

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

WP(C).No. 6852 of 2014 (F)

PETITIONERS:

1. SREEJI JAGADEESH
W/O. JAGADEESH PRASAD, AGED 49 YEARS, AMAR JYOTHI
PATTATHANAM, KADAPPAKKADA P.O, KOLLAM - 691 008.
2. AKHILESH
S/O. JAGADEESH PRASAD, AGED 25 YEARS, AMAR JYOTHI
PATTATHANAM, KADAPPAKKADA P.O, KOLLAM - 691 008.

BY ADVS.SMT.SUMATHY DANDAPANI (SR.)
SRI.MILLU DANDAPANI
SMT.ANNA THOMAS

RESPONDENTS:

1. THE SECRETARY
CORPORATION OF KOLLAM, KOLLAM - 691 001.
2. THE CORPORATION OF KOLLAM
REPRESENTED BY ITS SECRETARY, KOLLAM - 691 001.
3. TOWN PLANNING OFFICER/BUILDING INSPECTOR
CORPORATION OF KOLLAM, KOLLAM - 691 001.

R1 & R2 BY ADV. SRI.M.K.CHANDRA MOHAN DAS,SC, KOLLAM CORPN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
09-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS

EXHIBIT-P1-TRUE COPY OF THE JUDGMENT DATED 11/01/2011 IN O.S 13/2011 OF THE MUNSIFF'S COURT, KOLLAM.

EXHIBIT-P2-TRUE COPY OF THE INTERIM ORDER DATED 20/04/2010 IN W.P(C) 13432/2010, OF THIS HON'BLE COURT.

EXHIBIT-P3-TRUE COPY OF THE ORDER DATED 21/08/2013 IN APPEAL NO. 778/2012 PASSED BY THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM.

EXHIBIT-P4-TRUE COPY OF THE APPLICATION FOR BUILDING PERMIT DATED 08/10/2013 SUBMITTED BY THE PETITIONERS BEFORE THE KOLLAM CORPORATION.

EXHIBIT-P4(a)-TRUE COPY OF THE APPROVED PLAN.

EXHIBIT-P5-TRUE COPY OF THE APPLICATION NO. MO1/BA/0046/13 ISSUED BY THE KOLLAM MUNICIPAL CORPORATION TO THE PETITIONER.

EXHIBIT-P6-TRUE COPY OF THE RECEIPT DATED 09/10/2013 ISSUED FROM THE KOLLAM MUNICIPAL CORPORATION.

EXHIBIT-P7-TRUE COPY OF THE INTIMATION NO. PW4/BA/156/11-12 DATED 23/10/2013 ISSUED BY THE KOLLAM MUNICIPAL CORPORATION TO THE PETITIONER.

EXHIBIT-P8-TRUE COPY OF THE WRITTEN REQUEST MADE UNDER SECTION 392 (2) OF THE ACT DATED 13/11/2013 SUBMITTED BY THE PETITIONERS TO KOLLAM CORPORATION.

EXHIBIT-P9-TRUE COPY OF THE INTIMATION DATED 13/11/2013 SUBMITTED BY THE PETITIONERS TO THE KOLLAM CORPORATION.

EXHIBIT-P10-TRUE COPY OF THE INTIMATION NO. PW 10/MO1/BA/46/13-14 DATED 21/11/2013 FROM THE KOLLAM CORPORATION.

EXHIBIT-P11-TRUE COPY OF THE REPLY DATED 28/11/2013 ISSUED BY THE PETITIONERS TO THE 1ST RESPONDENT.

EXHIBIT-P12-TRUE COPY OF THE APPLICATION DATED 18/12/2013 SUBMITTED BY THE PETITIONERS TO THE KOLLAM CORPORATION.

EXHIBIT-P13-TRUE COPY OF THE INTIMATION NO. PW10/MO1/BA/46/13-14 DATED 06/01/2014, ISSUED BY THE FIRST RESPONDENT TO PETITIONERS.

EXHIBIT-P14-TRUE COPY OF THE REPLY DATED 13/01/2014 TO EXHIBIT-P11 SUBMITTED BY THE PETITIONERS TO THE 1ST RESPONDENT.

