
(2015) 11 KL CK 0095
In the High Court Of Kerala
Case No : WP(C) No. 21940 of 2015 (N)

Jomon

APPELLANT

Vs

Kaiparambu Grama Panchayat and Others

RESPONDENT

Date of Decision : 11-11-2015

Acts Referred:

Citation : (2015) 11 KL CK 0095

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

Bench : Single Bench

Advocate : C.A. Chacko, C.M. Charisma and Megha K. Xavier, Advocates, for the Appellant; T.M. Chandran, S.C., for the Respondent

Final Decision : Allowed

Judgement

A.V. Ramakrishna Pillai, J.—The petitioner has approached this Court aggrieved by the cancellation of a building permit already issued in his name for the construction of a residential building without insisting for development permit.

2. The petitioner purchased 2.65 Ares of dry land for the construction of the residential building. The second respondent issued Ext. P2 building permit. Based on Ext. P2, he started construction and half of the construction is already over.

3. The petitioner points out that when the second respondent issued Ext. P3 show cause notice, he submitted Ext. P4 reply requesting to drop the proceedings and permit him to continue with the construction. In spite of Ext. P4 reply, no action was taken by the respondents to drop the proceedings. When he approached this Court challenging the proceedings initiated to cancel Ext. P2 permit, this Court vide Ext. P6 judgment directed the second respondent to consider Ext. P4 explanation given to Ext. P3 show cause notice, keeping in view Ext. P5 judgment in WPC No. 18870/2014 after affording the petitioner an opportunity of hearing and pass appropriate orders.

4. According to the petitioner, since the second respondent failed to comply with the direction in Ext. P6 in time, the petitioner filed CCC No. 936/2015 before this

Court and during the pendency of the said case on 1.7.2015 the second respondent communicated Ext. P7 order to the petitioner allegedly issued in compliance with Ext. P6 judgment. Hence, the contempt case was closed on 10.7.2015 with liberty to challenge Ext. P7. In Ext. P7, it is stated that the petitioner could not state any reasons for not submitting the development permit and hence, Ext. P8 order cancelling the building permit would be in force and they would permit him to proceed with the construction only on production of development permit. In Ext. P8, the reason stated for cancellation of building permit is that the petitioner could not show any reason in Ext. P4 not to cancel the permit.

5. According to the petitioner, Ext. P7 order is not in compliance with Ext. P6 judgment. In Ext. P6 judgment, this Court has specifically directed the second respondent to consider Ext. P4 explanation keeping in view of Ext. P5 judgment. But it is evident from Ext. P7 that the second respondent has not even mentioned about Ext. P5 judgment in Ext. P7; it is alleged. It is further alleged that the second respondent is in no way justified in cancelling the permit vide Ext. P8 order. In Ext. P5 judgment, this Court observed that development permit is required only if the land is developed in accordance with rules and only if permission has been obtained to make such development that such document could be insisted upon; so alleges the petitioner.

6. According to the petitioner, the respondents have no case that the land of the petitioner is included in data bank. It was pointed out that vide Ext. P9, in a similar matter, this Court directed the Panchayat to consider the application for building permit without insisting on any layout or development plan approval and to issue the building permit if the application is otherwise in order, in accordance with law. The petitioner further alleges that Exts. P7 and P8 orders issued by the second respondent are illegal and arbitrary; so submitted the learned counsel for the petitioner. It is further alleged that the respondents ought to have permitted the petitioner to proceed with the construction of his house as per Ext. P2 building permit without insisting for production of development permit. According to the petitioner, further delay in permitting him to proceed with the construction would cause irreparable injury, loss and hardship to the petitioner. It is with this background, the petitioner has come up before this Court.

7. In the counter affidavit filed by respondents, it is contended that the enquiry and inspection of the property in question conducted by the Secretary revealed that the property where the petitioner is constructing the building is the one undergone plot sub division without obtaining development permit from the respondent panchayat. According to them, Rule 5 of the Kerala Panchayat Building Rules, 2011 clearly mandates that development permit from the Grama Panchayat should be taken before plot sub division and this is applicable even in the case of small plots. It was further contended that in the application submitted by the petitioner, he has suppressed this fact and the respondent realised the fact only on inspection of the property. It is further contended that

Ext. P7 order is in compliance with Ext. P6 judgment. The respondent has also produced Ext. R3(a) which is the copy of the circular dated 27.11.2013 issued by the Government explaining the details and requirements to be complied with while purchasing plots, flats etc.

8. Arguments have been heard.

9. Exts. P7 and P8 orders are issued cancelling the building permit already issued to the petitioners on the ground that it was obtained without obtaining development permit. The petitioner purchased 2.65 Ares of dry land for construction of a residential building and thereafter he applied for a building permit before the second respondent which was issued as per Ext. P2. On the basis of Ext. P2 he started construction and major portion of the construction is over. It is at that point of time, the respondents have cancelled the building permit on the ground that on inspection it was revealed that the plot was developed without a previous permission from the respondent Panchayat. The respondents cannot make such a contention mainly for two reasons. Firstly, it has to be noted that it was the duty of the respondent Panchayat to inspect the property before the building permit was granted. Based on the permit issued, the petitioner altered his position and has started the construction. Therefore, the principle of promissory estoppel stares against the second respondent.

10. It is relevant to note that Rule-5 of the Kerala Municipality Building Rules which deals with the application for development permit. As per Rule, every persons other than a Central or State Government Department who intends to develop or redevelop any parcel of land shall apply in writing to the secretary for issue of development permit. Evidently, this relates to cases in which large plots are intended to be developed for the purpose of construction.

11. Here, in this case, the petitioner has no idea to develop the land for any purpose. However, he only constructed a residential building in the property on the basis of a valid permit. No development activity is necessary for the purpose of constructing a residential building. Here, the petitioner purchased a plot of land from the person who was holding a larger extent. Therefore, the development permit cannot be insisted upon in this case for continuance of the construction. Evidently and admittedly too, the construction undertaken by the petitioner is in a small extent of land. The respondent has no case that the petitioner's land was a part of agricultural land. The title deed relied on by the petitioner would indicate that the garden lands were sub divided into small plots for sale to different individuals. Under such circumstances, this Court is of the view that the impugned order cancelling the permit already granted is quite unsustainable in the eye of law.

In the result, this writ petition is allowed. Exts. P7 and P8 are quashed. The petitioner is permitted to proceed with the construction in the light of a building permit without obtaining development permit as insisted on by the respondents.