
(2014) 07 KL CK 0239
In the High Court Of Kerala
Case No : WP(C). No. 11335 of 2014 (N)

C.S. Bijo

APPELLANT

Vs

Changanacherry Municipality

RESPONDENT

Date of Decision : 03-07-2014

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2014) 07 KL CK 0239

Hon'ble Judges : A.V. Ramakrishna Pillai, J

Bench : Single Bench

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

Final Decision : Allowed

Judgement

A.V. Ramakrishna Pillai, J.—Ext.P5 order and Ext.P6 order on appeal preferred by the petitioner before the Municipal Council are under challenge in this writ petition.

2. The petitioner is in possession of 2.02 ares of land in Re.Sy.No.16/1 of Vazhappilly East Village. The petitioner alleges that he wanted to construct a shop cum office building in the aforesaid property. According to him, the building plan for the proposed construction of the building was approved by the Secretary of the respondent Municipality and Ext.P2 building permit dated 30.04.2011 was also issued. He constructed a building in the property as per the approved plan and submitted completion certificate to the respondents on 26.07.2012. As the same was not considered by the respondent Municipality, he approached this Court with WP(C) No.15576/2013, which was disposed of by Ext.P4 judgment dated 24.10.2013 directing the Secretary of the respondent Municipality to take necessary follow-up action on the petitioner's completion certificate after inspecting the construction put up by him. Subsequently, Ext.P5 order was passed rejecting the petitioner's application submitted for occupancy, stating that the building constructed by the petitioner is included in the "Park and Open

Space Zone". Against that, he preferred an appeal before the Municipal Council, which was also dismissed by Ext.P6. It is with this background, the petitioner has come up before this Court.

3. Though sufficient opportunities have been given to the respondent Municipality to file counter, no counter has been filed.

4. However, at the time of hearing, the learned counsel for the respondent Municipality submitted that the petitioner has an alternate remedy by filing an appeal before the Local Self Government. Evidently, and admittedly too, the petitioner has constructed a building only with the sanction and permit issued by the 2nd respondent as evident from Exts.P1 and P2. He submitted completion certificate as early as on 26.07.2012 as evidenced by Ext.P3 receipt issued by the respondent Municipality. After the intervention of this Court, the respondent passed Ext.P5 order against the petitioner, which was appealed against before the Municipal Council. The Municipal Council, by Ext.P6, dismissed the appeal.

5. The learned senior counsel appearing for the petitioner submitted that the respondent failed in their statutory duties as per Chapter 3 Rule 23 Clause (3) of the Kerala Municipality Building Rules, 1999, by refusing to assign building number to the building constructed and to issue occupancy certificate to the petitioner. What can be seen from Ext.P5 is that the occupancy certificate was not issued on the ground that the building constructed by the petitioner is included in the "Park and Open Space Zone" as per the order of the District Town Planner No.C 343/12/K.D.S. It was pointed out that this order of the District Town Planner was issued only in the year 2012, whereas the permission for construction was granted in the year 2011. It is also relevant to note that even after the passing of such an order in 2012 by the District Town Planner, the 2nd respondent has never issued any notice or stop memo to the petitioner as contemplated under Chapter 3 Rule 19 Clause (1) of the Kerala Building Rules.

6. The learned senior counsel would submit that this Court, on various occasions, has held that the law prevailing on the date of sanctioning of permit is to be looked upon and it should not be in accordance with the law, which is prevailing on the date of submission of the application. The learned senior counsel invited my attention also to the decision of this Court in Nasar Vs. Malappuram Municipality, , wherein it was observed that 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 face of Article 14 of the Constitution.

Viewed in that profile, the petitioner is entitled to get the relief as prayed for, especially, because of the fact that he has expended huge amounts for the purchase of land and for the construction of the building therein and he cannot apply for electric and water connection without occupancy certificate and without getting the building numbered.

Therefore, the writ petition is allowed.

Exts.P5 and P6 are quashed.

The 2nd respondent is directed to issue occupancy certificate to the building constructed by the petitioner in conformity with Exts.P1 and P2.

This exercise shall be completed within a period of one month from the date of receipt of a copy of this judgment.