

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

WEDNESDAY, THE 15TH DAY OF JULY 2015/24TH ASHADHA, 1937

WP(C).No. 22204 of 2013 (A)

PETITIONER:

NEDUMANGAD MUNICIPALITY
NEDUMANGAD, THIRUVANANTHAPURAM
REPRESENTED BY ITS SECRETARY

BY ADV. SRI.P.RAMAKRISHNAN

RESPONDENTS:

MAFIDA SAJAD
W/O.SAJAD MOHAMMED, ANITHA MANZHIL, MANNARKONAM PO
NEDUMANGAD, THIRUVANANTHAPURAM 695 541.

BY ADV. SRI.D.KISHORE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15-07-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 22204 of 2013 (A)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 COPY OF LETTER DATED 7/3/2011 ISSUED BY THE PETITIONER
EXHIBIT P2 COPY OF ORDER DATED 8/7/2011 IN APPEAL NO.293/11
EXHIBIT P3 COPY OF NOTICE DATED 21/1/2012 ISSUED BY THE PETITIONER
EXHIBIT P4 COPY OF ORDER DATED 27/3/2012 IN APPEAL NO.92/2012
EXHIBIT P5 COPY OF NOTICE DATED 7/12/2012 ISSUED BY THE PETITIONER
EXHIBIT P6 COPY OF APPEAL MEMORANDUM DATED 1/1/2013 FILED BY THE
RESPONDENT
EXHIBIT P7 COPY OF STATEMENT DATED 18/3/21013 FILED BY THE PETITIONER
EXHIBIT P8 COPY OF ORDER DATED 5/7/2013 IN APPEAL NO.6/2013
EXHIBIT P9 COPY OF SHOW CAUSE NOTICE DATED 23/8/2013 ISSUED TO THE
PETITIONER

RESPONDENT(S)' EXHIBITS

ANU SIVARAMAN, J.
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W.P.(C).No.22204 of 2013
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Dated this the 15th day of July, 2015

JUDGMENT

Petitioner, Nedumangad Municipality has filed this writ petition aggrieved by Ext.P8 order of the Tribunal for Local Self Government Institutions at Thiruvananthapuram, by which it was declared that the respondent herein is deemed to be in occupancy under the proviso to Rule 22(3) of the Kerala Municipality Building Rules. The Secretary of the Municipality was further directed to give a proper occupancy certificate in the form provided in the statute within 15 days to the respondent.

2. The respondent had filed an application for construction of a shop room cum residential building in 2.5 cents of land in Nedumangadu Village on the banks of the Killi river. The application was rejected by Ext.P1 on the ground that sufficient space had not been left from the river puramboke and the plan did not take into account the road widening as a part of the Detailed Town Planning Scheme. In appeal, by Ext.P2 order dated 08.07.2007, Tribunal set aside the order of rejection on

the finding that the D.T.P Scheme was only at the proposal stage and the road widening need not be shown in the plan. Pursuant to Ext.P2, the application was reconsidered and the permit was granted to the respondent. However, it is alleged that the respondent erected pillars on the river puramboke in deviation of the approved plan and the petitioner issued an order of suspension of the permit. The stop memo and the suspension of permit by Ext.P3 was again taken in appeal before the Tribunal and Ext.P4 order dated 27.03.2012 was issued setting aside Ext.P3 on the ground that it was issued under Rule 16 of the Kerala Municipality Building Rules. The Tribunal found that Rule 16 of the Kerala Municipality Building Rules is not applicable to the instant case and if the respondent had deviated from the approved plan, action could have been taken either under Section 406 of the Kerala Municipalities Act or Rule 18 of the Kerala Municipality Building Rules and if the allegation is of the construction on the river puramboke, under Section 376 of the Kerala Municipalities Act .

3. It is stated that a completion plan and certificate was submitted by the respondent on 07.11.2012, whereupon, Ext.P5

notice dated 7.12.2012 was issued to the respondent stating that one of the rear stair columns of the building is on the river puramboke and one is built adjacent to the boundary and therefore there is deviation from the approved plan which is to be rectified.

4. The respondent disputes the existence of Ext.P5 notice and contends that in any view of the matter he has not received a copy of Ext.P5. On the ground that occupancy certificate has not been issued, the respondent had approached the Tribunal by Ext.P6 appeal seeking the issuance of occupancy certificate to her.

5. The petitioner had filed written objections in the appeal but Ext.P8 order was passed by the Tribunal after going through the entire files of the case. It was found that no notice had been served on the respondent by the petitioner and no action had been initiated against the respondent for unauthorised construction. In the above view of the matter, relying on the proviso to Rule 22(3) of the Kerala Municipality Building Rules, the Tribunal held that the legal fiction regarding deemed occupancy had come into effect as no notice or communication

had been issued by the petitioner. This finding of the Tribunal is under challenge in this writ petition.

6. The 1st respondent has filed detailed counter affidavit pointing out that the real reason for rejection of the applications for permit initially submitted by her was that if the Detailed Town Planning Schemes are put into action, her building would be within the prohibited distance from the widened road and the river puramboke. It is submitted that such denial of permits and subsequent actions against her on the basis of proposed Detailed Town Planning Scheme is not warranted or sustainable in view of the decisions of this court in **Nazar v. Malappuram Municipality** (2009(3) KLT 92) and **Raju S. Jethmalani and Ors.V. State** [(2005) 11 SCC 222]. It is further submitted that no notice as evidenced by Ext.P5 had, as a matter of fact, been issued or served on the petitioner. She was never informed about the violation or deviation as alleged by the petitioner. Therefore, she is clearly entitled to the occupancy certificate in terms of the provisions of the Act, it is submitted.

The learned counsel for the petitioner made available a copy of the despatch register of the Municipality to show that the

notice have actually been despatched by the Municipality. Learned counsel for the respondent would contend that even assuming that such a notice had been issued, the right of the municipality would stand confined to taking action against her, if so advised, in accordance with Section 376 of the Kerala Municipalities Act and the denial of occupancy certificate long after the completion of construction of the building in question is not warranted in the facts and circumstances of the case. The decision of this court in **Alexander v. Kottayam Municipality** (2014 (2) KLT 123) has been relied upon by the learned counsel appearing for the respondent. On almost identical facts, this Court held that even if there are violations of the building Rules in a given case, when the construction is completed and the defects in question are rectifiable, the proper course of action for the municipality would be to issue a provisional occupancy certificate and to initiate action in accordance with law if the situation so warrants. In this case also, it is clear that the initial application for permit was submitted as early as in 2011. The completion certificate was first submitted on 09.07.2012 and the rectified completion and plan was produced on 07.11.2012, but

the building number has not been assigned to the petitioner's building. It is also noticed that in view of the interim order passed by this court, the respondent could not occupy the building, though the occupancy certificate was issued by the petitioner, and I am of the considered opinion that this is a fit case where the municipality should issue building number to the respondent provisionally. The writ petition is disposed of directing the petitioner to issue a building number in respect of the disputed building provisionally, so as to enable the first respondent to occupy the same. The municipality is however at liberty to take any further action in accordance with law, if warranted by the circumstances, against the respondent in case the construction made by the respondent is found to be illegal. Ext.P8 order shall stand modified to that extent. The writ petition is disposed of as above.

Anu Sivaraman, Judge

sj