
(2014) 10 KL CK 0258

In the High Court Of Kerala

Case No : Writ Appeal No. 1469 of 2014 in WP(C). 17428/2014

Pala Municipality

APPELLANT

Vs

George Joseph

RESPONDENT

Date of Decision : 30-10-2014

Acts Referred:

Citation : (2014) 10 KL CK 0258

Hon'ble Judges : Ashok Bhushan, Acting C.J.;A.M. Shaffique, J

Bench : Division Bench

Advocate : V.M. Kurian, Mathew B. Kurian and K.T. Thomas, Advocate for the Appellant; Mathew John (K), Advocate for the Respondent

Judgement

A.M. Shaffique, J.—Heard learned counsel for the appellants and learned counsel appearing for the respondents. At the admission stage itself the appeal is being disposed of.

2. The Writ Petition was filed by the petitioners inter alia seeking a direction to the respondent/appellant Municipality to pass final orders on Exhibit P6 application enabling them to obtain occupancy certificate and completion certificate in respect of the building constructed by them on the basis of Exhibit P1 building permit. It was inter alia contended that the petitioners have completed construction of the building by expending about 300 lakhs and though the building has been completed and the request for completion certificate has been made, no action was taken by the Municipality for one or other reason for issuing the certificate, hence the petitioners are put to great hardship and thus the Writ Petition was filed seeking the aforesaid relief.

3. The Municipality has contended that the petitioners had not completed the construction in accordance with the Building Rules and the building permit issued. It was mentioned that though the Municipality had called upon the petitioners to rectify certain defects in the construction, the same was not complied with. Having regard to the aforesaid pleadings, the learned Single

Judge, by judgment dated 26.9.2014, disposed of the Writ Petition permitting the petitioners to submit an application for regularisation of the construction already made and thereafter the Municipality was directed to regularise the construction and pass appropriate orders numbering the building and issuing the occupancy certificate.

4. By impugning the judgment of the learned Single Judge it was argued by counsel for the appellants that the Court has committed serious error of law by directing regularisation of the construction. As per Rule 22 of the Kerala Municipality Building Rules, it is for the Municipality to consider whether the building has been constructed in accordance with the building permit or is in violation of any provisions of the Kerala Municipality Building Rules. Only on satisfaction of the same, the occupancy certificate can be issued and thereafter buildings can be numbered. Since the learned Single Judge had directed regularisation of the construction, it will amount to restriction on the part of the Municipality in considering whether the building has been constructed in accordance with the Building Rules.

5. On the other hand, it was argued by learned counsel for the respondents that there is mala fides on the part of the Municipality in not giving the occupancy certificate. They have delayed the application considerably for a long period. That apart, they were stating one reason or other for denying the occupancy certificate to the petitioners.

6. Learned counsel for the appellants, however, placed reliance on Exhibits P18, R3(a) and R3(d) to contend that the Municipality had called upon the petitioners to rectify certain defects after receiving the application for completion certificate dated 12.12.2013 and according to them, the same has not been rectified or rather the same is required to be verified before granting the completion certificate or regularisation of any violation as the case may be.

7. Having regard to the aforesaid statement, we are of the view that if there is any violation of the building permit, apparently, it may not be possible for the Municipality to grant the occupancy certificate. The building has to be constructed in accordance with the building permit and if there is any violation, it is required to be regularised in accordance with law. This is a matter, which is required to be considered by the Municipality and therefore, the learned Single Judge was not justified in directing the Municipality to regularise the construction. It is for the Municipality to consider the same in accordance with law.

8. Learned counsel for the appellants would submit that the Municipality will consider the application of the petitioners after curing the defect, if any, within a reasonable time without any delay and therefore, the direction of the learned Single Judge has to be vacated.

9. In the light of the aforesaid facts and circumstances, we modify the judgment to the extent permitting the Municipality to consider the application for

regularisation/occupancy certificate in accordance with law. The direction given to the Municipality to regularise the construction is hereby vacated. The Municipality is directed to take appropriate proceedings with notice to the petitioners within a period of one month from today.

With the above modification, the Writ Appeal is allowed.