EXHIBIT-P15-TRUE COPY OF THE INTIMATION NO. PW3/33256/13 DATED 16/01/2014 FROM THE KOLLAM CORPORATION 2ND PETITIONER.

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EXHIBIT-P16-TRUE COPY OF THE MEMO BEARING NO. TP/PW8-4033/01 DATED 04/03/2013 FROM THE KOLLAM CORPORATION TO THE 1ST PETITIONER.

EXHIBIT-P17-TRUE COPY OF THE NOTICE DATED 04/03/2014, FROM THE KOLLAM CORPORATION TO THE 1ST PETITIONER.

EXHIBIT-P18-TRUE COPY OF THE LETTER DATED 04/03/2014, OF THE 1ST RESPONDENT TO THE 1ST PETITIONER.

EXHIBIT-P19-PHOTOCOPY OF PORTION OF VERSION TAKEN BY THE 1ST PETITIONER FROM THE WEBSITE IN RESPECT OF EXHIBIT R1(b).

EXHIBIT-P20-PHOTOCOPY OF COVERING LETTER SUBMITTED BY THE PETITIONERS ALONG WITH EXHIBIT P4 APPLICATION ON 8.10.2013.

RESPONDENTS' EXHIBITS:

EXT.R1(a): A TRUE COPY OF THE NOTICE NO.PW4/BA/156/11-12 DTD. 13.7.2012 ISSUED BY THE CORPORATION.

EXT.R1(b): A TRUE COPY OF THE ON-LINE VERSION OF THE ORDER OF REJECTION SENT BY THE CORPORATION.

EXT.R1(c): A TRUE COPY OF THE NOTICE NO.PW4/BA/156/11-12 DTD. 24.3.2012 ISSUED BY THE CORPORATION.

EXT.R1(d): A TRUE COPY OF THE COMMUNICATION NO.G8-7126/14 DTD. 12.3.14 SENT BY THE CORPORATION TO THE PETITIONER.

// TRUE COPY //

TKS

P.S. TO JUDGE

C.T.RAVIKUMAR, J.

W.P.(C)No.6852 of 2014

Dated 9th November, 2015

JUDGMENT

The petitioners are the owners in possession of a piece of land comprised in Re-survey Nos.70, 71 and 72 of Vadakkevila Village in Kollam District. In fact, the first petitioner owns 5.36 Ares in Re-survey Nos.70 and 72 and the second petitioner who is her son, owns 2.83 Ares in Re-survey No.71 of the same Village. A three storeyed building was constructed in the said land years ago. Since they intended to construct an additional third floor they submitted an application for getting the requisite permit for such construction. That application was ultimately rejected as per order No.PWD4/BA/156/11-12 dated 13.7.2012 by the first respondent herein. After exhausting the remedy available against the same, ultimately they took up the matter before the Tribunal for Local Self Government Institutions by filing Appeal No.778 of 2012. After considering the rival contentions the Tribunal dismissed the appeal. A scanning of the same would reveal that the claim of the petitioners that they were entitled to get the deemed permit was virtually negated by the Tribunal while dismissing the appeal. At the same time, evidently, liberty was

granted to the petitioners to file fresh application in accordance with law for building permit. As per Ext.P3, after giving liberty the Secretary was directed to consider such application, if filed, in accordance with law. Ext.P4 would reveal that availing the liberty granted as per Ext.P3 the petitioners submitted Ext.P4 application on 8.10.2013. Though in Ext.P19 the date of receipt of such application was shown as 1.10.2013 it can only be either 8.10.2013 or on any subsequent date. At the same time, it is evident from Ext.P19 itself that the documents were submitted on 18.10.2013 and that the file was given to the officer concerned on 31.10.2013. Owing to the delay in the matter of its consideration the petitioners started effecting construction bonafidely thinking that they accrued the benefit of the deeming provision under the Kerala Municipality Building Rules and they were legally authorised to do so. Thereupon, they received Ext.P10 dated 21.11.2013 whereunder they were informed that sufficient open space was not provided. On receipt of Ext.P10 the petitioners submitted Ext.P11 reply relying on the provisions under Rule 11(b) of Kerala Municipality Building Rules. Subsequently, they submitted a referral application virtually, taking up the contention that they are entitled to get the benefit of deeming provision and thereby entitled to get permit in terms of the provisions under Section 392(2) of

