
(2014) 10 KL CK 0099
In the High Court Of Kerala
Case No : Writ Appeal No. 1160 of 2014

Changanacherry Municipality

APPELLANT

Vs

C.S. Bijo

RESPONDENT

Date of Decision : 28-10-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 300A
Kerala Municipalities Act, 1994 — Section 383A
Land Acquisition Act, 1894 — Section 14, 4, 4(1), 6

Citation : (2014) 10 KL CK 0099

Hon'ble Judges : Ashok Bhushan, J; A.M. Shaffique, J

Bench : Division Bench

Advocate : M.P. Ashok Kumar, Advocate for the Appellant; K. Gopalakrishna Kurup, Senior Advocate, K. Suresh and Deepthi S. Menon, Advocate for the Respondent

Judgement

A.M. Shaffique, J.—This writ appeal is filed by the respondent in the writ petition challenging the judgment dated 03/07/2014 in W.P.C. No. 11335/2014.

2. The writ petition was filed challenging Exts. P5 and P6 orders by which Secretary of the Municipality refused to grant occupancy certificate to the petitioner. Ext. P6 is the resolution of the Council dated 25/03/2014 refusing to interfere with the orders passed by the Secretary.

3. The facts involved in the writ petition would disclose that the writ petitioner obtained Ext. P2 building permit for construction of shop cum office building in a property having an extent of 2.02 acres of land in Re. Sy. No. 16/1 of Vazhappilly East Village. After constructing the building as per permit dated 30/04/2011, petitioner submitted a completion certificate to the Municipality on 26/07/2012. Since no action was taken in the matter, petitioner filed W.P.C. No. 15576/2013. By judgment dated 24/10/2013, this Court directed the Secretary to take necessary follow up action in the application submitted by the petitioner and to pass appropriate orders. It is in pursuance of the said direction that Ext. P5 order

came to be passed. Though an appeal was filed before the Municipal Council, the same was rejected by Ext. P6.

4. No Counter affidavit has been fled by the Municipality in the writ petition. However, a contention was raised that the occupancy certificate was not issued on account of the fact that the area in which building permit has been issued has been included as "park and open space zone" under the Town Planning Scheme which was in existence. The building of the petitioner was included under the said scheme on the basis of the report of the District Town Planner.

5. A contention was raised by the petitioner that such inclusion has been made only in the year 2012 whereas permission for construction was granted in the year 2011. The petitioner also relied upon the judgment of this Court in Nasar Vs. Malappuram Municipality, wherein this Court held that unless the land is acquired for the purpose of Town Planning Scheme, the scheme does not become operational. On this basis, Exts. P5 and P6 were quashed and there was a direction to the 2nd respondent to issue occupancy certificate to the building constructed by the petitioner if it is in conformity with Exts. P1 and P2.

6. Impugning the aforesaid judgment, this appeal has been filed. Heard Sri. M.P. Ashok Kumar, learned counsel appearing for the appellant and Sri. K. Gopalakrishna Kurup, learned senior counsel appearing on behalf of the respondent.

7. The short question involved in this writ appeal is whether the appellant Municipality could refuse to grant occupancy certificate to the petitioner.

8. The main contention urged by the learned counsel for the appellant is with reference to the scheme approved by the Town Planning Authority which is known as the Development plan for Changanassery Municipality. An affidavit has been filed before this court on 23/09/2014 along with I.A. No. 901/2014 inter alia stating that the Development plan for Changanassery was approved by Government as per G.O.(MS) No. 224/84/LA & SWD dated 29/07/1984 and the plan period was 1975-2001. Annexure A1 is the said development plan. Subsequently, development plan was revised and the revised plan which is produced as Annexure A2 was approved by Town Planner on 04/07/2009. Learned counsel submits that in Annexures A1 and A2, the area highlighted in dark green colour is with reference to the property covered by the building permit in question and therefore grant of permit itself was bad. In that view of the matter, it is not open for the Municipality to grant occupancy certificate, as directed by the learned Single Judge.

9. On the other hand, learned counsel for the respondent relies upon the judgment in Nasar's case (supra), in which the learned Single Judge relied upon an earlier Division Bench judgment of this Court in Padmini and Others Vs. State of Kerala and Another and held as under:

"As the law now stands, as laid down in Padmini (supra), the acquisition of land

for the purpose of a Town Planning Scheme has to be done under the L.A. Act. The cardinal date for various matters in relation to that legislation, including the fixation of compensation, is the notification of S. 4(1) of the L.A. Act, which is the date that is relevant even for determination of the compensation. This remains so in spite of the fact that in terms of the Municipality Act, the Government could be obliged to act on the request of the Municipality for the acquisition. Therefore, while the Government would not have any choice in the matter of acquisition for a Municipality and while any proposal of the Municipality to acquire would not depend upon any sanction of the Government, in so far as the owner of the land is concerned, the acquisition affects his interest only from the issuance of notifications and declarations under the L.A. Act and therefore, any attempt to curb the rights of the owners of lands, until the publication of those statutory notifications and declarations, would result in infraction of the right to property under Art. 300A of the Constitution. On the face of the law settled by this Court in *Padmini (Supra)*, any infraction of the principle stated therein would also result in the violation of the equality principle in the matter of enforcement of laws as is contained in Art. 14 of the Constitution. Any demand to create a rider over the title of the owner of the property under the pretext of a Town Planning Scheme which has not become operational by acquisition would, essentially, be oppressive and would not be countenanced on the fact of Art. 14 of the Constitution."

