

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 16TH DAY OF JULY 2015/25TH ASHADHA, 1937

WP(C).No. 19043 of 2015 (E)

PETITIONER(S):

**SMT.HASEEM, D/O. SHIHABUDEEN,
AGED 72 YEARS, R/AT DARSANA,
KILIKOLLOOR, KOLLAM- 691 004.**

**BY ADVS.SRI.K.BABU RAJAN,
SRI.DIPU.R.**

RESPONDENT(S):

- 1. THE CORPORATION OF KOLLAM
(BY AND THROUGH) ITS SECRETARY,
CORPORATION OFFICE, KOLLAM -691 001.**
- 2. THE TOWN PLANNING OFFICER,
CORPORATION OF KOLLAM, KOLLAM -691 001.**

BY ADV. SRI.M.K.CHANDRA MOHAN DAS, SC.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 16-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT P1** COPY OF THE RODER NO T.P PW4/BA/74/11-12 DATED 13-10-2011 GRANTING PERMISSION TO CONSTRUCT, ALONG WITH THE APPROVED PLAN.
- EXHIBIT P2** COPY OF THE RODER NO.T.P PW4/BA/74/11-12 DATED 10-12-2012, REJECTING THE OCCUPANCY CERTIFICATE.
- EXHIBIT P3** COPY OF THE RECEIPT OF THE APPLICATION FOR OCCUPANCY CERTIFICATE, DATED 04-10-2014.
- EXHIBIT P4** PHOTOGRAPH OF THE COMPLETED CONSTRUCTION AS PER THE SUGGESTED MODIFICATIONS BY THE RESPONDENTS.
- EXHIBIT P5** COPY OF THE RECEIPT OF APPLICATION FOR OCCUPANCY CERTIFICATE, DATED 22-12-2014, ISSUED BY THE RESPONDENTS.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 19043 of 2015

Dated this the 16th day of July, 2015.

JUDGMENT

Aggrieved by the inaction on the part of the respondent corporation for numbering the petitioner's building the construction of which is completed on the basis of a valid permit issued by the respondent corporation, the petitioner has come up before this Court.

2. The petitioner applied for a permit in 2011, for constructing a residential building in the property comprised in Sy.No.15/79, Division No.XIII in Kollam East Village. The petitioner alleges that the respondents granted permission to construct as per the approved plan, vide Ext.P1 between the period 13.10.2011 and 12.10.2014. The petitioner completed the construction and submitted an application for occupancy certificate on 2.11.2012. The respondent No.2 rejected the application vide Ext.P2 contending that the completed construction is not fit to occupy and hence, noted that

occupancy certificate would be considered when application is submitted after making the construction fit for occupation. The petitioner further alleges that he carried out the modifications as directed and resubmitted application for occupancy on 4.10.2014. However, the certificate is not issued till date. The petitioner alleges that when he approached the respondents, they verbally asked him to submit one more application. The petitioner accordingly submitted yet another application for occupancy certificate on 22.12.2014. In spite of passage of 30 days attracting deemed issue of the certificate and all the above, the respondents continue to neglect and fail to issue the occupation certificate causing unbearable loss, harm and injury to the petitioner; it is alleged.

3. Arguments have been heard.

4. The learned Standing Counsel for the respondent Corporation on instructions would submit that the construction has been carried out by the petitioner on the basis of valid

permit issued by the corporation. Subsequently, it was discovered that the area where the construction was carried out was covered by a detailed town planning scheme envisaged by the respondent corporation and it was for that reason the respondent corporation is not in a position to number the building and issue the occupancy certificate.

5. The learned counsel for the petitioners invited my attention to a Division Bench decision of this Court in **Padmini v. State of Kerala** [1999 (3) KLT 465], wherein it was held that no building permit can be refused to any person because there is a proposal to acquire the land in future. Reliance was also placed to the decision of the apex court in **Raju S. Jethmalani v. State of Maharashtra** [(2005) 11 SCC 222], wherein it was held that refusing to grant permits relying on obsolete DTP schemes is a clear violation of the provisions of the Constitution. Viewed in that profile, this Court is of the view that the petitioners are entitled to get the reliefs prayed for.

Therefore, the writ petition is allowed. The respondent corporation is directed to reconsider petitioner's application for building permit and to issue occupancy certificate within a period of one month from the date of receipt of a copy of this judgment in the light of what has been stated above.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.