
(2021) 09 KL CK 0014

In the High Court Of Kerala

Case No : Writ Petition (C) No. 22340 Of 2020

Maria Oommen, Puthupally House

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 01-09-2021

Acts Referred:

Kerala Town and Country Planning Act, 2016 — Section 67

Citation : (2021) 09 KL CK 0014

Hon'ble Judges : N.Nagaresh, J

Bench : Single Bench

Advocate : Paul Jacob, G.Ranjita, N.Nandakumara Menon, P.K.Manojkumar

Final Decision : Dismissed

Judgement

N.Nagaresh, J

1. The petitioner seeks to quash Regulation 11(3) of the General Town Planning Scheme for Trivandrum and to declare that Regulation 11(2)(i) permits construction of single family residential building of floor area up to 300 square metres in areas which are substantially built up, under Trivandrum Town Planning Scheme. The petitioner further seeks to quash Ext.P11 order and to direct the respondents to pass appropriate orders on Ext.P9 application in a time constrained manner.

2. The petitioner states that he owns two plots of land of 2.83 Ares and 2.53 Ares in Survey No.142-5 in Sasthamangalam Village, Thiruvananthapuram Taluk. The petitioner applied for Building Permit to construct a house in the plot, in the year 2013. The application was rejected. The petitioner made a second application, Ext.P4, on 15.02.2019. The building plan was for 383 Square Metres. The application was not processed.

3. On an application made under the Right to Information Act, the petitioner, as per Ext.P5, was informed that the plot is coming within Green Strip/Agricultural Reservation Zone under the General Town Planning Scheme for Trivandrum. The

other deficiencies pointed out in Ext.P5 are curable by the petitioner. The whole area around the petitioner's property is built up by residential buildings and is now known as 'Sudarsan Nagar'. Therefore, the petitioner's application for building permit has to be considered under Regulation 11(2)(i) under which the petitioner is entitled to construct residential building up to 300 Square Metres.

4. The petitioner therefore filed WP(C) No.8520/2020 and this Court as per Ext.P8 judgment directed the 3rd respondent to consider the application under Regulation 11(2)(i). The petitioner filed a fresh Building Permit Application, Ext.P9, for constructing 262.19 Square Metres area. However, the application was again rejected as per Ext.P11. Aggrieved by Ext.P11, the petitioner has filed this writ petition.

5. The 3rd respondent filed counter affidavit and contested the claims of the petitioner. The 3rd respondent stated that the petitioner's plot is situated alongside that Killi River. It falls in Green Strip/ Agriculture Reservation Zone of the General Town Planning Scheme of Trivandrum of the year 1971. As per the Varied Zoning Regulations of the General Town Planning Scheme sanctioned on 31.05.2007, single family residential buildings up to 300 Square Metres are permissible in areas which are substantially built up with lawful residential buildings. In the case of the petitioner, since his plot is alongside of the Killi River, construction is impermissible.

6. Heard the learned counsel for the petitioner, the learned Government Pleader representing the 1st respondent and the learned Standing Counsel for the respondents 2 and 3.

7. Identical issue relating to building construction in Green Zone/Agriculture Reservation Zone in the Thiruvananthapuram Corporation came up for consideration before a learned Single Judge in *Surathmaja v. Thiruvananthapuram Corporation* [2020 (1) KLT 283]. In the said judgment, this Court held as follows:

"14. I am afraid that I cannot accede to this contention because, when an area has been reserved as a "Green Strip" area, it really means that the owner of the property is divested of any entitlement to make any construction thereon or to deal with in any manner. This is in contra-distinction to zoning requirements which stipulate the development of an area in a particular manner, namely, "residential", "commercial", "mixed-use" etc., whereby the right of an owner to deal with his/her property is not taken away but only prescribes certain restrictions for it in larger public interest. The requirement in the Master Plan to preserve an area or property as a "green Strip" for all times is a permanent inhibition on an owner's right to use the said property and it thus falls foul of the provisions of Art.300A of the Constitution of India. Any permanent prohibition or inhibition against the right of an owner with respect to a property owned by him/her cannot obtain the imprimatur of this Court, being guided by the constitutional imperatives; and I am certainly of the view that when such an

inhibition is brought in, either through the Master Plan or through a Detailed Town Planning Scheme, it operates perpetually; and therefore that the land becomes compulsorily acquirable, if the zonal requirements in such manner has to be maintained.

15. Therefore, when an area thus becomes compulsorily acquirable under the Master Plan, the owner of the property obviously gets a concomitant right to issue a purchase notice under S.67 of the Kerala Town and Country Planning Act and if the same is rejected or not considered by the Corporation within the statutory period stipulated, then he/she gets entitled to have his/her application for building permit considered de hors the stipulations in the Master plan. This position of law has been ineluctably declared by this Court in Regional town Planner & Anr. v. Muhammed Rasheed & Ors. [2019(3) KLT 433 = [2019 (3) KHC 987] and District Town Planner, Malappuram & Ors. v. Vinod & Ors. [2019 (3) KLT 154 = 2019 (3) KHC 673]."

The learned Single Judge gave liberty to the petitioner therein to give purchase notice to the authorities invoking Section 67 of the Kerala Town and Country Planning Act, 2016.

8. As this writ petition is based on similar set of facts and since it relates to the same Corporation, I deem it appropriate to dispose of this writ petition following the said Judgment in Surathmaja v. Thiruvananthapuram Corporation (supra). Resultantly, I order this writ petition and leave liberty to the petitioner to issue to the respondent-Corporation an appropriate purchase notice under Section 67 of the Kerala Town and Country Planning Act; and if this is done within a period of two weeks from the date of receipt of a copy of this judgment, the competent authority of the Corporation will consider the same and issue appropriate orders thereon within the statutory period specified.

9. Needless to say, if the purchase notice of the petitioner is either rejected or not answered by the competent authority of the Corporation within the time frame fixed under the Kerala Town and Country Planning Act, then the Secretary of the Corporation will be obligated to consider the petitioner's application for building permit and issue appropriate orders thereon dehors the stipulations of the Master Plan, as expeditiously as possible, but within one month from the date on which the statutory period for consideration of the petitioner's application, under Section 67 of the Kerala Town and Country Planning Act, expires.

Ordered accordingly.