
(1999) 10 KL CK 0077
In the High Court Of Kerala
Case No : O.P. No. 15586 of 1993

Abdul Gafoor

APPELLANT

Vs

Badagara Municipality

RESPONDENT

Date of Decision : 25-10-1999

Acts Referred:

Citation : (1999) 2 KLJ 1090

Hon'ble Judges : D. Sreedevi, J

Bench : Single Bench

Advocate : P.G. Rajagopalan, for the Appellant; P.C. Sasidharan, for the Respondent

Judgement

Hon''ble Mrs. Justice D. Sreedevi

1. Petitioner is a licensee of a retail petrol outlet of Hindustan Petroleum Corporation Ltd., Bangalore. The outlet was situated in R.S. 230/8A of Badagara Village. A portion of the land was acquired under the Land Acquisition Act for Badagara By-pass Road, with the result that the retail outlet building was directed to be shifted to a little backwards. The Assistant Executive Engineer, National High way, Calicut granted permission to the petitioner to shift the petrol outlet office building to the rear side of the plot. Petitioner submitted an application to the Badagara Municipality to issue a building permit for the construction of office building of the petrol outlet. The permission was sought after demolishing the existing building pursuant to the acquisition and also the direction of the National High way authorities. The National Highway Division accorded sanction for shifting the office building to the site where the construction was to take place. The plan was also approved by the National Highway Department. The application filed u/s 239 of the Municipalities Act was registered by the Municipality. He was informed that his application has been forwarded to the Town Planning section of the Municipality. u/s 241 of the Act,--

Within fourteen days after the receipt of any application made under S. 239 for

permission to construct or reconstruct a hut or of any information or plan or further information or fresh plan required under rules or bye-laws, the Commissioner shall by written order either grant such permission or refuse on one or more of the grounds mentioned in S. 243 to grant it.

The Commissioner failed to comply with the provisions of Section 241. Then he made a written request u/s 233 of the Act. u/s 233, if the Commissioner does not give permission, it has to be presumed that the permission is granted. After one month from the date of notice of the Municipality the petitioner may proceed to execute the work of construction without contravening the provisions of the Municipalities Act. Construction was completed and he applied for registering the building under Ext. P2. Instead of granting permission the Municipality issued Ex. P3 notice directing the petitioner to demolish the construction already done on the ground that it is unauthorised. It has been mentioned therein that the petitioner has made the construction without getting licence from the Executive Authority. Petitioner has filed this O.P. for a writ of certiorari quashing Ext. P3 and to direct the respondents not to take any steps pursuant to Ext. P3 notice. The respondent-Commissioner of Badagara Municipality has not filed any counter. Learned counsel appearing for the petitioner submitted that when an application is made to the Commissioner for getting permission to start construction and if permission is not granted within a reasonable time, it has to be presumed or found that permission has been granted as u/s 233 of the Act.

2. Admittedly, the application was filed in 1992. He has effected construction only in 1993. Therefore, it has to be presumed that permission has been granted and as such Ext. P3 notice is not legal. Hence it is liable to be quashed.

In the result, this O.P. is allowed and Ext. P3 is quashed. The respondents are directed not to act upon Ext. P3 any further. No costs.