the Kerala Municipality Act and Rule 15(2) of the Kerala Municipality Building Rules. Evidently, they also requested the first respondent to accept the fee for granting permit and the said fact is also evident from Ext.P12. Pursuant to Ext.P12 they were given Ext.P13 intimation. The petitioners were informed that the permit fee could not be accepted as the appeal was already dismissed. The contention of the petitioners is that the Secretary should not have passed such an order after having taken steps for referring the matter to the Council. Earlier, the petitioners submitted Ext.P14 letter requesting the Secretary to forward the building permit in terms of Rule 15(2) of the Kerala Municipality Building Rules. Thereafter, when applied for information under the Right to Information Act Ext.P15 information was passed on to them. They were informed that all steps had been taken for placing the request for reference to the Council and it is being processed. According to the petitioners, in the said circumstances, they bonafidely believed that the Council would pass an order with retrospective effect from 18.12.2013. Thereupon, to their dismay they received Ext.P16 memo dated 4.3.2014, it is contended. Evidently, the petitioners were required to remove the unauthorised construction and they were also cautioned that in case of their failure to do so coercive steps would be taken. Such

a notice viz., Ext.P17 was also issued on the same day itself. Yet another order viz., Ext.P18 was also passed by the first respondent on the same day. It is stated therein that construction of the third floor was commenced without any permission and therefore, appropriate action in terms of the provisions under Sub-sections (2), (3) and (4) of Section 406 would be initiated against them. It is in the said circumstances that the captioned writ petition has been filed challenging Exts.P10, P16, P17 and P18. The petitioners also sought for the following further prayers:-

- “ii) issue a writ of mandamus or any other appropriate writ order or direction, directing the Secretary to pass orders to the effect that the Petitioners are entitled to continue the work on the basis of the deemed permission of the building permit that are to be granted to the Petitioners as per the provisions Section 392(2) of the Kerala Municipality Act, pending disposal of the above Writ Petition;
- (iii) to issue a writ of certiorari or other appropriate writ or direction quashing Exhibit-P10 dated 21.11.2013, since it has been passed after making the reference of the application for building permit to the Council of the Corporation on 16.11.2013, on which date, it was received by it;”

2. A counter affidavit has been filed by the respondents. A perusal of the statements therein would reveal that the stand of the respondents is that the application submitted by the petitioners availing

the liberty granted under Ext.P3 was earlier, rejected. Along with the counter affidavit Ext.R1(a) has been produced. It appears that as per the same the petitioners were informed that the application for permit could be placed before the Special Committee for granting exemption only if the petitioners produce land relinquishment form as contemplated under Rule 85 of Chapter XI of the Kerala Municipality Building Rules. Ext.R1(b) is the order of rejection of the application. The stand of the respondents is that it is after Ext.R1(b) that Ext.P10 notice was issued to the petitioners. The tenor of the contentions taken up in the counter affidavit would reveal that according to them the petitioners are not entitled to get the application considered under Rules 100, 101 and 102 of the Special Rules of the Kerala Municipality Building Rules. A perusal of paragraph 11 of the counter affidavit would reveal that they assigned certain further reasons as well, for taking up the stand that the petitioners are not entitled to get the benefits of the aforesaid rules. In short, it is evident from the counter affidavit that the contentions are taken up in support of the rejection of the application. A reply affidavit has been filed by the petitioners. Along with the same Exts.P19 and P20 are produced. Evidently, the petitioners contend that though Ext.R1(b) is produced along with the counter affidavit no decision rejecting the

application submitted by the petitioners pursuant to Ext.P3 was actually taken.

3. I have heard the learned Senior Counsel appearing for the petitioners and also the learned Standing Counsel for the respondents.

