
(2008) 06 KL CK 0049

In the High Court Of Kerala

Case No : Writ Petition (C) No. 38047 of 2007

Heera Constructions Pvt. Ltd.

APPELLANT

Vs

The Corpn. of Thiruvananthapuram and Another

RESPONDENT

Date of Decision : 27-06-2008

Acts Referred:

Kerala Municipalities Act, 1960 — Section 531

Citation : (2008) 3 ILR (Ker) 269 : (2008) 2 KLJ 863 : (2008) 3 KLT 553

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : Anil Thomas and K.V. Reshmi, for the Appellant; N. Nandakumara Menon and P.K. Manojkumar, for the Respondent

Judgement

Antony Dominic, J.—The challenge in this writ petition is against Ext. P21, an order passed by the Secretary of the respondent Corporation, cancelling Ext. P1 building permit issued to the petitioner. The petitioner company is engaged in real estate development and construction of multi storied apartments. The petitioner claims to have surrendered a portion of its land for road widening purposes and on that basis was granted the benefit of certain exemptions from the Kerala Municipality Building Rules, 1999 (hereinafter referred to as Rules for short). It is stated that it was on that basis that an application was made and Ext. P1 building permit was granted. On the strength of Ext. P1 building permit, they have constructed a residential apartment complex having 14 floors including the basement and ground floor.

2. According to the petitioner, on completion of construction by April 2006, they had obtained Ext. P2 NOC from the Airports Authority of India and Ext. P2(a) from the Fire and Rescue Services Headquarters.

3. The petitioner contends that after they completed construction, completion report was also submitted to the respondent Corporation. Later final NOC was also issued by the Fire and Rescue Services Headquarters and the petitioner was awaiting to be issued an occupancy certificate in terms of Rule 22 of the Rules.

The petitioner submits that in terms of the proviso to Rule 22(c) of the Rules, as the respondent did not issue the occupancy certificate within 15 days, they were entitled to proceed as if an occupancy certificate has been duly issued. On that basis, the flats were allotted to the purchasers who have occupied their respective flats.

4. Meanwhile, for obtaining water connection and power connection, petitioner needed an occupancy certificate and submitted Ext. P3 representation to the respondents on 11-8-2006 requesting them to issue the same. On receipt of Ext. P3, petitioner was issued Ext. P4 reply pointing out certain defects and seeking clarifications which was replied by Ext. P5 intimating that the defects mentioned in Ext. P4 were all rectified. Petitioner submits that even thereafter, there was no response to Ext. P3 application and therefore they submitted Ext. P6 reminder.

5. While matters stood thus, the respondents issued Ext. P7 notice calling upon the petitioner to show cause why Ext. P1 building permit shall not be cancelled following the Government Order dated 13-12-2006. Thereupon the petitioner submitted Ext. P8 reply and on its receipt, by issuing Ext. P9 notice, they were required to appear for a personal hearing on 24-3-2007. Accordingly they had appeared for the hearing and submitted Ext. P10 representation against the proposal to cancel Ext. P1 building permit. Since final orders were not passed, the petitioner approached this court by filing WP(C) 12669/2007 in which an interim order was passed directing the Corporation to pass final orders pursuant to Ext. P7 show cause notice. In pursuance to the said interim direction of this Court, the Corporation passed Ext. P11 order cancelling Ext. P1 building permit. It is submitted that on receipt of Ext. P11, incorporating a challenge to the said order. WP(C) 12669/07 was amended.

6. The writ petition was finally heard and was disposed of by Ext. P20 judgment dated 22-10-2007. In the aforesaid judgment this court held as follows:-

I would think that Rule 16 vests a power with the statutory functionary namely the Secretary. It is the Secretary who has to take a decision independently by applying his mind to the facts of the case as to whether in the facts of the case cancellation of the permit is warranted for the reason that the Committee which gave the permit under Rule 85 of the Building Rules was bereft of power for the reason that there is no quorum construction was completed and according to the petitioners all the apartments were sold out to third parties and thus there is supervening equity also. At such stage only for the reasons that there is no quorum in the committee in terms of Rule 85(2) the Secretary should have applied his mind independently and taken a decision as to whether it requires action under Rule 16 to cancel the permit. It is to be noted that petitioner has a case that petitioner having no control over the meeting of the committee and for the reason that Secretary did not participate to visit them with the consequences under Rule 16 would be totally unjustifiable.

On the aforesaid basis, Ext. P11 order was quashed and the respondent was

directed to reconsider the matter in the light of the observations in the judgment. Petitioner submits that accordingly the matter was reconsidered and Ext. P21 order has been issued, informing the petitioner that steps will be taken for cancelling Ext. P1 building permit and it is challenging Ext. P21 order this writ petition has been filed.

7. A reading of Ext. P21 order shows that three reasons have been assigned by the respondent to pass such an order; the first one is that Ext. P1 permit was granted by a special committee which did not have proper quorum. The second reason is that the building in question is situated in an area which is classified as a heritage zone and therefore construction can be undertaken only after obtaining an order of exemption from the Arts and Heritage Commission. The third reason stated is that the land in question comes within an area covered by the Detailed Town Planning Scheme for Museum - kowdiar Avenue.

8. Learned Counsel for the petitioner mainly contends that the proposed cancellation of Ext. P1 is absolutely arbitrary. It is stated that they have acted on Ext. P1, completed construction of a 14 storied building and that even in Ext. P21 there is no allegation involving the petitioner warranting cancellation of the building permit. According to them, therefore, it is not open to the Corporation to now turn around and contend that Ext. P2 is invalid and cancel the building permit leading to the demolition of a building having 14 floors and fully occupied by residents.

