
(1989) 02 KL CK 0060
In the High Court Of Kerala
Case No : O.P. No. 6245 of 1988

Ramankutty

APPELLANT

Vs

The Municipal Commissioner Palghat and others

RESPONDENT

Date of Decision : 21-02-1989

Acts Referred:

Kerala Municipalities Act, 1961 — Section 228, 234, 363(2)

Citation : (1989) 1 KLJ 739

Hon'ble Judges : T.L. Viswanatha Iyer, J

Bench : Single Bench

Advocate : C.P. Damodaran Nayar and D. Krishna Prasad, for the Appellant; K.J. Joseph, for the Respondent

Judgement

T.L. Viswanatha Iyer, J.—The petitioner purchased an item of property in R.S. No. 1522 of Pirayari Amsom from one P.V. Menon by registered document dated 11-4-1988. Before the sale, and on 18-4-1986, the vendor had obtained permission Ext. P1 from the first respondent Municipal Commissioner for construction of a building in the property, as per the site plan and detailed plan, copies of which are Exts. P1(a) and P1(b). The construction was under way when the property was purchased by the petitioner. After the purchase, the petitioner felt the necessity for some changes, and consequent deviation in the approved plan Ext. PI (b), to suit his requirements. He was making arrangements to get a revised plan approved, when the notice Ext. P2 dated 6-6-1988 was issued u/s 247(1) of the Kerala Municipalities Act calling upon him to stop the construction. This was followed by another notice of even date u/s 248 to stop further construction of the building. The petitioner objected to the notices by sending Ext P3 reply on 11-6-1988. Before any order on the objections was received, the petitioner applied by Ext. P5 on 22-6-1988 for permission to construct the building as per the revised plan submitted by him. No orders have so far been passed on this application. But the petitioner was informed in reply to Ext. P4, by the proceedings Ext. P6 dated 7-7-1988, that the "building construction licence" issued to the vendor P.V. Menon was not transferable u/s 363 (2) of the Kerala

Municipalities Act, 1961 (the Act) The petitioner was therefore directed to apply afresh for the licence through the Palghat Development Authority. He was also directed to stop the building construction work till grant of the new licence, failing which prosecution was threatened. The petitioner challenges Ext. P6.

2. After having heard counsel on both sides, I am of the opinion that Ext. P6 is unsustainable and is liable to be quashed. Section 363 contains general provisions regarding licences and permissions. Sub-clause (1) provides that every licence and permission granted under the Act shall specify the period for which, and the restrictions, limitations and conditions, subject to which, the same is granted and shall be signed by the Commissioner. Sub-clause (2) states that every licence issued by the Commissioner shall specify the person to whom, the premises in respect of which, and the trade or business or undertaking for which, the licence is granted. For any change, in the person, the premises or the business, trade or undertaking a fresh licence or permission shall be taken with or without payment of further fee as the council may fix. It is sub-clause (2) that is relied on in Ext. P6 to hold that Ext. P1 licence is not transferable and that the petitioner cannot avail of the same for the further construction of the building. The question is whether section 363(2) applies to permissions granted for purposes of constructing or reconstructing a building.

3. The necessity for permission to construct or reconstruct a building arises by virtue of the provisions in Chapter X of the Act dealing with building regulations. Section 228 requires any person intending to construct or reconstruct a building to apply to the Commissioner for approval of the site as also for permission to execute the work, accompanied by the necessary plans and other documents. Section 230 prohibits the beginning of the construction or reconstruction of the building unless and until the Commissioner has granted permission for execution of the work. Section 234 prescribes the grounds on which approval of the site, or the permission for the construction or reconstruction of the building may be refused. u/s 235, the permission shall lapse if the construction or reconstruction is not completed within the time specified unless an application for extension of time is made before the expiry of the period. It is evident from a perusal of these provisions in Chapter X, that what is contemplated is permission from the Commissioner to construct or reconstruct the building. Chapter XII of the Act deals with licences required for various kinds of activities. The provisions of the Act make a distinction between licence and permission. This distinction is carried into the various sub-sections in section 363 also. What is contemplated in relation to a building is permission, while in relation to other matters what is required is licence. It is only a licence that is made non-transferable by section 363 (2). There is no embargo on transfer of a permission. Therefore the statement in Ext. P6 that the permission Ext. P1 was not transferable is not warranted by the provisions of the Act.

4. Section 363(2) itself shows that the licence with which it is concerned, relates to licence for carrying on trades and the like. The first part of the section gives

the indication in that direction. Ext. P6 is not therefore sustainable in law. It has to be quashed. The first respondent has consequently to dispose of Ext. P5 afresh.

5. The petitioner challenges Exts. P2 and P3 as well. But then, admittedly there is deviation in the construction. If so, the first respondent was justified in issuing Exts. P2 and P3. The petitioner has already, filed his objection statement Ext. P4 which has to be disposed of afresh. He has himself realised the defect and applied by Ext. P5 series for approval of the revised plan, Exts. P2 and P3 are not therefore open to challenge. It is only necessary to direct the first respondent to deal with the request made by the petitioner, evidenced by Ext. P5 as also the objections Ext. P4 as expeditiously as possible. The original petition is therefore allowed in part. Ext. P6 is quashed. I decline the prayer to quash Exts. P2 and P3. There will be a direction to the first respondent to deal with and dispose of the prayer made in Ext. P5 as also the objections Ext. P4 at the earliest.