

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

WP(C).No. 11947 of 2014 (P)

PETITIONER:

**A.J VARGHESE, S/O.A.V.JOSE,
RESIDING AT ALUKKA HOUSE,
ARISTO ROAD, THRISSUR.**

**BY ADVS.SRI.T.C.SURESH MENON
SRI.P.S.APPU
SRI.A.R.NIMOD**

RESPONDENTS:

- 1. THE THRISSUR CORPORATION,
REPRESENTED BY ITS SECRETARY,
CORPORATION OFFICE, THRISSUR-680001.**
- 2. K.J.CHRISTOPHER, RESIDING AT
KANNANAICKAL HOUSE, KUTTANELLOOR.P.O,
THOTTAPPADY, THRISSUR-680014.**

***ADDL. R3 IMPEADED**

- 3. THE TOWN PLANNING OFFICER,
OFFICE OF THE DISTRICT TOWN PLANNER,
THRISSUR-680 001.**

**ADDL.R3 IS IMPEADED AS PER ORDER
DATED 7/8/2014 IN IA 10282/14.**

**R1 BY ADV. SRI.K.P.MJAYAN,SC
ADV. SRI.V.N.HARIDAS**

**R2 BY ADVS. SRI.N.HARIDAS
SRI.ANTONY MATHEW
SRI.M.N.SASIDHARAN**

R3 BY GOVERNMENT PLEADER SMT.K.A.SANJEETHA

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 22-07-2015 ALONG WITH WPC.27773//2014, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

mbr/

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXT.P1 :** TRUE COPY OF THE BUILDING PERMIT ISSUED BY THE
IST RESPONDENT CORPORATION DATED 19.3.2010.
- EXT.P2 :** TRUE COPY OF THE ORDER IN APPEAL NO.384/2013 ON THE FILE OF
THE COURT OF THE TRIBUNAL FOR LOCAL SELF GOVERNMENT
INSTITUTIONS, THIRUVANANTHAPURAM DATED 1.7.2013.
- EXT.P3** TRUE COPY OF THE ORDER PASSED BY THE IST RESPONDENT
CORPORATION DATED 17.3.2014.

RESPONDENT(S)' EXHIBITS:

- EXT. R1(A) :** A TRUE COPY OF THE WRITTEN COMPLAINT DATED 26.12.2012 MADE
BY THE 2ND RESPONDENT.
- EXT. R1(B) :** A TRUE COPY OF THE REPORT DATED 27.1.14 FROM THE DISTRICT
TOWN PLANNING OFFICE TO THE THRISSUR CORPORATION.
- EXT. R1(C) :** A TRUE COPY OF THE NOTICE ISSUED ON 21.12.2014 TO THE
PETITIONER FROM THE THRISSUR CORPORATION.
- EXT. R1(D) :** A TRUE COPY OF THE NOTICE ISSUED ON 21.12.2014 TO THE
2ND RESPONDENT FROM THE THRISSUR CORPORATION.
- EXT. R2(A) :** COPY OF THE LETTER NO.259/C2/TDO/14 DATED 17.2.2014 OF THE
GEOLOGIST, OFFICE OF THE MINING AND GEOLOGY DEPARTMENT,
MINI CIVIL STATION, CHEMBUKKAVU, THRISSUR - 20.
- EXT. R2(B) :** TRUE COPY OF THE PETITION DATED 26.12.2013 SUBMITTED BY THE
SECOND RESPO TO THE FIRST RESPONDENT CORPORATION.
- EXT. R2(C) :** COPY OF THE PETITION DATED 26.12.2013 SUBMITTED BY SECOND
RESPONDENT TO THE TOWN PLANNING OFFICER THRISSUR.
- EXT. R2(D) :** TRUE COPY OF THE LETTER DATED 27.1.2014 OF THE TOWN
PLANNING OFFICER, THRISSUR.
- EXT. R2(E) :** TRUE COPY OF THE LETTER NO.A2-1287/2014 DATED 6.6.2014 OF THE
TOWN PLANNING OFFICER, THRISSUR.
- EXT. R2(F) :** A TRUE COPY OF OFFICE NOTE FILE FROM 1.1.2014 TO 31.5.2014 IN
FILE NO.C/3240/13 IN THE OFFICE OF THE TOWN PLANNING OFFICER
THRISSUR.
- EXT. R2(G) :** TRUE COPY OF THE ORDER DATED 26.3.2014 INCRL.M.P.NO.537/2014
OF THE HON'BLE ENQUIRY COMMISSION AND SPECIAL JUDGE
VIGILANCE AND ATI CORRUPTION BUREAU, THRISSUR.

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**EXT. R2(H) : TRUE COPY OF THE LETTER BEARING NO.48605/RB2/14/LSG(D)
DATED 30.9.2014 OF THE SECRETARY TO GOVERNMENT, LOCAL SELF
GOVERNMENT(RB), DEPARTMENT, THIRUVANANTHAPURAM.**

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) Nos.11947 & 27773 of 2014

Dated this the 22nd day of July, 2015.