4. Certain indisputable facts obtained in this case. Evidently, the petitioners submitted an application for effecting construction of a third floor in the existing building in the property referred above. Aggrieved by the rejection of the said application ultimately the matter was taken up before the Tribunal for Local Self Government Institutions and it culminated in Ext.P3 order. The appeal preferred by the petitioners was dismissed as per Ext.P3. But, at the same time, liberty was granted thereunder, to the petitioners to submit fresh application in accordance with law, for building permit. It would also reveal that in such eventuality the first respondent was bound to consider the same, in accordance with law, as a specific direction in that regard was also issued in Ext.P3. In the light of the rival contentions and the documents referred above the fact that the petitioners submitted fresh application availing the liberty granted as per Ext.P3 cannot be disputed. True that,

while the respondents contend that the said application was rejected as is obvious from Ext.R1(b), the petitioners contend that no such order of rejection was passed. The only document which would indicate that the application was rejected is Ext.R1(b). Evidently, it is an online version of the order of rejection. Even if the contention of the respondents is taken as correct it would only reveal that the application was rejected as per that online version of order of rejection. Obviously, the reason for such rejection is not discernible from Ext.R1(b). The order passed in detail, if any, was not produced along with the counter affidavit. True that, in the meanwhile, the petitioners effected construction of the third floor to certain extent. The learned Senior counsel appearing for the petitioners submitted that after the filing of the writ petition no further construction was effected. From the facts expatiated above, it is evident that after dismissing the appeal filed by the petitioners the Tribunal thought it fit to grant liberty to the petitioners to file fresh application. There is no contention for the respondents that they challenged Ext.P3 order whereby such a liberty was granted to the petitioners. In such circumstances, when the petitioners submitted an application availing the liberty granted as per Ext.P3 the first respondent was under a bounden duty to consider the same strictly in accordance with law. Apart from the

online version of the order of rejection which lacks the reasons for the rejection there is absolute absence of any evidence to show that the first respondent has considered the fresh application viz., Ext.P4 imbibing the spirit of the directions in Ext.P3 order and also in accordance with the provisions. When the Tribunal granted liberty to the petitioners to file an application followed by a specific direction to the first respondent to consider the same in accordance with law, in case of receipt of such an application the first respondent was duty bound to consider the same strictly in accordance with law and at any rate, the online version of the order of rejection that lacks reasons cannot be treated as an order passed in tune with the direction of the Tribunal and in terms of the relevant provisions of law. Any order from which civil consequences flow must be a speaking order. That apart, owner of a land is entitled to effect construction on his property in the manner he likes subject, of course, to the relevant provisions of law. In such circumstances, an application submitted by an owner of a property seeking permission for effecting construction in a property could be rejected only by assigning sustainable reason in accordance with the provisions of the relevant Act or the Rules. In this case, nothing is before this Court which would indicate that Ext.P4 application was considered in accordance with law

and with application of mind the same was considered and was rejected assigning reasons in the light of the relevant provisions of law. As noticed hereinbefore, bonafidely believing that the petitioners have accrued a deeming permit they had effected construction of the third floor to certain extent, but, at the same time, after the receipt of Ext.P10 and P16 to P18 they did not effect any further construction, according to them. Taking into account all such aspects this writ petition is disposed of as hereunder:-

The first respondent shall consider Ext.P4 application and pass appropriate orders thereon strictly in accordance with law, as expeditiously as possible, at any rate, within a period of 45 days from the date of receipt of a copy of this judgment. If Ext.P4 application was rejected as per Ext.R1(b) then it shall be restored for the purpose of such a consideration and to enable such consideration the online version of order of rejection stands set aside. Taking into account the peculiar circumstances obtained in this case I am of the view that before passing such an order the petitioners shall also be afforded with an opportunity of being heard. Evidently, they will be entitled to take all legal contentions at the time of hearing. Till such an order is passed within the time stipulated as above, no coercive steps to demolish the

construction shall be effected. Since earlier the action on the part of the respondents was virtually found 'in order' by the Tribunal solely for the reason of delay the petitioners cannot claim accrual of any right to effect construction. It is also made clear that till such an order is passed the petitioners shall not proceed with any construction whatsoever in the building in question for which they sought permission. Needless to say that the question regarding the right of the petitioners to effect construction or of the respondents to take steps to demolish the already effected construction without permission would depend upon the outcome of the decision on the application.

Sd/-
C.T.RAVIKUMAR
Judge

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