

(2022) 06 KL CK 0049

In the High Court Of Kerala

Case No : Writ Petition (C) No. 11970 Of 2022

Siddique B.M.

APPELLANT

Vs

Kalamassery Municipality

RESPONDENT

Date of Decision : 06-06-2022

Acts Referred:

Kerala Town and Country Planning Act 2016 — Section 61, 113(2)

Citation : (2022) 06 KL CK 0049

Hon'ble Judges : Anu Sivaraman, J

Bench : Single Bench

Advocate : Aysha Youseff, Jobi.A.Thampi, Molly Jacob, M.Kabani Dinesh, Ashifa Youseff, Rabia Beegam T.K., Fashiya Youseff, C.M.Ebrahim, Shoukath Husain, M.K.Aboobacker

Final Decision : Dismissed

Judgement

Anu Sivaraman, J

1. This writ petition is filed with the following prayers:-

" i.to call for the records leading to Exhibit P7 notice and quash the same by issuing a Writ of Certiorari or any other appropriate Writ, Order or direction as this Hon'ble Court may deem fit to grant in the facts and circumstances of the case.

ii. to declare that the petitioner is entitled to obtain the occupancy certificate in respect of the special residential and commercial building on

the strength of Ext.P3 revised approved plan and Exhibit P3(a) building permit issued by the 2nd respondent.

iii. to issue a Writ of Mandamus commanding the 1st respondent Municipality to issue the occupancy certificate in respect of the residential building of the petitioner de hors Exhibit P7 notice/letter,

iv. to declare that the petitioner is entitled to invoke the deemed provision of having issued the occupancy certificate and issue a writ of mandamus to the 2nd respondent to issue a certificate in the physical format under the proviso 22(3) of the Kerala Municipality Building Rules for the deemed certificate, with the building No thereof.”

2. Heard the learned Senior Counsel appearing for the petitioner, the learned standing counsel appearing for respondents 1 to 3 and the learned Government Pleader appearing for the 4th respondent.

3. The petitioner submits that the petitioner is the owner in possession of 6.40 Ares of property in Survey No.808/2 of Thrikkakara North village within the jurisdiction of the 1st respondent Municipality. The petitioner had submitted an application for construction of a residential building in the property and Exhibit P2(a) site approval and building permit was issued for construction of the building in Group A2 residential category. The petitioner thereafter submitted Exhibit P3 revised plan and P3(a) site approval and building permit was issued for the construction of a special residential and commercial building. On the basis of the building permit issued, the construction was carried out and completed. Completion plan was submitted on 08.02.2022. However, Exhibit P7 notice was issued by the Municipality on 16.03.2022 stating that in an inspection conducted it is revealed that the construction is not complete and that the property is situated in a “park and playground zone” in the structural plan and that the building permit had been mistakenly granted. It is stated that occupancy certificate can be issued only after getting further directions from the Government. It is stated that though the petitioner submitted Exhibit P8 and P8(a) explanations, the same have not been considered by the respondents.

4. The learned standing counsel appearing for the Municipality submits that it is only on account of objections raised by the Senior Town Planner to the effect that the constructions made in violation of the structural plan for the Kochi city cannot be regularised or numbered that Exhibit P7 communication had been issued to the petitioner. It is contended that if occupancy certificate is issued and numbering done in violation of the directions issued by the Government and the Senior Town Planner, the Municipality will face difficulties.

5. A statement has been filed by the 4th respondent wherein it is contended that the structural plan for the Central City of Kochi was sanctioned by the Government as GO(MS) No.103/91/LAD dated 20.03.1991 and that the plan area consists of Kochi Corporation and adjacent local bodies including Kalamassery Municipality. It is contended that the plan is a comprehensive plan, providing long term policies, programs and proposals for spatial development. It is further contended as follows:-

“The Kerala Town and Country Planning Act 2016 (KT & CP Act 2016) came into force on 17.03.2016 repealing erstwhile Town Planning Acts and as per Section 113(2) of the Act, the General Town Planning Scheme for the area ie, the

structure Plan for Central City Kochi sanctioned under repealed Town Planning Acts was deemed to be a Master Plan sanctioned under the Kerala Town and Country Planning Act 2016. Hence the structure plan sanctioned in the year 1991 is now deemed to be a Master plan sanctioned as per the Kerala Town and Country Planning Act 2016 and hence its provisions are operational. As per Section 61 of the KT & CP Act 2016 "After the coming into operation of a Master Plan or DTP Scheme under this Act, no person shall use or cause to use any land or carry out development in any land, or change the use of land otherwise than in conformity with or with prejudicial to the Master Plans and detailed Town Planning Schemes under this Act'. Hence any development in the structure plan area shall be in conformity with the provisions of the sanctioned Structure Plan (Master Plan) for Central City, Kochi."

6. The learned Senior counsel appearing for the respondents places reliance on the decisions of this Court reported in *Raju S Jethmalani and others v. State of Maharashtra and others* [2005 (11) SCC 222], *Dakshayani Amma K v. Guruvaryur Municipality and others* [2016 KHC 159] and *Basheer v. Kozhikode Corporation* [2021 (4) KLT 82].

7. Having considered the contentions advanced on either side, I notice that the building was constructed specifically in accordance with the building permit granted by the Municipality. It is evident from the earlier judgments of this Court that the structural plan had become unworkable and that several building permits had been granted by the Municipality without reference to the zoning contained in the said structural plan for Kochi city. Since admittedly, the building was constructed on the basis of a building permit granted by the Municipality, it cannot be later contended that the issuance of the same was by mistake.

8. In the above factual situation, I am of the opinion that the contentions raised by the 4th respondent cannot stand in the way of the consideration of the application for occupancy certificate and the numbering of the building by the Municipality, especially in view of the fact that there is no violation of the building permit pointed out in Exhibit P7.

9. In the result, Exhibit P7 is set aside. There will be a direction to the 2nd respondent to take up the request made by the petitioner for occupancy certificate and for numbering of the building, consider and pass orders on the same in accordance with law taking note of the Building Rules in force and the approved building plan and permit within a period of three weeks from the date of receipt of a copy of this judgment.

Writ petition is ordered accordingly.