
(2009) 12 KL CK 0021

In the High Court Of Kerala

Case No : Writ Petition (C) No. 33397 of 2009

Usman

APPELLANT

Vs

Corporation of Calicut

RESPONDENT

Date of Decision : 18-12-2009

Acts Referred:

Kerala Municipality Building Rules, 1999 — Rule 21, 21(1), 21(2), 21(4)

Citation : (2010) 1 ILR (Ker) 477 : (2010) 1 KLT 367

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : K.P. Dandapani and Millu Dandapani, for the Appellant; K.D. Babu and Jithin Paul Varghese, for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.

Is the Secretary of a Municipality empowered to issue permission, transferring a development permit or a building permit in part and allowing the commencement or continuation of the work following such transfer?

1. The petitioner obtained a development and building permit. Later, respondents 2 and 3 purchased a portion of the land involved in that permit and the semi-finished structures standing thereon, with the right to continue to build that portion. The Secretary of the first respondent Corporation issued Ext.P8 taking the view that the permit cannot be transferred in part. Hence, this Writ Petition.

2. Rule 21 of the Kerala Municipality Building Rules, 1999, hereinafter referred to as the "KMBR", deals with intimation regarding transfer of plots. Sub-rule (1) thereof provides that every person holding development or building permit shall, unless the work has been executed in full and development or occupancy certificate obtained, inform the Secretary, every transfer of the whole or part of any property involved in the permit together with the name and address of the transferee and his intention to transfer, or otherwise, the permit. This provision itself is sufficient intrinsic tool, by way of statutory material, to hold that there is

no prohibition for transfer of a part only, of any property involved in a development or building permit. All that is required is that the transfer of the property, whether in whole or in part, has to be intimated to the Secretary. The transferor shall also intimate to the Secretary his intention to transfer the permit or not. Therefore, this sub-rule itself is sufficient indicator of the fact that there is no embargo for the owner of the land under development, or the building under construction, to transfer only a part of it. Such transfer does not require the permission of the Secretary. The transfer is to be intimated to the Secretary. If the transferor informs the Secretary of his intention to transfer the permit, he essentially informs his consent for the transfer, following which the Secretary can proceed with any request for transfer of the permit on such basis.

3. Sub-rule (2) of Rule 21 provides that every person in whose favour any property is transferred along with a development or building permit shall, before commencing or continuing the work, obtain permit of the Secretary in writing. This provision specifically amplifies the fact that the rules envisage that the Secretary can recognize transfer of the property, however that, the transferee shall not commence or continue the work without obtaining permit of the Secretary.

4. Sub-rule (4) of Rule 21 provides that, if convinced that the transfer will not in any way badly affect the development or construction, the Secretary shall issue permission in writing, transferring the permit and allowing the commencement or continuation of the work. The said sub-rule prescribes 15 days for the Secretary to issue the permission from the date of receipt of the request for it.

5. The conjoint effect of Sub-rules (1) and (4) of Rule 21 is that the holder of a development or building permit is entitled to transfer the property involved in the permit either in whole, or in part, and the Secretary is empowered to issue permission transferring the permit in accordance with such transfer, if convinced that the transfer will not, in any way, badly affect the development or construction. Therefore, if there is severance of the property in relation to which the development or building permit was originally issued, the transfer of the portion of the permit can be effected in favour of transferee, to facilitate further construction. But, this could be only made depending on, and fully in terms with, the lay out as approved in relation to the original permit and licence. By virtue of Sub-rule (2) of Rule 21 of KMBR, such application can be considered by the Secretary and permit that the Secretary would issue in terms of Rule 21(2) is a permit to continue the work in terms of the approved lay out and the building permit/development permit already granted.

6. The issue in hand can be looked at from a different angle also. Even if it were that the original grantee of the development or building permit completes the construction, there is no law which prohibits the transfer of the whole or a part of the completed building. Therefore, it would be unreasonable to say that such transfer cannot be made before the completion. The very provision in Rule 21(1), casting statutory responsibility on the transferor to inform, by itself provides the

statutory clue that transfer before completion is not forbidden. Logically, therefore, even in cases where the work is yet to be executed in full, the grantee of the licence is entitled to transfer any part of the property in relation to which the permit is granted and also to express his intention; thereby meaning, consent, to transfer the permit. Such transfer of the permit shall be in terms of the order of the Secretary in consonance with Rule 21(2) in relation to the portion of the property covered by the transfer without, in any manner, impairing the lay out fixed originally, in relation to the development or building permit, as issued initially to the transferor.

In the light of what is stated above, the impugned Ext.P8 order taking the view that there cannot be a partial transfer of permit is quashed and the first respondent is directed to take up the request of the petitioner and that the respondents 2 and 3 may make, for transfer of the portion of Ext.P7 development/building permit in terms of what is stated above. Let this be done within a period of two weeks from the date of receipt of a copy of this judgment. Writ Petition ordered accordingly.