

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 3RD DAY OF DECEMBER 2015/12TH AGRAHAYANA, 1937

WA.No. 238 of 2014 () IN WP(C).28747/2012

AGAINST THE JUDGMENT IN WP(C) 28747/2012 of HIGH COURT OF KERALA
DATED 21-11-2013

APPELLANT/PETITIONER:

KENT CONSTRUCTIONS PVT.LTD,
1ST FLOOR, KENT HAIL GARDEN, STADIUM LINK ROAD
PALARIVATTOM P.O, ERNAKULAM, COCHIN 682025
REPRESENTED BY ITS MANAGING DIRECTOR

BY ADVS.SRI.V.M.KURIAN
SRI.MATHEW B. KURIAN
SRI.K.T.THOMAS

RESPONDENTS/ RESPONDENTS:

1. CORPORATION OF KOCHI,
OFFICE OF THE KOCHI CORPORATION, ERNAKULAM
KOCHI 682011, REPRESENTED BY ITS SECRETARY

2. CHIEF ENVIRONMENTAL ENGINEER,
KERALA STATE POLLUTION CONTROL BOARD, KADAVANTHRA
KOCHI 682020

R1 BY ADV. SRI.K.ANAND, SC, COCHIN CORPN.
R BY SRI.P.K.SOYUZ,SC,COCHIN CORPORATION
R BY SRI. M.AJAY, SC, KERALA STATE POLLUTION CONTROL BO

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 03-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

RKC

**ANTONY DOMINIC &
P.V.ASHA, JJ.**

W.A.No.238 of 2014

Dated this the 3rd day of December, 2015

JUDGMENT

Antony Dominic, J.

The appellant filed W.P.(C) No.28747 of 2012 mainly challenging Ext.P10 communication issued by the 2nd respondent, requiring it to produce environmental clearance in terms of Ext.P12 notification, to consider Ext.P6 application, whereby the appellant sought consent to operate the sewage treatment plant established by it, in its project known as Kent Hail Garden. The writ petition having been dismissed, this appeal is filed.

2. We heard the learned counsel appearing for the appellant and the respective standing counsel appearing for respondents 1 and 2. In order to appreciate the rival contentions, it is necessary to refer to the essential facts of the case.

3. The appellant is engaged in the business of property development. On 19.6.2006, it submitted an application to the first respondent for a building permit for the construction of a multi-storied apartment building consisting of 162 residential

apartments. According to the appellant, on 22.8.2006, the plan submitted by the appellant was approved, in terms of the Government order dated 30.12.2004. However, the building permit was issued to the appellant only on 22.11.2006. This, according to the appellant, was on account of the controversy which arose following the Government order dated 28.8.2006 cancelling the Government order dated 30.12.2004. It is stated that by Ext.R2(e) dated 12.6.2007 the appellant applied to the 2nd respondent, for consent to establish a sewage treatment plant at its project site. The said consent was ultimately issued as per Ext.P11.

4. It is stated that the appellant completed the project and also established sewage plant by about June 2010. Ext.P2 is the occupancy certificate that was issued on 18.4.2011. In the meantime following the completion of the project in June 2010, the appellant submitted Ext.P6 application to the 2nd respondent for consent to operate the sewage treatment plant established by it. To that application Ext.P10 reply dated 7.1.2011 was issued,

requiring the appellant to produce environmental clearance, in terms of Ext.P12 notification dated 14.9.2006. The contention raised by the appellant was that, Ext.P12 notification issued on 14.9.2006 cannot be relevant to the project executed by the appellant, as it had applied for its building permit on 19.6.2006 and its plan was approved by the Corporation on 22.8.2006. However, the learned single Judge took the view that the permit having been issued only on 22.11.2006, the notification dated 14.9.2006 applied to the project and that therefore the demand for production of environmental clearance made in Ext.P10 is legal. It is this judgment which is under challenge.

5. These contentions were re-iterated before us also. Having considered the submissions made, we confess our inability to accept the contention raised by the appellant. Although it may be true that the appellant had applied for building permit on 19.6.2006 and the plan was approved by the Corporation on 22.8.2006, in view of the provisions contained in Chapter 18 of the Kerala Municipalities Act, the appellant could

not have commenced the construction, except the permission of the Municipality. Admittedly, in this case Ext.P1 building permit was issued by the first respondent only on 22.8.2006. Therefore, the construction, could not have started prior to the date of issue of building permit. Ext.P12 is the notification dated 14.9.2006 issued by the Government of India. This notification insofar it is relevant, reads thus:

"Now, therefore,, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of Section (3) of the Environment (Protection) Act, 1986, read with clause (d) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 and in supersession of the notification No. S.O.60 (E) dated the 27th January, 1994, except in respect of things done or omitted to be done before such supersession, the Central Government hereby directs that on and from the date of its publication the required construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule to this notification entailing capacity addition with change in process and or technology shall be undertaken in any part of India only after the prior Environmental Clearance from the Central Government or as the case may

be, by the State Level Environmental Impact Assessment Authority, duly constituted by the Central Government under sub-section (3) of Section 3 of the said Act, in accordance with the procedure specified hereinafter in this notification".

A reading of this notification shows that on and from the date of the publication of the notification, construction of new projects or activities or expansion or modernisation of existing projects is permissible only after prior environmental clearance from the authority mentioned therein, is obtained. Therefore, the requirement of the notification is to be satisfied not with reference to the date of application for building permit or the approval of the building plan, but is with reference to the commencement of construction. Commencement of construction insofar as this case is concerned, can only be subsequent to 22.11.2006, which is long after Ext.P12 notification was published by the Government of India on 14.9.2006. Therefore, for such a construction the requirements of Ext.P12 notification have necessarily to be complied with. If that be so, the demand of the 2nd respondent in Ext.P10 for production of environmental

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clearance in terms of Ext.P12 cannot be faulted on the grounds urged by the appellant. We cannot find any illegality in the view taken by the learned single Judge.

The appeal is dismissed.

Sd/-
ANTONY DOMINIC,
JUDGE.

Sd/-
P.V.ASHA,
JUDGE.

rkc

True copy

P.A to Judge