
(2013) 09 KL CK 0094

In the High Court Of Kerala

Case No : Writ Petition (C) No. 21030 of 2011

Yesodharan

APPELLANT

Vs

Punalur Municipality

RESPONDENT

Date of Decision : 12-09-2013

Acts Referred:

Citation : (2013) 4 KLT 131

Hon'ble Judges : A.M. Shaffique, J

Bench : Single Bench

Advocate : Siby Mathew, Philip J. Vettickattu, B. Premnath E and Neenu Bernath, for the Appellant; K. Jaju Babu, M.U. Vijayalakshmi, Brijesh Mohan, M.V. Joseph (Alappuzha) and B. Krishna Mani, for the Respondent

Judgement

A.M. Shaffique, J.—Petitioner challenges the order passed by the Tribunal for Local Self Government Institutions allowing the appeal filed by the 3rd respondent. The facts involved in the above case would disclose that the petitioner had constructed a two storied building in his property. The building was not constructed in accordance with the approved plan. The 3rd respondent who is the neighboring property owner had complained regarding the same and ultimately the petitioner was forced to submit a revised plan. The revised plan was also approved. Thereafter, a complaint came to be filed stating that the building was constructed without complying with the provisions of the Kerala Municipality Building Rules (hereinafter referred to as the "KMBR Rules"). The 3rd respondent, however contended that though there was a direction by the Tribunal in an earlier occasion calling upon the Secretary of the Municipality to take action under S. 406 of the Kerala Municipality Act (hereinafter referred to as the "Act") no such action had been taken by the Municipality and the intention of the authorities is to help the petitioner herein. When the petitioner filed an application for getting the Occupancy Certificate, the Secretary called upon the petitioner to close down the windows on the western side of the building to enable the grant of Completion Certificate. The petitioner agreed to close down the said windows by using cardboard sheets and part of it was closed. Thereafter,

the Municipality had granted numbers to the building. Alleging that it was a wrong grant the appeal came to be filed. The Tribunal on a consideration of factual situation involved in the matter formed an opinion that there was violation of R. 24(5) of the K.M.B.R. Rules as the petitioner does not have the minimum required space on the side yard. What was required was 1 metre, but there is a provision to grant exemption upto 75 cms provided that there is no opening either by way of window or door into the said yard.

2. According to the petitioner, though he had agreed to close down the said windows and doors on that side of the building in order to enable him to get the exemption under the R. 24(5) of the K.M.B.R. Rules, the Tribunal had taken a view that there has to be a permanent closure by laterite, granite, bricks etc. According to the petitioner, there is no such requirement as per the K.M.B.R. Rules as the definition of building inter alia includes any structure either temporary or permanent and steel frames, cardboards etc., are also included to form a permanent closure.

3. The petitioner has a case that he has closed the 1st and 2nd floor by cardboard fixtures and the same method can be adopted as far as the basement is concerned.

4. The 3rd respondent has filed a counter affidavit inter alia contending that the intention of the petitioner by providing cardboard fixtures is to remove it at a later point of time and unless it is a permanent closure, the petitioner cannot not get the benefit of the exemption provided under the proviso to R. 24(5) of the K.M.B.R. Rules.

5. The learned Standing counsel for Municipality had also placed on record the files in relation to the same.

6. The short question to be considered is the validity of Ext. P11 order passed by the Tribunal. It is the contention of the party respondent that the petitioner had constructed the building in violation of the approved plan and in violation of the Building Rules. If any concession is granted to the petitioner he will definitely circumvent the same and avoid the action to be taken against him under S. 406 of the Act.

7. Rule 24(5) of the K.M.B.R. Rules reads as under:-

Rule 24. Exterior and interior open air spaces.-

(5) Every building upto 10 metres in height shall have a minimum side yard of 1.20 metres of one side and a minimum of 1.00 meter on the other side:

Provided that in the case of building upto 7 metres height, the depth of the side yard on one side may be reduced to not less than 75 cms without any opening such as door and window on that side, but however ventilator opening may be made above height of 2.10 metres from the corresponding floor level, if the side yard on the other side have a minimum of 1.20 metres:

Provided further that in the case of building upto 7 metres height, the depth of side yard on one side other than that having 1.20 metres may be reduced below 75 cms or even abut the plot boundary without any manner of opening on that side, if the owner of the plot on that side voluntarily agrees for the same in writing.

8. Building is defined under R. 2(1) as under:-

(1) "building" means any structure for whatsoever purpose and of whatsoever material constructed and every part thereof whether used for human habitation or not and includes foundations, plinth, walls, floors, roofs, chimneys, plumbing and building services, verandah, balcony, cornice or projections, part of a building or anything affixed thereto or any wall enclosing or intended to enclose any land or space and signs and outdoor display structures.

9. Having regard to the aforesaid fact that the building means structure for whatsoever purpose and of whatsoever material constructed and every part thereof whether used for human habitation or not and includes foundations, plinth, walls, floors, roofs, chimneys, plumbing and building services, verandah, balcony, cornice or projections, part of a building or anything affixed thereto or any wall enclosing or intended to enclose any land or space, I am of the view that if the petitioner is able to fix any structure of any material enclosing the entire side yard, the petitioner will be able to get the benefit of the proviso to R. 24(5) of the KMBR Rules. Under such circumstances, the contentions urged by the respondents that there was violation of Building Rules may not have any relevance as such.

10. In view of the above finding, Ext. P11 is liable to be set aside as the finding by the Tribunal to close the side of the building by laterite, granite, bricks etc., does not seem to be correct. In the above circumstances, this Writ Petition is disposed of as follows:-

i) The petitioner shall enclose all the openings towards the side of the 3rd respondent's property with cardboard or any other material permanently and shall not make any opening into the said area.

ii) The Secretary of the Municipality shall ensure that the petitioner complies with the above direction.

ii) If at all any information is received to indicate that the petitioner has opened the fixtures towards the side of the 3rd respondent's property, it shall be open for the Secretary to take necessary action in accordance with the prescribed procedure.