

**GOVERNMENT OF KERALA****Abstract**

WP(C) No. 45333/2024 filed by Sri.P.V.Hamza and others before the Hon'ble High Court of Kerala - Judgment - Complied with - Orders issued.

LOCAL SELF GOVERNMENT (RB) DEPARTMENT

G.O.(Rt)No.1409/2025/LSGD Dated, Thiruvananthapuram, 06-06-2025

Read 1. Representation submitted by the President, Ottapalam Bus Stand Shopping Complex Merchant Association dated 10/12/2024.

2. Judgment of Hon'ble High Court dated 28/01/2025 in WP(C) No.45333/2024.

3. Representation dated 23.04.2025 submitted by Sri. Hamza P.V and others.

4. Letter No.LSGD/PD/9709/2025-LL5 dated 22/04/2025 from the Principal Director, Local Self Government Department.

5. Letter No.285881/2025 dated 03/05/2025 from the Secretary Ottappalam Municipality.

ORDER

Sri. P.V. Hamza and others filed WP(C) No. 45333/2024 before the Hon'ble High Court of Kerala, challenging the resolution taken by the 2nd respondent Municipality on 07.08.2024 to demolish the Ottappalam Bus Stand Shopping Complex expressing safety concerns.

2) As per the judgment read as 2nd paper above, the Hon'ble High Court disposed of WP(C) 45333/2024, directing 1st respondent, State of Kerala, to consider and pass orders on Ex.P6 representation, read as 1st paper above, after hearing the petitioners and the respondent Municipality within a period of two months from the date of receipt of a copy of the Judgment. Accordingly the petitioners and the respondent Municipality were heard on 23/04/2025.

3) During the hearing the petitioners submitted that,

- i. The petitioners are the occupants of shop rooms in Ottapalam Bus Stand shopping complex. The building was constructed in the year 1986. The building still stands strong and sound without any structural instability. Needless to say that the building has been ignored by the Ottapalam Municipality and periodical maintenance was never done for this building. On account of the ignorance of the Municipality there are certain minor wear and tear, that has to be repaired, in the building. Except for a few repairing works in some points, the building is structurally safe and strong.
- ii. The Ottapalam Municipal Council after obtaining a report from an Assistant Professor attached to the Thrissur Government Engineering College has blindly accepted the report stating that the shopping complex building is in a dangerous situation. The Ottapalam Municipal Council has not made any assessment of the structural safety of the building. No notice was issued to the petitioners who are the occupiers of the bus stand shopping complex with regard to the so called inspection done by the Assistant Professor of the Engineering College, Thrissur. The inspection was conducted on 07.01.2024 at 5.00 pm which is a Sunday and the inspection was over within one hour as informed by the local people.
- iii. As far as the demolition of a building is concerned, the expert authority of the Engineering College must conduct necessary tests which are prescribed in the Non-Destructive Testing (NDT) Techniques as per the prescribed code of civil engineering. Admittedly the same is not done in this case. Had the test been done the concrete core testing, testing of steel with ultrasonic testing machines excavating to the sides of the concrete columns to ascertain bearing capacity of the soil and similar tests would also have been done as a part of the said process. The above procedure has not been followed.
- iv. The impugned decision No. 22 dated 07.08.2024 passed by the Ottapalam Municipal Council is in violation of Section 229B of the Kerala Municipality Act 1994. Section 229B of the Kerala Municipality Act 1994 deals with the exercise of statutory functions of the officials and it is clearly mandated in the said section that where any officer of

the Municipality is vested with any statutory powers or functions to be independently and solely exercised by such officer, the Council, the chairperson, the chairman of the standing committee or any councilor shall not interfere with or influence in the exercise of such powers or functions by such officer. Section 411 is clear that the authority to initiate the proceedings under section 411 is none other than the Secretary of the Municipality and here the Municipal Council as per the impugned decision interfered with the statutory functions of the Secretary and took the impugned decision which itself is illegal and in violation of the principles of the natural justice as well as the violation of the Section 229B of Kerala Municipality Act 1994.

