
(2021) 09 KL CK 0042
In the High Court Of Kerala
Case No : Writ Petition (C) No. 6849 Of 2021

P.C.Krishnan Pillai

APPELLANT

Vs

Secretary, Mavelikkara Municipality, Municipal Office,
Mavelikkara

RESPONDENT

Date of Decision : 06-09-2021

Acts Referred:

Kerala Municipal Building Rules — Rule 11

Citation : (2021) 09 KL CK 0042

Hon'ble Judges : N.Nagaresh, J

Bench : Single Bench

Advocate : Dinesh R.Shenoy, Ebin Mathew, P.Rohit Premanandan Shenoy,
Vincent Joseph, V.G.Arun, R.Harikrishnan, Neeraj Narayan

Final Decision : Disposed Of

Judgement

N.Nagaresh, J

1.The petitioner seeks to quash Exts.P27, P32 and P36 notices and to direct the 1st respondent to grant Occupancy Certificate and Building Numbers to the petitioner's building.

2. The petitioner owns 7.47 Ares of land in Mavelikkara Village, which is situated on the northern side of Kayamkulam-Thiruvalla Main Road. The properties on the northern and eastern side of the land are owned by respondents 2 to 4, who are grandchildren of the brother of the petitioner's grandfather. Their property has no road access and hence the petitioner's father allowed them to use a 4-feet passage through his property. The petitioner constructed a building abutting the said pathway as per an approved plan issued by the Mavelikkara Municipality. The petitioner constructed another building on the western side of the passage also.

3. In the year 2019, the petitioner proposed to construct a three storied building in the property and the petitioner was granted Ext.P9 Building Permit. Ext.P9

permit was for construction, as an extension to the existing building. The petitioner demolished the staircase of the existing building, thereby widening the said pathway to 2.50 metres as required under the Building Permit and the approved plan. There is a half wall which will also be demolished, and thereby the width of the pathway will increase to 2.70 metres. Respondents 2 to 4 thereupon made a demand that the pathway should be widened up to 3 metres and they filed complaints to Municipal authorities.

4. The petitioner filed Ext.P17 OS No.245/2019 seeking permanent prohibitory injunction against respondents 2 to 4. The Court granted Ext.P18 interim prohibitory injunction against respondents 2 to 4, in favour of the petitioner. The petitioner contends that on the basis of influence exerted by the daughter of the 4th respondent, who is an employee of LSG Department, the Municipality issued a notice to the petitioner, to which the petitioner submitted Ext.P20 Reply. However, the Municipal authorities issued Ext P21 notice to the petitioner demanding to show-cause why Ext.P9 permit should not be cancelled. The petitioner submitted Ext.P22 Reply.

5. Thereafter, Ext.P23 hearing notice was given to the petitioner. The petitioner appeared on the hearing date and submitted Ext.P24 Reply. The Secretary to Municipality, however, issued Ext.P25 notice alleging that there is some discrepancies in the Survey Numbers and the petitioner has to submit a revised plan. The petitioner, as per Ext.P26, informed that he will correct the mistakes, if any, in the existing plan and a revised plan may not be insisted upon, as the construction of the building in accordance with the existing plan is almost complete. Later, the petitioner submitted Ext.P28 completion plan.

6. At this stage, the 4th respondent filed Ext.P29 O.S. No.244/2020 before Munsiff's Court seeking easementary right over the pathway. No interim injunction was granted by the court. The petitioner submitted Ext.P31 representation to the Assistant Engineer seeking Occupancy Certificate. The 1st respondent issued Ext.P32 notice stating that the Municipality is unable to establish the width of the pathway leading to the parking area and hence a further survey sketch by the Taluk Surveyor should be produced after fixing Survey Stones and further stating that the building construction has to be regularised. The petitioner challenges Exts.P27 and Ext.P32 notices.

7. During the pendency of the writ petition, the 1st respondent passed Ext.P36 order alleging that the building completion plan shows construction of 30 Square Metres excess area and the same has to be regularised and that the petitioner has to execute an attested bond, in view of the pending civil litigations. The petitioner has filed a petition for amendment in the writ petition seeking to challenge Ext.P36.

8. The 1st respondent filed a counter affidavit. The 1st respondent stated that Ext.P9 Building Permit was obtained to construct an annex to an existing second building, without disclosing the existence of another building constructed first.

The access width mentioned in the plan is only 2.70 metres. When respondents 2 to 4 filed a complaint alleging that 1.20 metres of the 2.70 metre access belong to them, a site inspection was carried out and it was noticed that measurements mentioned in various documents are contradictory. The Re-survey number mentioned was not correct. Hence, Ext.P21 notice was issued.

9. The 1st respondent stated that the access width mentioned in the completion plan is not sufficient to give Occupancy Certificate. The requisite access width is 3.6 metres. The total extent of the first building was not mentioned in the site plan. The petitioner has to provide four parking areas and the completion plan has only two parking areas. The 1st respondent stated that as per the approved plan, total extent of the building is 231.24 Square Metres, whereas in the completion plan it is 261.24 Square Metres. There is a difference of 29.62 Square metres, which can be regularised by paying additional tax.

10. Heard the learned counsel for the petitioner, the learned Standing Counsel for the 1st respondent and the learned counsel for respondents 2 to 4.

11. The discrepancies found by 1st respondent against the construction and reasons for not issuing Occupancy Certificate, as contained in Exts.P27 and P32 notices are:

1. There are discrepancies in Survey numbers shown in Plan
2. Access width to parking area is not shown properly.
3. The access width shown includes a pathway used by others
4. Site plan does not disclose all existing buildings.
5. Taluk Surveyor has to demarcate the boundaries and lay boundary stones.

