
(2013) 04 KL CK 0089
In the High Court Of Kerala
Case No : W.P.C. No. 31832 of 2011

Jose

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 08-04-2013

Acts Referred:

Kerala Municipalities Act, 1994 — Section 2(1)(f), 7

Citation : (2013) 2 KLT 616

Hon'ble Judges : A.M. Shaffique, J

Bench : Single Bench

Advocate : Renjith Thampan and V.M. Krishnakumar, for the Appellant; K.K. Chandran Pillai, A.S. Sajush Paul and K.T. Lilly, Government Pleader, for the Respondent

Judgement

A.M. Shaffique, J.—The petitioner had constructed a building in a Panchayat area at a time when Building Rules were not applicable to the Panchayat. After the Building Rules were made applicable, petitioner wanted to construct the first floor and accordingly he submitted Ext. P1 building plan and Ext. P2 is the building permit issued. According to the petitioner, building has already been constructed. In the meantime, the Panchayat was merged with the Municipality. The Municipality has issued a notice Ext. P3 under S. 406(1) of the Kerala Municipalities Act (hereinafter referred as the Act) calling upon the petitioner to demolish the structure on account of violation of the Building Rules as there is no proper set back in regard to the open area as provided under R. 24(4) of the Kerala Municipality Building Rules (hereinafter referred as the Rules). Ext. P5 is the final order by which the petitioner is called upon to demolish the said structure. The petitioner preferred an appeal before the Tribunal for Local Self Government Institutions. Ext. P6 is the order of the Tribunal. Having regard to the facts and circumstances involved in the matter, the Tribunal found that the permit was not in accordance with the Building Rules prescribed and the Municipality has the jurisdiction to direct demolition of the structure. However, the Tribunal directed the petitioner to approach the Municipality for regularisation

of the construction as per the scheme applicable.

2. The learned senior counsel appearing for the petitioner contended that there is no violation of the Rules as such and the reasons stated for not taking action in terms of S. 406 is bad in law. Further it is contended that R. 24(4) of the Rules does not apply in respect of the construction of the existing ground floor building as the ground floor building was in existence even prior to the commencement of the Rules. In fact R. 24(4) reads as under:

Every building upto 10 metres in height shall have a minimum rear yard of 2 metres depth.

3. There are four provisos to the above Rules which provides for certain adjustments on certain conditions which we are not concerned with. Even if the 1st and 2nd provisos are made applicable the minimum depth shall be one metre. It is stated in Ext. P3 that the first floor is not constructed in accordance with the permit conditions since on the northern side of the existing building the set back is only 0.50, the front set back is 2.50. As per the permissible distance of depth it ought to have been 1.20 metres and 3.04 metres respectively. The Tribunal has considered this matter in detail and has formed an opinion that the appellant has admitted about the violations committed by him and that there is slight deviation from the approved plan. According to the petitioner, he was entitled to construct the first floor covering the entire upper portion of the ground floor. The Tribunal found that the appellant could have constructed only on the basis of the approved plan whereas he has encroached into areas which was left as vacant in the approved plan and had made construction. The Tribunal therefore proceeded on the basis that there is nothing illegal on the part of the Municipality in taking proceedings under S. 406(1) of the Act.

4. In regard to the application of R. 24(4), no doubt when the Rules were not applicable to the Panchayat it was open for the petitioner to construct any building and get it numbered by the Panchayat. Once the Rules are made applicable it cannot be stated that the Rule need not be followed. When an additional construction is being made and a plan is submitted for an additional construction, the same should be in compliance with the provisions of the Rule.

5. Building is defined under R. 2(1)(1) as under:

2(1)(1): "building" means any structure for whatsoever purpose and of whatsoever material constructed and every part thereof whether used for human habitation or not and includes foundations, plinth, walls, floors, roofs, chimneys, plumbing and building services, verandah, balcony, cornice or projections, part of a building or anything affixed thereto or any wall enclosing or intended to enclose any land or space and signs and outdoor display structures;

Alteration is defined under S. 2(1)(f) as under:

2(1)(f): "alteration" means a structural change, such as an addition to the area or height or addition of floor/floors or mezzanine floor within any existing floor

height, or change of existing floor or changing the roof to concrete slab or reconstruction of existing walls or construction of concrete beams and columns amounting to structural change or construction of internal walls for sub-dividing the existing rooms with the intention of changing the use of the room/rooms which amount to change in the occupancy group of the building under these rules, or closing of any required means of ingress and egress to the building;

Section 7 relates to submission of application for building which inter alia calls upon every person who intends to construct or reconstruct a building or make alteration or addition or extension to a building to apply in a prescribed format to the local authority for obtaining such permission. The building shall be constructed only in accordance with the building permit issued. R. 24(4) and various other provisions relating to the general requirements regarding the plot and exterior and interior open air spaces applies in the case of every building. The very purpose of R. 24 is to provide necessary exterior and interior open space within the owner's own premises. There is no distinction between construction of first floor or any other upper floors. The contention of the learned counsel that the restriction regarding yard space cannot apply to the first floors absolutely baseless in so far as the very intention of leaving space is to open up the sky to provide proper exterior or interior open space for proper human habitation. Though there was no such restriction while the property was situated in a Panchayat area, once the Rules are made applicable, there cannot be any deviation from the Rules. Therefore the said contention cannot be sustained.

6 Having regard to the factual circumstances involved in the matter, it seems that there is some violation of the Building Rules. But the fact remains that the petitioner had already constructed the ground floor when the Building Rules were not in force and the first floor was also constructed on the basis of a permit issued by the Panchayat. It might be a case where the Panchayat has also overlooked the fact regarding leaving of open space. Therefore the remedy of the petitioner is only to approach the Municipality to regularise the construction as he had already completed the first floor on the basis of Ext. P2 permit. In that regard, I am of the view that the petitioner is not entitled for any relief in this Writ Petition. However, it shall be open for the petitioner to approach the Municipality for regularisation of the construction as per the prescribed procedure. If such an application is filed by the petitioner, Municipality shall take a decision as early as possible.

The Writ Petition is disposed of as above.