

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

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

WP(C).No. 17615 of 2015 (B)

PETITIONER :

**M.UNNIKRISHNA MENON,
S/O.KOCHUNNI KARTHA, AGED 70 YEARS,
RESIDING AT 'PRANAVAM',
PALIYAM ROAD, THRISSUR - 680 001.**

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

RESPONDENT(S) :

- 1. THE THRISSUR CORPORATION,
REPRESENTED BY ITS SECRETARY,
CORPORATION OFFICE, THRISSUR - 680 001.**
- 2. THE COMMANDANT GENERAL,
FIRE AND RESCUE SERVICES,
THIRUVANANTHAPURAM - 695 001.**

**R1 BY ADVS. SRI.K.P.VIJAYAN
SRI.V.N.HARIDAS**

R2 BY GOVERNMENT PLEADER SRI.JOE KALLIATH

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 20-08-2015 , THE COURT ON 09-11-2015 DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1. TRUE COPY OF THE BUILDING PERMIT GRANTED TO THE PETITIONER DATED 09.08.2012.
- EXHIBIT P2. TRUE COPY OF THE INSPECTION REPORT DATED 13.02.2015.
- EXHIBIT P3. TRUE COPY OF THE LETTER SENT BY THE 2ND RESPONDENT TO THE DIVISIONAL OFFICER, FIRE AND RESCUE SERVICES, PALAKKAD DATED 26.04.2015.
- EXHIBIT P4. TRUE COPY OF THE LETTER SENT BY THE DIVISIONAL OFFICER, FIRE AND RESCUE SERVICES, PALAKKAD DATED 11.05.2015.
- EXHIBIT P5. TRUE COPY OF THE LETTER SENT BY THE ASSISTANT DIVISIONAL OFFICER, THRISSUR DATED NIL.
- EXHIBIT P6. TRUE COPY OF THE LETTER SENT BY THE DIVISIONAL OFFICER, PALAKKAD TO THE 2ND RESPONDENT DATED 19.05.2015.
- EXHIBIT P7. TRUE COPY OF THE NEWS ITEM PUBLISHED IN THE MALAYALA MANORAMA DAILY DATED 16/7/2015

RESPONDENT(S)' EXHIBITS

- EXHIBIT R2(A). TRUE COPY OF THE CIRCULAR NO.5/15 DATED 23/06/15
- EXHIBIT R2(B). TRUE COPY OF THE REPORT OF THE COMMITTEE HEADED BY DIRECTOR (TECHNICAL) ALONG WITH COVERING LETTER
- EXHIBIT R2(C). TRUE COPY OF THE COMMUNICATION DATED 03/07/15 ISSUED TO THE PETITIONER.

/TRUE COPY/

P.A.TO JUDGE

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 17615 of 2015

Dated this the 9th day of November, 2015

J U D G M E N T

The petitioner has approached this Court for a direction to the Fire and Rescue Services to grant the final fire NOC to an apartment complex, the construction of which has been completed in all respects.

2. The petitioner alleges that he has been granted a building permit to construct an apartment complex consisting of basement, ground and 11 floors by the 1st respondent corporation. As a precondition for the grant of building permit, the applicant has to produce an NOC from the Fire and Rescue Services. According to the petitioner, the construction has now been completed and some of the apartments have already been handed over to the respective buyers. Prior to the grant of an occupancy certificate, the petitioner is obliged to produce the final fire NOC from the Fire and Rescue Services. An inspection was conducted by the Board of Officers, who

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opined that everything is in accordance with the rules and recommended for the grant of final fire NOC. The petitioner alleges that the 2nd respondent strangely again called for a report from the Divisional Office, Palakkad to ascertain if everything is in order. A report has been sent from the Divisional Officer, Palakkad once again, making it clear that all the mandatory requirements have been complied with. However, still, the 2nd respondent does not issue a final fire NOC, which, according to the petitioner, is causing irreparable damage to the petitioner, who is facing the wrath of the persons, who have invested in the apartment complex. Hence, this writ petition.