- v. Section 57 of Kerala Municipality Act 1994 make it clear that if a decision is taken by the Municipal Council in excess or abuse of the powers conferred by the Municipality Act or any other law, the Government can interfere by cancelling the said decision either suo moto or on a petition received from a citizen.

4) The Secretary, Ottappalam Municipality submitted that

- i. The petition preferred by Sri. P.V. Hamza & others under Section 57 of the Act is not maintainable under law and on the facts and circumstances of the case, it is to be noted that the power of Government under Section 57 of the Municipality Act to cancel or amend a resolution is limited to only 4 circumstances mentioned under (a) to (d) of S.57(1).
 - a. has not been legally passed or taken; or
 - b. is in excess or abuse of the powers conferred by this Act or any other law; or
 - c. is likely to endanger human life, health safety, communal harmony or public peace, or is likely to lead to a riot or quarrel; or
 - d. has violated the guidelines issued by the Government in the matter of implementation of plans, schemes or programmes or the conditions of grants.

None of the above four grounds exist in this case.

- ii. Section 57(3) forbids Government from entertaining any petition for cancellation or amendment of any resolution or decision of the council

if an alternate redressal is available to the petitioner through the Tribunal under Section 509. In the instant case the action is taken under Section 411 of the Act against the building which is in a ruinous state and dangerous to the passers-by and to the occupiers of neighbouring structures, so as to prevent any danger therefrom. Moreover action under Section 411 of the Act is appealable before the Tribunal under S.509(7). These aspects have been specifically considered by the Hon'ble High Court in its judgment in W.P.(C).No.45333/2024.

- iii. The Municipality took the decision to demolish the building as the building became dangerous to the public and its occupiers due to its ruinous condition. The decision was based on the report of an expert. The report was furnished by the Thrissur Engineering College on the application of the Municipality. The contention of the petitioner that the report is without any inspection is utter falsehood. Newspaper report regarding spalling of concrete causing threat to general public is also part of record in W.P.(C) No.45333/2024. The technical expert has inspected the building and reported that the building is located in a crowded area and is threat to human life due to the spalling of concrete.
- iv. The contention that the building was constructed in 1986 is without any basis. The building was constructed much prior to 1986 by the Panchayat and was handed over to the Municipality on its formation. The age of the building has been reported to be more than 50 years by the technical expert. The contention that the building is strong and sound without any structural instability is contrary to facts, false and misleading.
- v. The attempt of the occupiers is to continue the occupation of the building without payment of license fee to the maximum possible extent. One among the occupier, Mr. Safeer M owes more than 20 lakh to the Municipality towards license fee. The occupation of the rooms in the building is unauthorized and the occupiers are liable to be evicted. The petitioners have no right to risk the life of others and the Municipality is bound to safeguard the life of the general public. The Municipality is doing its duty in compliance with all legal formalities and procedure contemplated under the law; which needs no

interference. It is respectfully submitted that the above petition may be dismissed enabling the Municipality to proceed with the demolition of the building before the coming monsoon.

5) Government have examined the matter in detail and found that the request of the petitioners cannot be considered as the building is in a ruinous state and dangerous to the public, passers-by and the occupiers, warranting demolition to avoid untoward incident of collapse of the building resulting in casualty. The shopping complex building is an old one whose safety is under threat. The technical expert has given report after going through the case and the engineers of the Municipality have also vouched for the instability and hence the building need to be demolished. Accordingly Ex.P6 representation filed by the petitioners is rejected.

6) The judgment of the Hon'ble High Court dated 28.01.2025 in WP(C) No.45333/2024 is thus complied herewith.

(By order of the Governor)

JAYANTHI B S

DEPUTY SECRETARY

To

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The Principal Director, Local Self Government Department,
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The Secretary, Ottappalam Municipality

The Director, Information Kerala Mission (for publishing in the website of
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Information Officer (Web & New Media), Information and Public Relations
Department

Stock file/Office copy

Forwarded /By order

Signed by

Rajesh N

Section Officer

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