

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 29TH DAY OF JANUARY 2015/9TH MAGHA, 1936

WP(C).No. 19681 of 2014 (I)

PETITIONER(S):

**M.A.SOMARAJAN
S/O. MADHAVAN, ANANDAPURAM HOUSE,
KUMBALAM P.O.
ERNAKULAM DISTRICT-682506.**

**BY ADVS.SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE
SMT.ACHU SUBHA ABRAHAM**

RESPONDENT(S):

**1. KUMBALAM GRAMA PANCHAYAT
REPRESENTED BY ITS SECRETARY, PANCHAYAT OFFICE
KUMBALAM-682506.**

**2. THE SECRETARY
KUMBALAM GRAMA PANCHAYAT, PANCHAYAT OFFICE
KUMBALAM-682506.**

**BY ADVS. SRI.P.J.MATHEW
SRI.AJITH GEORGE**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: TRUE COPY OF THE BUILDING PERMIT ISSUED BY THE RESPONDENTS DATED 28.4.2009.**
- EXHIBIT P2: TRUE COPY OF THE NOTICE DATED 18.6.2012 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.**
- EXHIBIT P3: TRUE COPY OF THE REPLY SUBMITTED BY THE PETITIONER DATED 21.6.2012.**
- EXHIBIT P4: TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER DATED 6.1.2014.**
- EXHIBIT P5: TRUE COPY OF THE COMPLETION CERTIFICATION SUBMITTED BY PETITIONER DATED 6.1.2014.**
- EXHIBIT P6: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT DATED 4.7.2014.**
- EXHIBIT P7: TRUE COPY OF LETTER ISSUED BY THE R2 DATED 30/7/14**
- EXHIBIT P8: TRUE COPY OF THE CIRCULAR ISSUED BY THE GOVERNMENT OF KERALA DATED 22/6/11.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 19681 of 2014

Dated this the 29th day of January, 2015

JUDGMENT

Heard the learned counsel for the petitioner and the learned counsel for the respondents, apart from perusing the record. Since the issue lies in a narrow compass, this Court proposes to dispose of the writ petition at the admission stage itself.

2. Briefly stated, having constructed residential building, the petitioner applied for occupancy certificate and allotment of building number. When they were rejected, he filed the present writ petition.

3. The learned counsel for the petitioner, supplying the specifics, has contended that the initial building permit was granted through Exhibit P1 dated 28.04.2009. Since the petitioner could not complete the construction within the statutorily mandated period, on 16.04.2012 the petitioner applied for renewal of the building permit. The second

respondent, however, asked the petitioner through Exhibit P2 to produce a No-Objection Certificate from the National Highway authorities on the ground that the property is situated within 33 meters from the National Highway. Under those circumstances, the petitioner is said to have submitted Exhibit P3 reply contending that the stipulation of obtaining NOC from the National Highway authorities came into force subsequent to the grant of building permit to the petitioner, and as such the said condition would not affect the right of the petitioner to have the renewal of building permit. At any rate, eventually the petitioner having completed the building, submitted Exhibit P5 completion certificate along with Exhibit P4 application for the grant of occupancy certificate and also allotment of building number. Once again, the second respondent issued Exhibit P7 reiterating the demand that the petitioner should obtain NOC from the National Highway authorities to obtain the completion certificate as well as the building number.

4. According to the learned counsel for the petitioner, in terms of Exhibit P8 certificate issued by the Government of Kerala, the subsequent change in the rules would not

affect the right of the person who obtained any building permit prior to the enforcement of the said Rules.

5. The learned counsel for the respondent Grama Panchayat would strenuously contend that since the property is situated within 33 meters from the National Highway, it is incumbent on the part of the petitioner to obtain NOC, in the absence of which the petitioner cannot demand the respondent Grama Panchayat to issue completion certificate or for the allotment of building number.

6. It is evident from Exhibit P8 that the Government of Kerala has issued the following clarifications on account of the local authorities insisting on compliance with Rules in force at the time of applying for completion certificate or numbering of the building. It is profitable to extract the relevant portion from Exhibit P8, which is as follows:

“There is no legal impediment in issuing building numbers to buildings which have been constructed in accordance with valid building permits granted in accordance with rules which were in effect before amendment to Kerala Municipality Building Rules. The amended rules shall not be insisted for constructions made in

accordance with permit obtained before amendment of Kerala Municipality Building Rules.

It is also made clear that the amended provisions of Kerala Municipality Building Rules shall not be applicable to buildings whose construction could not be completed within the permitted period and extension is sought for.”

7. In the facts and circumstances, I do not see any justification on the part of the second respondent to insist on the petitioner's compliance with the Rules that came into force admittedly after the permit was given to the petitioner and accordingly Exhibit P7 is set aside. Consequently, the second respondent is directed to consider petitioner's Exhibit P4 application without reference to amended Rules and to process it further in accordance with law, as expeditiously as possible, at any rate, within a period of one month from the date of receipt of a copy of this judgment.

With the above observation, this writ petition is disposed of. No order as to costs.

**DAMA SESHADRI NAIDU
JUDGE**