3. In the counter affidavit filed by the 2nd respondent, it is contended as follows;

In view of increase in fire incidents during the years, 2014 & 2015, and further due to death of people in a fire incident in June, 2015 in an apartment building in Mumbai, it has become

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necessary to consider the life safety of the occupants, who use the high rise buildings. A meeting of Divisional Officers, Assistant Divisional Officer, Director (Technical), Director (Administration) and Administrative Officer under the leadership of the 2nd respondent was held on 09.06.2015 after assumption of charge as the Commandant General Department on 01.06.2015. It was decided that there should be full compliance of National Building Code in relation to fire safety, adoption of best practices in assuring life safety in building design and installation etc. In the above circumstances, the committee members, who have to issue NOC, were directed to inspect the site/buildings with a view to assess, check and ensure that all the provisions of National Building Code in Part II especially, Section 12.2.5.1, additional information on 'a' to 't' and all Sections, Sub Sections and

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Annexures of Part IV to assure life safety are complied with. As the mission of the department is 'saving lives', Ext.R2(a) circular was issued by the 2nd respondent incorporating the decisions arrived at the meeting and other general guidelines on 23.06.2015 vide Circular No.5/15.

In view of Ext.R2(a) circular and the Government Order dated 17.07.2012, the 2nd respondent constituted a committee under the Chairmanship of Director (Technical) to see whether the relevant provisions of National Building Code relating to fire safety are complied with by the petitioner. The Director (Technical) and the committee members inspected the building of the petitioner and found that there are seven deviations in the building. Ext.R2(b) is the report of the committee headed by the Director (Technical) along with a covering letter. GO(Rt) No.2503/12/Home dated 17.08.2012 prescribes

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that the final NOC in respect of buildings above 24 mts. has to be issued by the committee headed by the Director (Technical). In view of the direction issued by the 2nd respondent, the committee headed by the Director (Technical) submitted Ext.R2(b) report to the 2nd respondent and; one of the committee members viz., Assistant Divisional Officer, Fire & Rescue Services, Thrissur intimated the copy of the report to the 1st respondent as well as to the petitioner vide Ext.R2 (c) communication dated 03.07.2015.

The relevant provisions of National Building Code was sought to be strictly enforced by issuing Ext.R2(a) circular for assuring life safety of the occupants of the buildings. It is pointed out that the height of buildings, which houses apartments in Kerala has gone up to 100 mts. and in this particular case, the height of the building is 35.46 mts. According to the 2nd respondent, in such

circumstances, importance of life safety measures provided in the building assume significance. As the practice that was followed earlier with specific reference to details collected during inspections requires change, Ext.R2(a) circular was issued; and consequently, a detailed report was called for from a High Level Committee as prescribed by the Government to see whether life safety measures mentioned in the National Building Code was provided in the building owned by the petitioner. As and when the deviations noted in Ext.R2(b) report are rectified by the petitioner, the Committee headed by the Director (Technical) can consider grant of final NOC to the building of the petitioner. This is so submitted as GO(Rt) No.2503/12/Home dated 17.08.2012 has authorized the committee headed by the Director (Technical) to issue final NOC for the building. It is further pointed out that the committee headed

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by the Director (Technical), who is the authority to issue final NOC, is a necessary party to this writ petition.

4. The petitioner has filed a reply affidavit.

5. Arguments have been heard.

6. It was pointed out by the learned counsel for the petitioner that the construction of the apartment complex is over and some of the apartments have already been handed over to the respective buyers. The 1st respondent corporation is yet to issue an occupancy certificate for the premises for the reason that the 2nd respondent has not granted the final fire NOC. According to the petitioner, he has complied with all the procedural formalities and the Board of Officers, who conducted an inspection, has also recommended the grant of final fire NOC. After the conduct of additional inspections, reports have been sent to the 2nd respondent, clarifying that all the mandatory requirements have been met by the petitioner. However, the 2nd respondent is maintaining

silence and refusing to issue the final fire NOC to the petitioner; so submitted the learned counsel for the petitioner.

