാർത്ഥിച്ചു കൊണ്ടിരിക്കുകയും ചെയ്യും. അവർ പ്രാർത്ഥിക്കും. അല്ലാഹുവേ! അദ്ദേഹത്തെ അനുഗ്രഹിക്കുകയും അദ്ദേഹത്തോട് കരുണ കാണിക്കുകയും ചെയ്യേണമേ!. നമസ്കാരം പ്രതീക്ഷിച്ചു കൊണ്ടിരിക്കുന്ന സമയമത്രയും അദ്ദേഹം നമസ്കാരത്തിൽ തന്നെയാണ്. (ബുഖാരി: 647) (മുസ്ലിം: 649)”

17. It is stated in Clause 1064 about the importance of praying together instead of praying alone. Prayers together is more graceful. The reason for the same is explained in Clause 1065. It is true that the praying alone and praying together is different and if prayer is done together, that is more graceful

than praying alone. But in Clause 1065, it is stated that while a devotee is going to the Mosque for prayer, every step towards the Mosque will increase his status and will vanish his sins one by one. Therefore, every steps towards mosque is important as per the above verse. It is not stated in the "Hadees" or in the Holy Qur-an that Mosque is to be situated adjacent to the house of every Muslim community member. Distance is not the criteria, but reaching the Mosque is important. In the instant case 36 Mosques are available within the vicinity from the commercial building of the petitioner. In such circumstances, there is no need of another Mosque in that vicinity because the devotees of Muslim community can go to other nearby Mosques. The petitioner has no case that there is difficulty in going to the other Mosque other than the distance. In this modern society 5 kms is not a distance at all. Almost all citizens have vehicles, including car, Motor Bikes and atleast a Bicycles. Moreover, in addition to this, public transport facilities and private transportation facilities are available from

every nook and corner of the State. In such circumstances, the distance is not a criteria for allowing religious places. It is true that Article 26(a) of the Constitution of India states that subject to the public order, morality and health, every religious denomination or any section thereof shall have the right to establish and maintain institutions for religious and charitable purposes. That does not mean that they can construct religious places in every nook and corner of the country. Kerala is a very small State. A study which is available on the internet about the religious places based on the Census 2011 is alarming. Kerala has 10 times higher number of religious structures than the total number of Villages in Kerala. According to 2011 Census, there are 1018 Villages in Kerala along with 87 Municipalities and 6 Municipal Corporations sharing 1,01,140 places of worship along with 29,565 hospitals. The number of places of worship in Kerala is almost 3.5 times higher than the number of hospitals in Kerala. Therefore, if further religious places and religious prayer halls are allowed

in Kerala without any guidelines, there will be no place for the citizens to reside.

19. There are devotees in Hindu, Christians, Muslim etc. in our land. Kerala is a small State in which all these community members are staying with happiness and with communal harmony. Kerala is exhausted with religious institutions and prayer halls. There are sufficient number of religious places and prayer halls to all the communities in the State even as per the 2011 Census Report. As far as the present case is concerned, there are about 36 mosques situated within 5 kilometre radius from the existing commercial building of the petitioner. Then why another prayer hall for the petitioner is a million dollar question. The Government and the local bodies should be vigilant while granting permission for religious places and prayer halls in future. It should be done strictly in accordance to the Manual of Guidelines. Moreover, the change of occupancy of existing building from one category to the category of religious places shall not

be allowed in normal cases. Rejection of approval should be the rule and the approval should be only in rarest of rare case. If there is any inevitable situation, the competent authorities as per the Manual of Guidelines, before taking decisions, should go deep into such requests after getting intelligence report and police report about the ground realities. As far the change of occupancy to religious purpose is concerned, normally it should not be approved because the purpose of the construction is for the category in which the permit is issued. The construction of a commercial building and construction of a religious place are entirely different. In a State like Kerala, the category change from one category to religious place is not necessary unless there are sufficient reasons for the same. If any building is used for religious purpose when the building is constructed for some other purpose, stringent action should be taken by the Police authorities and the State. Normally the category change of the building from one category to a religious category is to be deprecated. If every

devotee of Hindu, Christian, Muslim, Jews, Parsis, etc. start to construct religious places and prayer halls near their residence, the State will face serious consequence including communal disharmony. In this case the intelligence report and the police report says that if the present conversion of the commercial building to a religious prayer hall is allowed, there is chance for communal disharmony. It is a sensitive issue. Therefore the authorities should not permit such category change and if any such inevitable situation arise, a detailed study considering the facts and circumstances of that particular case is necessary. If there are other similar religious place / prayer hall available nearby, that is a sufficient ground to reject a request for change of category to the religious place and even to construct a new religious place / prayer hall. Each case has to be considered based on its own merit, but with great caution. This Court, while considering the expansion of National Highway, considered the question of even demolishing mosque, temple, etc. for

development in **Balakrishna Pillai and Another v. Union of India and Others [2021 (4) KHC 282]**. Relevant portion of the above case is extracted hereunder:

