
(2022) 03 KL CK 0173

In the High Court Of Kerala

Case No : Writ Petition (C) No. 23835 Of 2021

Suneeth Sebastian

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 22-03-2022

Acts Referred:

Citation : (2022) 03 KL CK 0173

Hon'ble Judges : T.R.Ravi, J

Bench : Single Bench

Advocate : Pratheesh.P, Anjana Kannath, K.M.Faisal, T.R.Rajan

Final Decision : Allowed

Judgement

T.R. Ravi, J.

1. The petitioner was granted a building permit on 2.2.2018 by the 3rd respondent for construction of a residential building of a total area of 409.18 M2 and a carpet area of 303.84 M2. Exts.P1 and P2 are the building permit and the approved building plan. The petitioner completed the construction and approached the 3rd respondent for occupancy certificate. On 30.7.2021, by Ext.P3, the 4th respondent informed the petitioner that the occupancy certificate cannot be granted, since the area where the construction was carried out falls under the agricultural zone as per the Structure Plan (General Town Planning Scheme) for Central City of Cochin. The structure plan was sanctioned in the year 2007 and as per the Zoning Regulation, residential buildings upto a total built up area of 300 M2 alone is permitted in those areas. The petitioner relies on Ext.P6 judgment dated 3.8.2021 in W.P.(C)No.19197 of 2020 wherein this Court had in similar circumstances directed grant of renewal of building permit in a case where the construction was of residential building with a total area of 745.25 M2.

2. Respondents 2 to 4 have filed a counter affidavit producing along with Ext.R3(a), which is the structure plan. Part IV of Ext.R3(a) deals with Zoning and

Subdivision Regulations. Ext.R3(a) identifies eight major groups of use of Zones as residential, commercial, industrial, public and semi-public, grounds and public open spaces (park and playgrounds), transportation, conservation zone and CBD. Three kinds of patterns of land utilisation have been identified as water sheet, agricultural use and developed land. The contention is that the area comes under the land utilisation pattern of agriculture, which permits only construction of residential building for the owner not exceeding a total built up area of 300 M2.

3. The petitioner has filed a reply affidavit to show that the property of the petitioner is a land which had been converted more than 20 years back and cannot be treated as an agricultural land. Photographs have been produced to show that the area in question has several residential buildings.

4. Heard the learned counsel for the petitioner and the respondents.

5. Following the judgment in W.P.(C)No.19197/2020, this Court had disposed of W.P.(C)No.16737/2021 wherein also the relief sought was for renewal of a building permit which had already been granted and based on which the construction had almost been completed. This Court directed renewal of the building permit finding that it is highly arbitrary and unjustifiable to decline the benefit, since the building permit had been granted and construction was also almost completed. I do not find any reason to take a different view in this writ petition, particularly, when in this case construction is already completed and what remains is issuance of an occupancy certificate. Moreover, the property is very close to Maradu Junction and is a dry land. It is not as if that construction of residential building is totally prohibited in the zone. The restriction is only regarding the constructed area.

6. The writ petition is hence allowed. Ext.P3 notice which directs the petitioner to submit a fresh application restricting the construction to 300 M2 is set aside. Respondents 1 to 4 are directed to reconsider the application of the petitioner for issuance of an occupancy certificate and to grant the same and number the building, if the petitioner is otherwise entitled to. The reason that the area is coming under the agricultural zone shall not be a reason for rejection of the application. Necessary orders shall be issued within six weeks from the date of receipt of a certified copy of this judgment.