

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

WP(C).No. 18889 of 2014 (I)

PETITIONER(S) :

**CORPORATION OF THIRUVANANTHAPURAM,
REPRESENTED BY ITS SECRETARY, CORPORATION BUILDINGS,
VIKHAS BHAVAN, THIRUVANANTHAPURAM-695 033.**

**BY SRI.N.NANDAKUMARA MENON (SENIOR ADVOCATE)
ADV. SRI.P.K.MANOJKUMAR, S.C**

RESPONDENT(S) :

**S.KRISHNAKUMAR, AGED 50 YEARS,
S/O.LATE M.G.SIVASANKARA KURUP, MANAGING DIRECTOR,
LIFE SPAN, INFRASTRUCTURE INDIA PVT. LTD.,
ANA NIKUNJAM CONSTRUCTIONS PVT. LTD., "INDRAPRASTHAM",
T.C. 4/2554(3), PATTOM-KOWDIAR ROAD, PATTOM.P.O.,
PIN-695 004, THIRUVANANTHAPURAM.**

**BY ADVS. SRI.R.S.KALKURA
SRI.M.S.KALESH
SMT.A.V.PRIYA
SRI.HARISH GOPINATH
SMT.R.BINDU
SRI.SANIL KUNJACHAN
SRI.JOHNSON JOSE PANJIKKARAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 12-11-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

- P1: THE PHOTOSTAT COPY OF THE ORDER NO. UE2/BA-59/13 DATED 13-03-2013, ISSUED BY THE TOWN PLANNING OFFICER, TRIVANDRUM CORPORATION, TO THE RESPONDENT.**
- P2: THE PHOTOSTAT COPY OF THE DECISION OF THE COUNCIL DATED 13-05-2013 ISSUED BY THE MAYOR, COPY COUNCIL SECRETARY, TRIVANDRUM CORPORATION.**
- P3: THE PHOTOSTAT COPY OF THE COMMUNICATION NO. ZUE2/BA-59/13 DATED 01-06-2013 ISSUED BY THE SECRETARY, TRIVANDRUM CORPORATION, TO THE RESPONDENT.**
- P4: THE PHOTOSTAT COPY OF THE APPEAL MEMORANDUM SUBMITTED BY THE RESPONDENT DATED 11-07-2013 IN APPEAL NO. 648/2013 BEFORE THE HON'BLE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM.**
- P5: THE PHOTOSTAT COPY OF THE STATEMENT FILED BY THE PETITIONER NO. UE2/BA-59/13 DATED 01-08-2013 IN APPEAL NO. 648/2013 BEFORE THE HON'BLE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS.**
- P6: THE PHOTOSTAT COPY OF THE ORDER 23-10-2013 IN APPEAL NO. 648/2013 PASSED BY THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM.**
- P7: TRUE PHOTOSTAT COPY OF THE PETITION FILED BY THE RESPONDENT DATED 05-06-2014 IN APPEAL NO. 648/2013 BEFORE THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM.**

RESPONDENT(S)' EXHIBITS :

- R1(A): TRUE COPY OF THE RECEIPT DATED 15.02.2013 EVIDENCING THE SUBMISSION OF THE SAID APPLICATION BEFORE THE PETITIONER BY THE RESPONDENT. TRUE ENGLISH TRANSLATION OF EXHIBIT R1(A).**
- R1(B): TRUE COPY OF THE REFERENCE APPLICATION DATED 21.03.2013 SUBMITTED BY THE RESPONDENT BEFORE THE CORPORATION COUNCIL OF THE PETITIONER.**
- R1(C): TRUE COPY OF THE NOTICE BEARING NO.UE2/BA-59/13 DATED 13.03.2013 ISSUED BY THE EXECUTIVE ENGINEER, CORPORATION OF TRIVANDRUM TO THE RESPONDENT. TRUE ENGLISH TRANSLATION OF EXHIBIT R1(C).**