9. On the other hand, the Corporation has a different story to tell. Learned Senior Counsel for the Corporation would submit that the very grant of permit was irregular. According to the Senior Counsel, the Secretary of the Corporation, who was the Convener of the Special Committee constituted as per Rule 85 of the Rules, which decided to grant Ext. P1 permit, was absent in the meeting and hence the Committee did not have quorum. According to him, the members of the committee were not properly informed of the statutory and other requirements which ought to have been adverted to before the said decision was taken. It is his contention that the pendency of the DTP Scheme and the absence of exemption from the Arts and Heritage Commission were also not taken note of by the Special Committee. It is submitted that on these grounds Ext. P1 building permit was irregularly granted and deserves to be cancelled.

10. Yet another contention raised by the learned Senior Counsel is that the writ petition itself is not maintainable for the reason that against Ext. P21 order, an appeal under Sec. 509 of the Act lies to the Tribunal for Local Self Government Institutions. It is also contended that in the construction that has been completed by the petitioner, they have committed several violations of the Building Rules and for that reason also, the construction is illegal calling for action against the petitioner.

11. I have considered the submissions made by both sides. At the outset I should state that the reasons stated in Ext. P21, except the vague allegation of violation

of Rules, are not attributable to the petitioner. A reading of Ext. P21 order shows that the Secretary who is the Convener of the Special Committee was absent in the meeting which decided to grant building permit and it is on that basis it is contended that the committee did not have the quorum. Defect in the constitution of the Special Committee which decided to grant the building permit cannot be a ground for the Corporation to raise a plea that the decision of the Special Committee is invalid for that reason. A citizen is entitled to presume that the internal management of the Corporation has been regular and is being carried on in accordance with the Act, Rules and Bye-laws of the Corporation. Persons who bona fide deal with the Corporation in the manner authorised by the Act are not affected by any irregularity in the internal management of the Corporation of which they have no notice. In my view the object of Section 531 of the Kerala Municipality Act, is to extend such protection to those who deal with the Corporation, although this protection does not extend to the members of the Committee as such. In other words, the members of the Committee or the Corporation cannot avoid a decision taken by the Committee on the ground that the Committee was irregularly constituted or that it did not have quorum. In this case, there is nothing to indicate that the petitioner was not dealing with the Corporation in a bona fide manner. Therefore, I cannot accept the contention of the Corporation that the decision taken by the Special Committee to grant building permit, is invalid.

12. It is stated that the area falls within the heritage zone and in the absence of an exemption order from the Acts and Heritage Commission, Ext. P1 building permit could not have been granted. Even if this contention is taken to be true, the negligence of the officers of the Corporation alone can be the reason for the issue of the building permit. If that be so, the question is whether Ext. P1 building permit can be cancelled for that reason. In my view, absence of an exemption order cannot be a reason to cancel Ext. P1 building permit for more reasons than one. Ext. P1 building permit was issued as early as on 30-6-2004. On the strength of Ext. P1, by April 2006, petitioner completed construction of a 14 storied building. It was much later that on 31-1-2007 the first notice was issued and Ext. P21 was issued only on 10-12-2007. In the meantime, since the building has been constructed and huge investment has been made, in my view it is not open for the Corporation now to contend that Ext. P1 was irregularly issued for want of an order of exemption. On the other hand, if relevant facts were not supplied to the Special Committee at the time when it decided to grant Ext. P1, the Corporation should have identified its officers or the members of the Committee responsible for such serious lapses and proceeded against them. It is not their case that any such action is even contemplated by it.

13. It is stated in Ext. P21 order that the Committee which granted Ext. P1 was not informed of the ineligibility of the petitioner to be granted Ext. P1. This statement in Ext. P21 is contradicted by the contents of Ext. P12, a report sent by none other than the Secretary of the Corporation to the Secretary to Government Local Self Government Department. In that report the fact that the

site comes within the Heritage Zone has been dealt with and it is stated that this plot is not included in the heritage zone. That apart, it is also stated that in the adjacent lands, huge constructions of similar nature have come up. Therefore, it is not correct to conclude that the authorities were not aware or informed of the factual situation at the time when they considered the petitioner's application or granted Ext. P1 permit, but had proceeded on the basis that the area is outside the heritage zone. Further, the applicability of Heritage Zone was not a contention raised by the Corporation in its counter affidavit in WP(C) No. 12669/2007 filed by the petitioner challenging Ext. P11 order.

14. Similar is the contention relying on the Town Planning Scheme for Museum - Kowdiar Avenue. Here again, if at all this is factually correct, that ought to have been taken note of by the Special Committee at the time when building permit was decided to be granted and this cannot be a reason for cancelling the permit at this distance of time. As far as the plea that the petitioner has violated the Building Rules now urged by the Corporation is concerned, this again was not an allegation against the petitioner when WP(C) 12669/2007 was considered and this aspect has been specifically noticed by this Court in Ext. P20 judgment. Further, apart from the vague plea, no materials are pleaded or placed in support of this contention. Therefore, the Corporation cannot be permitted to urge this contention against the petitioner at this late stage. In my view, for all the aforesaid reasons there is absolutely no justification for cancelling Ext. P1 building permit at this late stage. The plea of the learned Senior Counsel that the writ petition is not maintainable for the reason that the petitioner has an alternate remedy of appeal also does not merit acceptance. This writ petition was admitted by this Court on 19-12-2007 and an interim order was also passed and that order has been extended from time to time. The parties have filed their pleadings and the matter was also argued at length on merits. That apart, I also do not find any disputed question of fact incapable of being resolved in this proceedings. For these reasons, I do not think that at this late stage this Court will be justified in relegating the petitioner to pursue the statutory remedy of appeal.

In the result, Ext. P21 will stand quashed and the writ petition is disposed of directing that occupancy certificate will be issued to the petitioner. No costs.