7. Mr.Joe Kalliath, the learned Senior Government Pleader, invited my attention to Ext.R2(a) circular and had pointed out that the total height of the apartment complex is 35.46 metres, which is inclusive of the basement, ground floor and 11 floors. However, prior to Ext.R2(a) circular, there was a Government Order, GO(Rt) No.2503/2012/Home dated 17.08.2012, which provides that for buildings having more than 100 metres of height, the application has to be sanctioned by the committee consists of Director (Technical), who is the Chairman and two members, one of whom is the Divisional Officer, Fire & Rescue Station, Thiruvananthapuram and the second one is the Station Officer (Chief Store), Fire & Rescue Services, Headquarters, Thiruvananthapuram. The committee is empowered to process the application for site & final NOCs in the case of application, in which,

objections raised by the other scrutiny committees and the NOC for both site & final would be issued within 15 days of receipt of such application.

8. The building permit was granted to the petitioner to construct a residential apartment complex vide Ext.P1. An inspection was carried out in relation to the grant of final fire NOC by a committee headed by the Divisional Officer, which resulted in Ext.P2 inspection report. An additional query, namely, whether fire water tanks are specifically provided on the ground floor as well as terrace, was sought for vide Ext.P3, to which the Assistant Divisional Officer, Fire and Rescue Service, Thrissur conducted an inspection and reported that separate water tanks are provided in the building. The said fact was reported to the office of the 2nd respondent vide Ext.P6. Pursuant to the GO dated 17.08.2012 referred to above, Standing Order No.5/12 was issued by the previous Commandant General, whereby the inspection of the building above the height of 24 mts. was

delegated to a committee headed by the Divisional Officer. The inspection report of the committee headed by the Divisional Officer, which is produced as Ext.P2, contains 12 details, which mainly deal with erection of fire fighting equipments and construction of fire water tanks.

9. It was argued by the learned Senior Government Pleader that the relevant provisions of the National Building Code were sought to be strictly enforced by issuing Ext.R2(a) circular for assuring life safety of the occupants of the buildings. It was further pointed out that as and when the deviations noted in Ext.R3(b) report are rectified by the petitioner, the committee headed by the Director (Technical) can consider grant of final NOC to the building of the petitioner.

10. It is relevant to note that till the time of issue of Ext.R2(a) circular, GO(Rt) No.2503/12/Home dated 17.08.2012 was in force, by which, power was delegated

to a committee headed by a Divisional Officer to inspect the buildings and to recommend for the grant of final NOC. This committee had inspected the building constructed and has issued Ext.P2 recommending the grant of final NOC to the petitioner. It is worthwhile to note that all technical formalities prescribed at the time of grant of NOC has been scrupulously complied with by the petitioner; and hence, Ext.P2 recommendation was given by the Board of Inspectors. The 2nd respondent cannot now come forward with Ext.R2(a) circular, that too, one issued after the filing of the writ petition and contend that the inspection cannot be conducted by the Board of Inspectors headed by a Divisional Officer. The petitioner is not at fault in complying with the necessary directions issued at the time of granting NOC. The petitioner is entitled to get the final NOC in terms of Ext.P2 and reliance placed on Exts.R2(a) and R2(b) cannot be countenanced. It is well settled that the rules cannot be changed midway. NOC was granted to the

petitioner at the first instance, based on which, he has completed construction and the Board of Inspectors headed by a Divisional Officer has also given their stamp of approval stating that the mandatory requirements in terms of the NOC has been provided by the petitioner.

11. The learned counsel for the petitioner relied on Ext.P7 report, which appeared in Malayala Manorama daily dated 16.07.2015, which shows that the Government was deliberating on the issue as Ext.R2(a) circular has caused a turmoil since a large section of the society has been drastically affected by the same. Even otherwise, there are only minor deviations pointed out in Ext.R2(b) and except for item nos.1, 4 & 5 mentioned therein can be rectified in no time. However, defect no.4 pointed out by the 2nd respondent, viz., providing ventilation at the basement cannot be resolved by any stretch of imagination at this point of time since construction is completely over and any modification made in the concrete structure at the basement would affect the

structural stability of the building. Therefore, on a consideration of the entire materials now placed on board, this Court is of the view that the petitioner is entitled to get the relief as prayed for.

In the result, the writ petition is disposed of as follows;

- The petitioner is permitted to cure the deviations except for item no.4 mentioned in Ext.R2(b) within a period of two weeks from the date of receipt of a copy of this judgment.
- In the event of curing the defects, the 2nd respondent shall grant the petitioner the final fire NOC in respect of the apartment complex constructed by him on the basis of Ext.P1 building permit.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

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