
(2012) 02 KL CK 0188

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 25049 of 2011

K. Premajan

APPELLANT

Vs

Corporation of Kozhikode and Others

RESPONDENT

Date of Decision : 09-02-2012

Acts Referred:

Citation : (2012) 1 KLJ 822

Hon'ble Judges : V. Chitambaresh, J

Bench : Single Bench

Advocate : M. Krishnakumar, for the Appellant; K.D. Babu, (SC), Jeswin P. Varghese and Lilly K.T., (GP), for the Respondent

Final Decision : Dismissed

Judgement

V. Chitambaresh, J.—The petitioner is aggrieved by the construction of a massive building by the second respondent on the adjacent 3 cents (125 Sq.mts) of land within the limits of the Corporation. Ext. P1 building permit issued by the Corporation for a three storied building is impugned in this writ petition. The complaint is that a pencil like structure is being erected to circumvent the provisions of the Kerala Municipality Building Rules, 1999 (hereinafter referred to as "the Rules" for short) The construction of buildings in small plots (not exceeding 125 Sq.mts. of area) is governed by Rules 60, 61, 62, 63 and 64 contained in Chapter VIII of Rules. Rule 60 of the Rules is as follows:-

60. Special provisions for construction in small plots:- The provisions in the Kerala Municipality Building Rules shall apply to construction of building under residential and/or commercial occupancy, in plots not exceeding 125 sq.meters of area subject to the modifications in this Chapter:

Provided that permit shall not be granted under this chapter to one and the same person or with his consent to another person, for constructing different buildings, whether separately or abutting each other, in plots formed by division of one or more plots, he remaining as owner of more than one such divided plots or if that

person has another plot abutting the proposed plot.

(Emphasis supplied)

Thus construction of different buildings horizontally by one and the same person or another whether separately or abutting each other is prohibited in small plots. The petitioner contends that such curb should logically be extended to vertical construction also lest multi-tier buildings are put up.

2. Rule 61 limits the number of floors to three and Rule 62 of the Rules relaxes the extent of set back when compared to big plots. Rule 63 of the Rules clarifies that the provisions regarding Floor Area Ratio, coverage, dimension of building etc. would not apply to small plots. The petitioner relies on Ext. P3 Circular issued by the State Government which restricts the construction of a building exceeding 150 Sq. meters in a small plot. A reading of Ext. P3 Circular would indicate that only a single building not exceeding the said plinth area can be constructed. The second respondent points out that Ext. P3 Circular has been issued subsequent to Ext. P1 building permit and cannot affect the construction already started. I agree with this contention even though Ext. P3 Circular is issued by the Government for removal of doubts under Rule 161 of the Rules. The resultant position is that only one building of maximum three floors shall be permitted to be constructed and that too not exceeding a total plinth area of 150 Sq. meters in a small plot.

I dismiss the writ petition. No costs.