- R1(D): TRUE COPY OF THE ORDER NO.ZUE2/BA-59/13 DATED 01.06.2013
ISSUED BY THE PETITIONER TO THE RESPONDENT.
TRUE ENGLISH TRANSLATION OF EXHIBIT R1(D).**
- R1(E): TRUE COPY OF THE BASIC TAX REGISTER OF CHERUVAKKAL
VILLAGE.
TRUE ENGLISH TRANSLATION OF EXHIBIT R1(E).**
- R1(F): TRUE COPY OF THE APPLICATION ALONG WITH
THE ENDORSEMENTS.
TRUE ENGLISH TRANSLATION OF EXHIBIT R1(F).**
- R1(G): TRUE COPY OF THE DESPATCH REGISTER OF THE PETITIONER
PAGES 299,300 AND 301.
TRUE ENGLISH TRANSLATION OF EXHIBIT R1(G).**
- R1(H): TRUE COPY OF G.O(P)443/2008/REVENUE DATED 24.12.2010.
TRUE ENGLISH TRANSLATION OF EXHIBIT R1(H).**
- R1(I): TRUE COPY OF THE LETTER DATED 29.10.2013 ISSUED BY
THE RESPONDENT TO THE PETITIONER.**
- R1(J): TRUE COPY OF THE ACKNOWLEDGMENT OF RECEIPT ISSUED BY
THE PETITIONER TO THE RESPONDENT ACKNOWLEDGING
THE RECEIPT OF EXHIBIT R1(I).
TRUE ENGLISH TRANSLATION OF EXHIBIT R1(J).**
- R1(K): TRUE COPY OF THE LETTER DATED 23.11.2013 ISSUED BY
THE RESPONDENT TO THE PETITIONER.**
- R1(L): TRUE COPY OF THE ACKNOWLEDGMENT OF RECEIPT OF
EXHIBIT R1(K) ISSUED BY THE PETITIONER TO THE RESPONDENT
TRUE ENGLISH TRANSLATION OF EXHIBIT R1(L).**
- R1(M): TRUE COPY OF THE APPLICATION SUBMITTED BY
THE RESPONDENT BEFORE THE PETITIONER DATED 07.01.2014.**
- R1(N): TRUE COPY OF THE NOTICE DATED 18.02.2014 ISSUED BY
THE SECRETARY OF THE PETITIONER TO THE RESPONDENT.**
- R1(O): TRUE COPY OF THE ORDER DATED 22.02.2014 ISSUED BY
THE ADALATH TO THE PETITIONER'S SECRETARY.
TRUE ENGLISH TRANSLATION OF EXHIBIT R1(O).**
- R1(P): TRUE COPY OF SKETCH AND DRAWINGS OF THE PLOTS WHERE
THE RESPONDENT'S BUILDING IS TO BE CONSTRUCTED.**
- R1(Q): TRUE COPY OF THE PLAN WHICH WAS SUBMITTED BEFORE
THE THIRUVANANTHAPURAM CORPORATION FOR APPROVAL
BY THE RESPONDENT.**

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**R1(R): THE TRUE COPY OF THE NOTIFICATION BEARING NO.K-13430/08
DATED 14.12.2009 PUBLISHED BY THE KERALA GOVERNMENT.**

**R1(S): TRUE COPY OF THE JUDGMENT DATED 05.05.2015 IN
W.P.(C).NO.2824 OF 2015.**

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.M.SHAFFIQUE, J

W.P.C.No.18889 of 2014

Dated this the 12th day of November 2015

J U D G M E N T

The writ petition has been filed by the Corporation of Thiruvananthapuram challenging Ext.P6 order dated 23/10/2013 passed by the Tribunal for Local Self Government Institutions, Thiruvananthapuram (hereinafter referred to as 'the Tribunal') in Appeal No.648/2013 filed by the respondent herein. The appeal came to be filed by the respondent herein against the decision No.1(17) dated 13/05/2013 of the Corporation Council which was communicated to the respondent as per letter dated 01/06/2013. By the said decision, the Council opined that the appeal filed before it cannot be entertained as the Secretary had already rejected the application for building permit on the ground that the property is in the paddy field list.