"20. Our Country is now launched upon an ambitious program of all around economic advancement to make our economy competitive in the world market. To improve the economy, infrastructure available in the country is also to be developed. National Highways are necessary for free transportation of vehicles, goods etc. According to me, one of the need of the Country is National Highway with sufficient width, with straight roads, so that citizens, businessmen, industrialists and people from all walks of life can use the same. In such a situation, if this Court starts to interfere in acquisition proceedings of National Highway on the basis that there is a curve or there is a Mosque or there is a Temple or there is a School, the acquisition proceedings could not be completed. Unless there are mala fides or unless there is patent illegality, the acquisition proceedings cannot be interfered with by the writ court, invoking the powers under Article 226 of the Constitution of India. The vehement argument of the petitioners is that, if the proposed alignment is accepted, that will destroy two mosques and two temples. Here I remember the famous film song of the veteran poet and the pride of Keralite Sri.Sreekumaran Thambi. A portion of the song is extracted hereunder:

"മണ്ണിലും വിണ്ണിലും തൂണിലും തൂരുമ്പിലും
 ദൈവമിരിക്കുന്നു അവൻ
 കരുണമയനായ് കാവൽ വിളക്കായ് കരളിലിരിക്കുന്നു"

I am not a person to translate these lines. But for this judgment, English translation is almost like this. "The God almighty is omnipresent. He exist on the earth, in the sky, in pillars, and in the rust. He is the embodiment of kindness and dwells in the hearts of all, as a light of kindness." For the development of the National Highway, if the religious institutions are affected, God will forgive us. God will protect the petitioners, the authorities, and also the author of this judgment. God will be with us. "(underline supplied)

20. God is there everywhere. If the Muslim community want to conduct their 'prayers' in the mosque itself, they can go to the nearest mosque instead of constructing a new prayer hall near to their residence. As I observed earlier, in the Modern Era, almost all the citizens have vehicles. Cycles are also available for transportation. Public transportation facility and private transportation facility are also available. Moreover, every step towards the mosque by a Muslim will only increase their status and

will vanish their sins. Therefore the members of the Muslim community can walk to the nearest mosque so that they can achieve higher status and vanish the sins committed by them. For conducting 'prayers' to the Muslim community members, prayer hall is not necessary within 10 metres or 100 meters from their residence. They can travel to the mosque for prayers if they are real devotees and the followers of prophet. Because of the peculiar geographical situation of Kerala, it is known as 'God's own country'. But we are exhausted with religious places and prayer halls and we are not in a position to allow any new religious places and prayer halls except in the rarest of rare cases. While confirming Ext.P13 order passed by the District Collector in this case, I think appropriate directions is to be issued to the Government and Police authorities for taking appropriate steps to see that the citizens are living with happiness alone without any communal disharmony. Let the citizens love each other and follow their religious practices according to their religious beliefs. They

can do it from their house and if their religion insists that, it should be done together in a prayer hall; they can travel to the nearest mosque instead of constructing another mosque or prayer hall in their neighbourhood. This reminds me of the famous lines of the Malayalam song written by the great poet Late Vayalar Ramavarma. A portion of the song and the sum and substance of the meaning of the same in English is extracted hereunder:

“മനുഷ്യൻ മതങ്ങളെ സൃഷ്ടിച്ചു
 മതങ്ങൾ ദൈവങ്ങളെ സൃഷ്ടിച്ചു
 മനുഷ്യനും മതങ്ങളും ദൈവങ്ങളും കൂടി
 മണ്ണു പകുവച്ചു - മനസ്സു പകുവച്ചു
 മനുഷ്യൻ മതങ്ങളെ സൃഷ്ടിച്ചു

ഹിന്ദുവായി മുസൽമാനായി
 ക്രിസ്ത്യാനിയായി
 നമ്മളെ കണ്ടാലറിയാതായി
 ലോകം ഭ്രാന്താലയമായി

“Man created religions
 Religions created God

Man, religions and God together divided
the earth and divided the heart.
We became Hindus, Muslims, Christians
When we meet, we stopped recognizing each other
The earth became a madhouse
-----"

21. If the poet is alive today, I am sure that the poet will rewrite the second line of the above song as... "religion is the creator of religious places", instead of God. As I observed earlier, certain directions are necessary invoking the inherent powers of this court under Article 226 of the Constitution of India to the State Government and to the Police authorities for taking appropriate steps to ensure that there is no communal riot or communal disharmony in the State of Kerala because of the construction of prayer halls and category change of buildings to religious prayer halls.