10. Another judgment relied upon is *The Kalpetta Municipality Vs. M. Mohandas, State of Kerala, The Chief Town Planner and District Town Planner*, . In that case, the Division Bench of this Court held that by virtue of Sections 33 and 34 of the Madras Town Planning Act, notification issued under the Madras Town Planning Act is akin to a notification issued under the provisions of the Land Acquisition Act and therefore when the time specified under the Land Acquisition Act is over, the scheme automatically does not become operative. Paragraphs 8 and 9 of the said judgment reads as under:

"8. The scheme of the Land Acquisition Act, 1894 is that whenever the Government is of the opinion that a particular piece of land is required for a public purpose, a notification to that effect is required to be published u/s. 4 and upon the publication of such notification any person having an interest in such property sought to be acquired may raise objections regarding the legality of such acquisition. On receipt of the objections and upon an appropriate consideration of the objections, if the State is still satisfied that the objections are not tenable and the acquisition is necessary for a public purpose may make a declaration contemplated u/s. 6 of the Land Acquisition Act and upon such a declaration after following the procedure prescribed under the latter provisions of the Land Acquisition Act, the possession of the property can be taken by the State. It is well settled that the proceedings for acquisition under the Land Acquisition Act, 1894 commence with the publication of the notification contemplated under Section 4 of the said Act.

9. Sections 33 and 34 of the Madras Town Planning Act read as follows:

33. Modification of Land Acquisition Act.-Immovable property required for the purpose of a town planning scheme shall be deemed to be land needed for a public purpose, within the meaning of the Land Acquisition Act, 1894, (and may be acquired-

(a) under the said Act, or

(b) under the said Act as modified in the manner hereinafter provided in this chapter.)

34. Notification under Section 14 to have effect as declaration under Section 6, Land Acquisition Act.--

[In cases falling under clause (b) of Section 33, a notification under section 14 shall, notwithstanding anything contained in the Land Acquisition Act, 1894, operate] in respect of any land for the purposes of the scheme as a declaration under Section 6 of the said Act, and no further declaration shall be necessary, but it shall not be incumbent on the (State Government), or officer authorised in that behalf to take immediate steps for the acquisition of such land:

Provided that if the land is not acquired within three years from the date of the notification, it shall cease to have effect as a declaration under Section 6 of the Land Acquisition Act, 1894."

11. On a consideration of the respective pleadings, it is useful to refer to Rule 22 of the Kerala Municipality Building Rules, 1999 which reads as under:

"22. Completion certificate, development certificate and occupancy certificate.-

(1) Every owner shall, on completion of the development or redevelopment of land or construction or reconstruction or addition or alteration of building, as per the permit issued to him, submit a completion certificate certified and signed by him, to the Secretary in the form in Appendix E:

Provided that in the case of buildings, other than single residential units up to two floors with total floor area not exceeding 150 sq.meters the completion certificate shall be certified and signed by the owner and registered Architect or Engineer or Supervisor also as in Appendix F.

(2) The Secretary shall, on receipt of the completion certificate and on being satisfied that the development or redevelopment of land has been effected in conformity with the permit given, issue a development certificate in the form in Appendix G, not later than 15 days from the date of receipt of the completion certificate:

Provided that if no such development certificate is received within the said fifteen days, the owner may proceed as if such a development certificate has been duly issued to him.

(3) The Secretary shall, on receipt of the completion certificate and on being

satisfied that the construction or reconstruction or addition or alteration has been carried out in conformity with the permit given, issue occupancy certificate in the form in Appendix H [not later than fifteen days from the date of receipt of the completion certificate]:

Provided that, in case there is deficiency as per the provisions of these Rules, in minimum width of mandatory open space/yard after completion of the construction, other than the distance stipulated as per section 383A of the Kerala Municipality Act, 1994 and rule 117 of these Rules, the Secretary may allow a tolerance upto 5% of the minimum mandatory open space/yard to be provided as per these Rules or twenty five centimeters, whichever is less, for the building constructed:

Provided further that if no such occupancy certificate is issued within the said fifteen days, the owner may proceed as if such occupancy certificate has been duly issued to him.

(4) The owner of a building may if he intends to occupy the building before its completion, apply to the Secretary for that purpose and the Secretary shall, on being satisfied that such occupancy will not endanger life issue occupancy certificate in respect of the completed part."

12. Sub Rule (3) clearly indicates that the Secretary is under obligation to issue occupancy certificate on being satisfied that the construction or reconstruction or addition or alteration has been carried out in conformity with the permit given. Therefore, rule does not permit a further enquiry if the building is constructed in accordance with the building permit granted by the Municipality. No further enquiry is contemplated to indicate that the building permit was wrongly issued. No doubt, we are aware of Rule 16 which permits the Secretary to suspend or revoke the permit if he is satisfied that the permit was issued by mistake or that a patent error has crept in it or that the permit was happened to be issued on misrepresentation of fact or law or that the construction if carried on will be a threat to life or property. Rule 16 reads as under:

"16. Suspension and Revocation of permit.-The Secretary shall suspend or revoke any permit issued under these rules if it is satisfied that the permit was issued by mistake or that a patent error has crept in it or that the permit was happened to be issued on misrepresentation of fact or law or that the construction if carried on will be a threat to life or property:

Provided that before revoking permit, the owner of the permit shall be given sufficient opportunity to explain and the explanation shall be duly considered by the Secretary."

13. But, we are of the view that in the present case, the building has already been constructed, which, according to the writ petitioner, is as per the building permit issued and therefore the Secretary is not entitled to exercise any discretion to deny the grant of occupancy certificate. The contentions urged by

the appellant with reference to the existence of the Town Planning scheme also does not hold good in the light of the judgment of this Court in Nasar's case (supra) as well as the judgment in Kalpetta Municipality (supra).

Under these circumstances, we do not find any ground to interfere with the judgment of the learned Single Judge.

Accordingly, this writ appeal is dismissed.