2. The brief facts involved in the writ petition would disclose that the respondent submitted an application dated 12/02/2013 for building permit, on 15/02/2013. Local inspection was conducted by the office of the Corporation and it was found that various survey numbers covered by the property comes

under the Green Strip Zone of the revised Town Planning Scheme of the Thiruvananthapuram city and no construction could be made in the said property without obtaining prior concurrence of the Chief Town Planner. Accordingly, by order dated 13/03/2013, application was rejected. The appeal preferred by the respondent before the Council of Corporation on 21/03/2013 was rejected, against which he had filed an appeal before the Tribunal. The Tribunal, after considering the matter, declared that the respondent is entitled to a deemed permit in terms of Rule 15(2) of the Kerala Municipal Building Rules (hereinafter referred to as 'the Rules') read with Section 392(2) of the Kerala Municipality Act (hereinafter referred to as 'the Act') and therefore they have obtained a deemed permit for effecting construction. While coming to the said finding, the Tribunal observed that though the application was submitted by the respondent on 15/02/2013, no order was communicated by the Secretary to the respondent within thirty days. The Council also did not take a decision within a further period of 30 days after receiving the application dated 21/03/2013 and therefore taking into consideration Rule 15(2) of the Rules and Section 392(2) of the Act, respondent is entitled for

deemed licence. Further, the Tribunal, relied upon the judgment in **Shivaprasad v. State of Kerala** [2011(1) KLT 690] and observed that the Town Planning Act does not survive and therefore the master plan cannot be relied upon. Reference is also made to another judgment in **Abdul Kabeer v. Malappuram Municipality** [2012(3) KLT 106]. The Tribunal further proceeded to consider whether the property is a paddy land or wet land as on the date of coming into force of Kerala Conservation of Paddy and Wet Land Act, 2008 (hereinafter referred to as 'the 2008 Act') and relying upon the judgment in **Jafarkhan v. K.A.Kochumakkar and Others** [2012(1) KHC 523] observed that since the conversion had been made even prior to the 2008 Act coming into force, treating the property as paddy land does not arise. He also placed reliance on the judgment in **Ashraf v. Eramala Grama Panchayat** [2012(3) KLT 323] and the data bank entries.

3. Sri.N.Nandakumara Menon, learned senior counsel appearing on behalf of the petitioner submits that the Tribunal have absolutely gone wrong in coming to the conclusion that the respondent has a deemed permit. It is submitted that as far as

the objection raised by the Corporation is concerned, no concession could be effected since the property is described as Green Strip Zone in the Zonal Regulation prepared in terms with the master plan. Under such circumstances, without permission from the Town Planner, no building permit can be granted to the respondent. The same principle will apply even assuming for the sake of argument that deemed permit is available to the respondent. That apart, it is contended that the respondent is not entitled for deemed building permit as an order had been passed by the Secretary well within time under the Rules, that is on 13/03/2013. The only fact is that it was communicated to the respondent and he received it only on 28/03/2013. It is also argued that the judgments relied upon by the Tribunal had no application to the facts of the case especially on account of the fact that the detailed town planning scheme has to be verified to understand as to whether the property is declared to be a Green Strip Zone or not and such an adjudication has not been made. It is also contended that the judgment in **Shivaprasad** (supra) is pending in appeal before this Court and therefore the said judgment cannot be made applicable to the factual situation in

the case. That apart, in view of the Kerala Town and Country Planning Ordinance, 2013 which has been re-promulgated subsequently and the present being 2015, the provisions of the Ordinance revives all the Town Planning Scheme and no permission can be granted in violation of the Town Planning Scheme nor can any person construct any building in violation of the said Ordinance as held in the judgment in **Kannur Municipality v. Nabeesa Yousf** [2015(3) KLT 407].

4. On the other hand, Sri.R.S.Kalkura, learned counsel appearing on behalf of the respondent submits that no order was passed in terms of Ext.P1 on 13/03/2013 as evident from the documents produced in the case. The documents obtained under the Right to Information Act clearly disclose the fact that there had been manipulation in the register maintained by the Corporation. Though it is seen that the order is passed only on 23/03/2013, it is corrected as 13/03/2013 and there is manipulation in the register kept by the Corporation itself. Further, it is contended that the thandaper register produced by the authorities clearly indicates that the property is described as purayidam. The data bank clearly indicates that the property in