The petitioner would state that the 1st respondent is not justified in denying Occupancy Certificate on these grounds.

12. Ext.P9 Building permit would show that the permit was issued for construction in Re-Survey Nos.33/5 and 20/16-21. The building plans also show the same survey numbers. The 1st respondent does not have a case that the petitioner has made constructions violating the permit conditions. The 1st respondent has required the petitioner that since the survey sketch includes the land in Re-survey No.33/20, the same should also be included and a revised plan should be submitted.

13. The petitioner would submit that while the land comprised in Re-survey No.33/5 and 20/16-21, is in his name, the land in Re-survey No.33/20 is in the joint name of himself and his wife. Therefore, the 1st respondent cannot force the petitioner to include that land in the Building Plan application. This Court is also of the view that since the ownership entities are different, the petitioner is not compellable to submit a revised plan on that ground.

14. Another reason is the access width. According to the 1st respondent, as per

Kerala Municipal Building Rules, 1999, the requisite access width is 3.6 metres and the pathway is only 2.70 metres wide. Here, it is to be noted that the property abuts a 10 metre wide Kayamkulam-Thiruvalla Road and the petitioner has a road frontage of 8.92 metres. What is alleged by the 1st respondent is that the side open space does not have the requisite access width. Since the 1st respondent does not have a case that the petitioner has not left requisite space on four sides of the building, the fact that the side road is not satisfying the access width cannot be sustained when the plot has a frontage of 8.92 metres on a 10 metre wide public road.

15. Yet another contention of the 1st respondent is that the access width shown includes a pathway used by others. Here, the case of the petitioner is that his father permitted his relatives to use a pathway for access to their properties which was 1.2 metre wide and the petitioner is now widening the said area to 2.70 metres. Respondents 2 to 4, who are the relatives, now claim easementary right over the said property. It is the contention of the 1st respondent that in the title documents of respondents 2 to 4, this is shown as a pathway over which they have a right. This issue is now agitated before a civil court in a declaratory Suit filed by respondents 2 to 4. Therefore, the 1st respondent cannot rely on the said disputed claim to deny Occupancy Certificate to the petitioner, after approving the Building Permit submitted by the petitioner, when there is no violation of permit conditions.

16. The further contention is that the Building Plan does not show an existing Building. It may be noted that as per Rule 11 of the Kerala Municipal Building Rules regulating the approval of site and plans and issue of permit, the Secretary shall, after inspection of the site and verification of the site plan and documents, if convinced of the bona fides of the ownership of the site, and that the site plan, drawings and specifications conforms to the site and the provisions of these rules or bye-laws made under the Act and any other law, approve the site and site plan.

17. The Secretary shall, after approving the site and site plan, verify whether the building plan, elevation and sections of the building and specifications of the work conforms to the site and site plan, and is in accordance with the rules and bye-laws made under the Act or any other law, approve the plan and issue permit to execute the work. When Ext.P9 Building Permit is granted after a site inspection made by the Secretary as mandated by the Building Rules, the Secretary cannot be heard to contend that a building which existed in the larger extent of property should have been marked in the Plan, unless of course such building did not exist at the time of Site Inspection. The 1st respondent has no such case.

18. The further reason for not granting Occupancy Certificate is that a Taluk Surveyor has to demarcate the boundaries and lay boundary stones. This requirement is presumably due to the complaints filed by the respondents based on their claim of easement. When the said issue is before a Civil Court, the 1st

respondent cannot demand that the boundary should be demarcated first by Taluk Surveyor, for issuance of Occupancy Certificate. This would be especially so because the petitioner has carried out the construction based on an approved Building Plan.

19. In the counter affidavit of the 1st respondent, it has been further alleged that the plinth area exceeds the approved Building Plan and that four parking areas ought to have been there, instead of two. The petitioner would contend that the discrepancy in the plinth area arises out of the non-counting of the 1.2 metre wide passage on the First Floor. However, the said passage has been disclosed in Ext.P9-approved Building Plan. It is to be noticed that in his counter affidavit, the 1st respondent has stated that the excess construction of 29.62 Square Metres can be regularised. Since there is no suppression of construction of the said passage and since the construction is in accordance with the approved plan, this Court is of the considered view that the alleged excess construction should be regularised on petitioner paying additional taxes, if he is otherwise eligible to get the said excess construction regularised.

20. As regards parking area, the case of the 1st respondent is that the petitioner has provided only two parking areas and four parking areas are necessary. Ext.P9 approved Building Permit and Plan would show that there are three parking spaces in the approved plan and not two, as contended by the 1st respondent. After approving the Building Plan inclusive of three parking plots, the 1st respondent cannot, after construction of the Building, as per the approved Building Permit, require that there should be four parking plots. The petitioner would, however, state that there is ample space in the plot to locate the 4th parking place.

In view of the findings made hereinabove, the writ petition is disposed of setting aside Exts.P27, P32 and P36 and directing the 1st respondent to consider the application of the petitioner for issuance of Occupancy Certificate on the basis of Ext.P37 Completion Plan, taking into consideration the observations and findings made hereinabove. The petitioner will be at liberty to submit application for regularisation of excess construction in accordance with the Building Rules, paying the prescribed fee/additional fee. It is, however, made clear that the findings in this writ petition shall not in any manner affect the claim of respondents 2 to 4, of their easementary right pending consideration before the Civil Court.