Therefore, this writ petition is disposed of with following findings and directions:

1. Ext.P13 is confirmed and the prayers in the writ petition are rejected.
2. The Chief Secretary of State of Kerala and the State Police Chief shall issue necessary orders / circulars directing all the officer concerned to see that there is no illegal functioning of any religious places and prayer halls without obtaining permission from the competent authorities as per the Manual of Guidelines and if any such religious place or prayer hall is functioning without necessary permission, to take necessary steps to close down the same forthwith.
3. The Chief Secretary of the State of Kerala will issue necessary orders / circulars directing the competent authority as per the Manual of Guidelines to

consider each application to start religious places and prayer halls strictly and the approval can be granted only in appropriate cases. In the order/circular, it should be clearly mentioned that the distance to the nearest similar religious place / prayer hall is one of the criteria while considering the application for religious places and prayer halls.

4. The Chief Secretary of the State of Kerala will issue a separate circular / order prohibiting change of category of a building to a religious place / prayer hall except in inevitable circumstances and in the rarest of rare case, and that also only after getting report from the Police and Intelligence ascertaining the ground realities of that particular place.

5. The registry will forward a copy of this judgment to the Chief secretary of the state of Kerala and the State Police Chief for issuing appropriate consequential orders.

Sd/-

**P.V.KUNHIKRISHNAN
JUDGE**

das
DM
SKS
JV

APPENDIX OF WP(C) 792/2022

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE REGISTRATION CERTIFICATE DATED 4.4.2018.
- Exhibit P2 TRUE COPY OF THE BYE LAW OF THE SOCIETY.
- Exhibit P3 TRUE COPY OF THE DEED NO.1718/1/2018 OF NILAMBUR SUB REGISTRAR OFFICE.
- Exhibit P4 TRUE COPY OF THE BUILDING PERMIT.
- Exhibit P5 TRUE COPY OF THE INTERIM ORDER DATED 8.6.2017 IN WP(C) NO.18986/2017.
- Exhibit P6 TRUE COPY OF THE JUDGMENT DATED 9.1.2018 IN WP(C) NO.39075/2017.
- Exhibit P7 TRUE COPY OF THE AFFIDAVIT DATED 7.3.2018 SWORN IN BY THE ERSTWHILE OWNERS OF THE BUILDING.
- Exhibit P8 TRUE COPY OF THE RECEIPT FOR PROPERTY TAX DATED 12.3.2018.
- Exhibit P9 TRUE COPY OF THE REQUEST DATED 23.6.2018 SUBMITTED BEFORE THE DISTRICT COLLECTOR.
- Exhibit P10 TRUE COPY OF THE APPLICATION FOR CHANGE OF OCCUPANCY SUBMITTED BEFORE THE PANCHAYAT ON 21.7.2018 TOGETHER WITH THE CERTIFICATE OF THE REGISTERED ARCHITECT.
- Exhibit P11 TRUE COPY OF THE LETTER FORWARDED BY THE 4TH RESPONDENT TO THE 1ST RESPONDENT.
- Exhibit P12 TRUE COPY OF THE JUDGMENT DATED 17.9.2020 IN

WP(C) NO.31065/2018.

Exhibit P13 TRUE COPY OF THE ORDER DATED 10.8.2021
PASSED BY THE DISTRICT COLLECTOR.

Exhibit P14 TRUE COPY OF THE INTELLIGENCE REPORT OF THE
DISTRICT POLICE CHIEF DATED 4.12.2020
OBTAINED BY THE PETITIONER UNDER RTI ACT.

RESPONDENT EXHIBITS

Exhibit R4(a) TRUE COPY OF THE LIST OF MOSQUES IN THE 5-KM
RADIUS OF THE PETITIONER'S COMMERCIAL
BUILDING AS PER THE SANCHAYA ASSESSMENT
SOFTWARE.

TRUE COPY

P.A.TO JUDGE