which the respondent intends to construct a building is treated as converted land as on the date of coming into force of the 2008 Act. The learned counsel further relied upon the statutory provisions especially Rules 12 to 15 of the Rules read with Section 392 of the Act to contend that it does not suffice that an order is passed by the Secretary in terms of Rule 14 of the Rules, it is necessary that the order has to be communicated to the applicant within a period of thirty days period as specified under the Rules. He also relied upon the judgment of this Court in **Sivadasan.P.N. v. P.C.Alexander and Others** [2015 KHC 2401] and the judgment in **Rajesh Ramachandran v. Corporation of Thiruvananthapuram** [2008(3) KLT 419] for the proposition that in addition to passing of an order either granting or refusing to grant building permit, the Secretary will have to intimate the said matter to the applicant within a period of thirty days, as specified under Rule 14 read with Section 392 of the Act. It is stated that when there was failure on the part of the Secretary to give any such intimation, the respondent had sought for reference to the Council which again was rejected after a substantial long period and beyond the thirty days period, as specified under the

Rules and accordingly the Tribunal was justified in directing that deemed permit is obtained by the respondent. Further, it is contended that as far as the contention regarding master plan is concerned, no notice had been issued to the respondent to indicate that such an objection had been taken by the Secretary. That apart, in Ext.P1, what is stated is that the property comes under paddy land in the list maintained and there is no reference to any violation of the master plan. It is submitted that as far as the property of the respondent in which the building is sought to be constructed is concerned, it does not affect the master plan in any manner and unless an opportunity is granted to the respondent, such matters cannot be brought to the notice of the Corporation.

5. Rules 14 and 15 of the Rules reads as under:

"14. Period within which Secretary is to grant or refuse permission to execute work.- The Secretary shall within thirty days from the date of receipt of an application for permission to execute any work or any information or document or further information or further document required under these rules or

bye laws made under the Act, by written order either grant or refuse to grant such permission on any of the grounds mentioned in rule 12 and intimate the same to the applicant.

Provided that the said thirty days shall not begin to run until the site has been approved under rule 13."

"15. Reference to council where the Secretary delays to grant or refuse to approve or permit.-

(1) The Council shall, if the Secretary neither approves nor disapproves a building site, neither gives nor refuses permission to execute any work within thirty days from the date of receipt of the application, on the written request of the applicant, be bound to determine whether such approval or permission should be given or not.

(2) Where the Council does not, within one month from the date of receipt of such written request, determine whether such approval or permission should be given or not, such approval or permission shall be deemed to have been given, and the applicant may proceed to execute work, but not so as to contravene any provision of the Act or these rules or bye-laws

made thereunder.

Provided that such execution of work shall be considered as duly permitted and not one for regularization and permit shall be issued as per rules even if the work has been commenced, being carried on or completed if it otherwise complies with rule provisions.”

6. Sections 391 and 392 of the Kerala Municipality Act, 1994 reads as under:

“391. Period within which Secretary is to grant or refuse to grant permission to execute work.- *Within thirty days after the date of receipt of an application under Section 387 for permission to execute any work or of any information or of document or further information or documents required under the rules or bye-laws made under this Act, the Secretary shall, by written order either grant or refuse to grant such permission on any of the grounds mentioned in Section 393 and intimate the fact to the applicant in writing.*

Provided that the said period of thirty days shall not begin to run until the site has been approved under Section 390.

392. Reference to Council where Secretary delays grant or refusal of approval or permission.-

(1) Where, within the period specified in section 390 or section 391, as the case may be, the Secretary has neither given nor refused his approval of a building site, or his permission to execute any work, as the case may be, the Council shall be bound, on the written request of the applicant, to determine whether such approval or permission should be given or not.

(2) Where the Council does not, within one month from the date of receipt of such written request, determine whether such approval or permission should be given or not, such approval or permission shall be deemed to have been given, and the applicant may proceed to execute the work, but not so as to contravene any of the provisions of this Act or any rules or bye-laws made thereunder."

7. The first question to be considered is whether the respondent is entitled for a deemed building permit, as held by the Tribunal. It is not in dispute that Ext.P1 order had been communicated, according to the respondent, on 25/03/2013.