JUDGMENT

These writ petitions relate to the grant of occupancy certificate to the building constructed by the petitioner. The petitioner alleges that he had filed an application for building permit before the respondent corporation on 30.4.2008, which was granted on 19.3.2010. In the meanwhile, on 16.12.2009, the Kerala Municipality Building Rules underwent extensive amendment. Based on the permit already issued, the petitioner went ahead with the construction and completed one of the two towers of the residential flats permitted to be raised. When the petitioner applied for renewal of licence to complete the rest of the construction, it was objected to by the first respondent corporation on the ground that the petitioner should submit a revised plan in compliance with the amended building rules. The petitioner approached the Tribunal for Local Self government Institution with a statutory appeal and

obtained an order in his favour. The respondent corporation remained *ex parte* in the proceedings and the decision of the tribunal was not put to challenge. On the basis of the direction issued by the tribunal, the respondent corporation renewed the petitioner's licence. However, while he was proceeding with the construction, the respondent corporation issued a stop memo on the basis of the objection raised by the District Town Planner. The corporation directed the petitioner to stop further construction until the engineer of the corporation, to be deputed, clearly understood the violation said to have been committed by the petitioner as stated in the communication by the town planner. It is with this background, the petitioner filed W.P.(C) No.11947 of 2013 against the stop memo.

2. This court as per the interim direction, suspended the operation of stop memo. On the basis of that, the petitioner proceeded with the construction. The petitioner thereafter completed the building and submitted the completion certificate and sought occupancy certificate from

the respondent, which was turned down by the respondent corporation. It is against the same, W.P.(C) No.27772 of 2014 is filed.

3. The first respondent corporation as well as the party respondent has filed counter affidavit in the writ petition.

4. In the counter affidavit filed by the first respondent signed by the secretary, it was submitted that the permit was issued inadvertently by the then secretary without looking into the provisions of the amended municipality building rules. The permission was granted without insisting for fresh plan in accordance with a new rules, which led to the completion of the construction.

5. In the counter affidavit filed by the party respondent, stress was given to the violations made mention of in the letter issued by the Town Planner. According to the said respondent, the construction is in violation of the rules and therefore it cannot be regularized at all.

6. I have heard the learned counsel for the petitioner,

the learned counsel for the respondent corporation and the learned counsel for the party respondent in the matter.

7. The respondent Corporation would submit that the building permit already issued to the petitioner was due to some 'inadvertence' on the part of the officials of the corporation. When the petitioner's application was being considered, the new building rules has come into force and therefore the respondent corporation ought to have insisted for fresh plan in accordance with the new building rules. Without doing so, the permit was granted by the then secretary and the petitioner has proceeded with the construction. As the petitioner has altered his position on account of the permit given by the respondent corporation though it is stated to be an inadvertence on the part of the then secretary which is not now in service, the petitioner cannot be blamed for the same. Nobody has a case that the construction is against the provisions of the unamended rules. The demand on the corporation to provide revised plan on the

basis of the amended building rules, was struck down by the tribunal. The said order (Ext.P2 in W.P.(C) No.27773/2013) was never put to challenge and the same has attained finality. The operation of stop memo issued by the corporation has been stayed by this Court, which passed the way of the petitioner to proceed with the construction of the second tower. It is relevant to note that there was never any dispute in respect of the first tower. The petitioner points out that respondent corporation which suffered the orders passed by the learned tribunal as well as this Court has no right to refuse the occupancy certificate. It was rightly pointed out by the learned tribunal that no further condition could be stipulated by the corporation for renewal of the building permit and the same has to be renewed on the basis of the rules, that were applicable at the time when the building rules amended. On a consideration of the entire materials placed on record, this Court is of the view that the petitioner is entitled to get the relief as prayed for.

In the result, W.P.(C) No.11947 of 2014 is allowed. Ext.P3 is quashed. W.P.(C) No.27773 of 2014 is allowed. The first respondent corporation is directed to grant occupancy certificate to the building constructed by the petitioner after verifying whether there is any deviation from the approved building plan and permit on the basis of the building rules that was in existence at the time when the permit was granted. This shall be done within a period of two weeks from the date of receipt of a copy of this judgment.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.

The fourth sentence in the decretal portion of the common judgment dated 22/07/2015 in W.P.(C) Nos.11947 and 27773 of 2014 is corrected as follows:

"The first respondent corporation is directed to grant occupancy certificate to the building constructed by the petitioner after verifying whether there is any deviation from the approved building plan and permit on the basis of the building rules that existed at the time of the submission of application by the petitioner." as per order dated 20/08/2015 in I.A.No.11996/2015 in W.P.(C) No.11947/2014 and I.A.12006/2015 in W.P.(C) No.27773/2014."

Sd/-
Registrar (Judicial)