

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI PCHALY

THURSDAY, THE 4TH DAY OF JUNE 2015/14TH JYAISHTA, 1937

W.A.No. 1494 of 2013 IN WP(C).12601/2013

AGAINST THE JUDGMENT IN WP(C) 12601/2013 of HIGH COURT OF KERALA DATED 26-08-2013

APPELLANTS/PETITIONERS IN WP:

1. SAHAR ABBAS T M
S/O.MOHAMED KUNJI, THAYAL HOUSE, P.O.THALANGARA
KASARGOD DT.
2. AYISHA THASNEEM
W/O ABDUL LATHEEF, DAARUSALAM MANZIL, KUNNARIYOTH P.O
KASARAGOD DT.

BY ADV. SRI.P.CHANDRASEKHAR

RESPONDENTS/RESPONDENTS IN WP:

1. THE KASARAGOD MUNICIPALITY
REPRESENTED BY ITS SECRETARY, KASARGOD - 671 121.
2. THE SECRETARY
KASARGOD MUNICIPALITY, KASARGOD - 671 121.
3. K.M.ABDUL HAMEED,
S/O.MOHAMED, KADAVATH HOUSE, THALANGARA
KASARGOD - 671 121.

R1, R2 BY ADV. SRI.V.M.KURIAN, SC FOR MUNICIPALITY
R BY SRI.A.MOHAMMED SAVAD

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 04-06-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & SHAJI P.CHALY, JJ.

Writ Appeal No.1494 of 2013

Dated this the 4th day of June, 2015

JUDGMENT

Antony Dominic, J.

This appeal is filed by the petitioners in Writ Petition No.12601/13. In the Writ Petition, they challenged Exts.P7 and P8 orders issued by the first respondent rejecting Ext.P5 application for transfer of Ext.P1 building permit in favour of the first appellant, and the order cancelling Ext.P1 building permit, respectively. By the judgment under appeal, the learned Single Judge dismissed the writ petition. It is this judgment, which is challenged before us.

2. We heard the counsel for the appellant and the learned counsel appearing for the respondents.

3. Briefly stated, the facts of the case are that the second appellant was the owner of 8.25 cents of land within the limits of first respondent Municipality. On the basis of an application made for the construction of the building, she obtained Ext.P1 building permit dated 1.2.2013. By this permit, she was allowed to construct a godown having a total plinth area of 168 sq.mts., consisting of 84 sq.mts. each in the ground floor and the first floor. Soon thereafter, on 21.3.2013 by Ext.P2 document she alienated 3.75

cents of land and the building permit in favour of the first appellant. On the next day, namely 22.3.2013, she also executed a sale deed by which the remaining 4.5 cents of land and the building permit were transferred to one Muhammed Kunji. Subsequently on 4.5.2013, by Ext.P3 the first appellant purchased 4.5 cents and the building permit from Muhammed Kunji. Thus, by Exts.P2 and P3, first appellant acquired the entire 8.25 cents originally owned by the second appellant. He also acquired the building permit by virtue of his title deeds. On the strength of Exts.P2 and P3, he submitted applications dated 24.4.2013 and 4.5.2013, to the respondent Municipality for transfer of Ext.P1 building permit in his favour. Those applications were rejected by the Municipality as per Ext.P7. Reason stated in Ext.P7 is that the permit was granted for the entire 8.75 cents and the same has been sold by the two documents. It is also stated that no construction is seen to have been undertaken. On the same day, by Ext.P8 order, Ext.P1 permit was also cancelled. This is the background in which this appeal is filed. After hearing counsel on both sides, the learned Judge upheld Exts.P7

and P8 and dismissed the writ petition. It is this judgment, which is under challenge before us.

4. Having heard the counsel for both sides and on considering the materials produced before us, we find that under Rule 21 of the Kerala Municipality Building Rules, 1999 once the property in respect of which building permit has obtained is transferred, transferee cannot commence or continue construction without obtaining permit of the Secretary in writing. In violation of this statutory mandate of Rule 21 (2), the first appellant has made some constructions, which is the admitted factual position. Since this amounts to the violation of the Rules, the cancellation of the permit, cannot be faulted.

5. Be that as it may, if as asserted by the counsel for the appellants themselves, the construction now undertaken by the first appellant is strictly in compliance with the plan approved on the basis of which Ext.P1 permit was granted, we see no reason why the first appellant shall not be given an opportunity to get the same regularised in terms of Rule 143 of the Kerala Municipality Building Rules, 1999. If it is so done, he can also make a fresh application for regularisation of

permit and he can obtain building permit for the remaining construction as well. Having this in mind, we dispose of this writ appeal with the following directions:

1. in respect of the constructions already made, it will be open to the first appellant to make an application to the respondents under Rule 143 of the Kerala Municipality Building Rules, 1999 for regularisation.
2. On receipt of such application, the Secretary or any other authorised officer of the Municipality will inspect the site and on such inspection, if it is found that the structure partly constructed by the first appellant is in accordance with the plan on the basis of which Ext.P1 permit was obtained and also in compliance with the provisions of the Kerala Municipality Building Rules, 1999, the application will be allowed.
3. Once the above process is completed, it will be open to the first appellant to make a fresh application for building permit, which will be considered in the light of the provisions of the Kerala Municipality Building Rules, 1999 and the governing rules and the orders will be passed without any further delay.

With the above directions and vacating the adverse directions of the learned Single Judge, this writ appeal is disposed of. In the meanwhile, subject to the first appellant making an application under Rule 143 of the Kerala Municipality Building Rules, 1999 within two weeks from today and until orders are passed on the same, the interim order of stay passed by this Court will remain in force.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

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