Respondent's case is that it was prepared only on 23/03/2013. It is contended by the learned counsel for the petitioner that no such contention had been urged before the Tribunal. A perusal of the order of the Tribunal also does not indicate that such issues were considered by the Tribunal. Therefore, I do not want to venture upon a decision as to whether an order had been passed on 23/03/2013. I have to proceed on the basis that the order had been passed by the Town Planning Officer on 13/03/2013. Then the question is whether to invoke Rule 15, the order is required to be communicated to the applicant within a period of thirty days. Rule 14 requires the Secretary by a written order either grant or refuse to grant such permission on any of the grounds mentioned in Rule 12 and intimate the same to the applicant. It is not clear from Rule 14 as to whether the intimation to the applicant should be made within thirty days. Section 392 also indicates that within thirty days after receipt of an application, the Secretary shall, by written order, either approve or refuse to approve the site on any of the grounds mentioned in Section 393 and intimate the fact to the applicant.

8. In fact, the provision indicates the preparation of a written order either approving or refusing to approve the site within a period of thirty days and intimate the fact to the applicant. Thirty days mentioned is not for the purpose of intimating the fact to the applicant. It is only for the purpose of approving or refusing to approve the site. This will be more clear from Section 392 which indicates that within the period specified in Sections 390 or 391, as the case may be, Secretary has neither given nor refused his approval of a building site or his permission to execute the work the Council shall be bound, on the written request of the applicant, to determine whether such approval or permission should be given or not. Section 392(1) read with Rule 15 refers to the grant or refusal of building permit by the Secretary and not the date of intimation. Therefore, the date of intimation is not the relevant date for considering the question whether the deeming provision applies or not. The deeming provision is covered by Section 392(2) read with Rule 15(2). The benefit of deemed permit is available only if the Council does not, within a period of one month from the date of receipt of the written request, either determine whether to grant or refuse

permission of the building permit. Merely for the reason that the Secretary failed to intimate the order, grant or refusal within thirty days period will not attract the deeming provision. It is for the Council to decide whether the Secretary was justified in granting or refusing permission and whether the permission should be granted or not. It is apparent from the facts on record that atleast on 25/03/2013, the respondent was in receipt of a copy of the order passed by the Secretary with the date 13/03/2013. At that point of time, the reference to the Council has become irrelevant and there was no reason why the Council should have passed any further order in that matter, since the respondent had already been intimated about the refusal to grant permission. Of course, in a different situation, if the Secretary had not passed any order at all, the Council would have been justified in passing appropriate orders and if the Council thereafter refused to pass any orders, the respondent could have availed of the deeming provision. The judgment relied upon by the learned counsel for the respondent namely **Sivadasan.P.N.** (supra) has no application to the facts of the case as, in that case, what was considered was grant of trade licence, wherein there was a

specific provision under Section 447(6) of the Act which indicated that there will be a deemed licence if the application for any licence or permission is not communicated to the applicant within thirty days after the receipt of the application by the Secretary. For that reason itself **Rajesh Ramachandran** (supra) has no application to the facts of the case. That apart, when the contention urged by the Corporation is that there is violation of the master plan prepared for the Thiruvananthapuram city, it is for the competent authority to consider the same with due notice to the applicant.

9. The Tribunal had further proceeded to consider the question as to whether the Town Planning Scheme applies, whether the property involved is coming under paddy land, whether Kerala Conservation of Paddy and Wet Land Act, 2008 applies etc. I do not think that the Tribunal was justified in venturing into such finding of fact especially when those are all disputed questions of fact which have to be initially decided by the competent authority. Hence for that reason also, Ext.P6 order is liable to be set aside.

Under such circumstances, I am of the view that the order impugned, Ext.P6 is liable to be set aside and accordingly I do so and the following directions are issued:

i) Respondent shall be given notice in regard to the application for building permit stating the reason why the building permit cannot be issued and he shall be given an opportunity to submit a representation in that regard.

ii) This process shall be done within a period of six weeks from the date of receipt of a copy of this judgment.

iii) The Secretary shall pass appropriate orders within a period of thirty days from the date of hearing the respondent, in accordance with the procedure prescribed.

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

jsr