

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 27TH DAY OF NOVEMBER 2015/6TH AGRAHAYANA, 1937

WP(C).No. 21046 of 2015 (E)

PETITIONERS:

- 1. BINU TOM, PADINJAREKARA HOUSE, PALAI.**
- 2. RUBY ANTO, PADINJAREKARA HOUSE, PALAI.**

BY ADVS.SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SRI.MANU SEBASTIAN
SMT.PARVATHY NAIR

RESPONDENT(S):

- 1. STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT,
LOCAL SELF GOVERNMENT INSTITUTIONS,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 2. DIRECTOR OF MUNICIPALITIES,
THIRUVANANTHAPURAM - 695 001.**
- 3. PALA MUNICIPALITY, MUNICIPAL HOUSE,
PALA, REPRESENTED BY ITS SECRETARY - 686 575.**
- 4. SECRETARY, PALA MUNICIPALITY,
MUNICIPAL HOUSE, PALA - 686 575.**

R1 & R2 BY GOVERNMENT PLEADER SRI.P.PADMALAYAN
R3 & R4 BY ADV. SRI.V.M.KURIAN, SC

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 27-11-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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APPENDIX

PETITIONERS' EXHIBITS:

- EXT. P1 : A TRUE COPY OF BUILDING PERMIT NO.B1-202/09-10
DATED 31.12.2009 ISSUED BY THE 4TH RESPONDENT.
- EXT. P2 : A TRUE COPY OF COMMUNICATION NO.P153/08 DATED 17.12.2009 OF
ASST. ENGINEER PWD ROADS, PALA.
- EXT. P3 : A TRUE COPY OF CERTIFICATE ISSUED BY ASST. ENGINEER PWD
ROADS, PALA.
- EXT. P4 : A TRUE COPY OF NOTICE NO.BA-202/09-10 DATED 26.6.2014.
- EXT. P5 : A TRUE COPY OF REPLY DATED 9.7.2014 SUBMITTED BY THE
PETITIONERS TO THE 4TH RESPONDENT.
- EXT. P6 : A TRUE COPY OF COMMUNICATION NO.PW2-4903/14 DATED 5.7.2014
ISSUED BY THE 4TH RESPONDENT.
- EXT. P7 : A TRUE COPY OF COMMUNICATION NO.BA-202/09-10 DATED 26.2.2015.
- EXT. P8 : A TRUE COPY OF COMPLETION CERTIFICATE DATED 5.6.2015.
- EXT. P9 : A TRUE COPY OF APPLICATION DATED 5.6.2015 SUBMITTED FOR
OCCUPANCY CERTIFICATE.
- EXT. P10 : A TRUE COPY OF COMMUNICATION NO.BA-202/09-10 DATED 24.6.2015
OF 4TH RESPONDENT.
- EXT. P11 : A TRUE COPY OF G.O(MS) NO.167/2014/LSGD DATED 27.9.2014.
- EXT. P12 : A TRUE COPY OF COMMUNICATION NO.BA-202/09-10 DATED 20.8.2014.
- EXT. P13 : A TRUE COPY OF APPROVED SITE PLAN.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

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A.M. SHAFFIQUE, J.

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W.P. (C) No. 21046 of 2015

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Dated this, the 27th day of November, 2015

J U D G M E N T

This writ petition has been filed challenging Exts.P4 and P10 and for a direction to the 4th respondent to issue occupancy certificate to the petitioners on the basis of Ext.P9 application.

2. The short facts involved in the writ petition would disclose that the petitioner was given building permit dated 31/12/2009 by the 3rd respondent Municipality for construction of 127.97 sq.metres of built up space including the ground floor, first floor and stair case cabin with a condition that land should be surrendered free of cost if widening is required for river view road. According to the petitioners, subsequently, PWD requested for surrender of 0.70 cents of land for the purpose of widening the river view road and accordingly, the same has been surrendered to the PWD, which is evident from Ext.P3. However, petitioners were served with notice dated 26/6/2014 under Section 406(1) of the Kerala Municipalities Act (hereinafter referred to as 'the Act') alleging that there is violation of the Building Rules as the

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construction has not been made in accordance with the plan and the front yard set back is only 2.10 metres as against the required 3 metres. Petitioners submitted Ext.P5 explanation *inter alia* stating that at the time of granting the permit, petitioners had 3 metres space in its front yard facing the river view road and it is only on account of the condition imposed in Ext.P1 building permit that 0.70 cents of land has been given by way of free surrender to PWD. If surrendered land is also taken into consideration, there is no violation of the Building Rules.

3. Without taking into consideration the aforesaid facts, petitioners were served with another notice dated 5/7/2014 by which they were informed that further steps are being taken in the matter. Since the petitioners had given free surrender of land, Municipality took a view that unless permission is obtained from the Special Committee under Rule 85 of the Kerala Municipality Building Rules, no further steps could be taken in the matter. In the meantime, the building had been constructed and the petitioner submitted Ext.P9 application, which came to be rejected in terms of Ext.P10 order dated 24/6/2015 stating that the building has not been completed and that the matter is

pending before the Director in regard to another complaint. It is submitted by the petitioners that the Municipality was not justified in contending that there is violation of the Building Rules especially when the land was given free surrender at the instance of the PWD authorities and such a condition was imposed in Ext.P1 building permit. That apart, it is contended that the construction of the building has been completed and the Municipality is bound to grant occupancy certificate.

4. Learned Counsel appearing for the Municipality submits that the issue relating to the occupancy certificate will be considered after the Special Committee regularises the construction based on the free surrender given by the petitioners.

5. Learned Government Pleader on instructions would submit that the Government had already directed Special Committee to be formed as per circular dated 19/9/2013 and that it is for the Municipality to constitute a Special Committee for the said purpose.

6. Having regard to the aforesaid factual situation, the following facts are clear;

(i) That at the time of granting building permit, petitioners

had set back of 3 metres in its front yard and the building permit was granted on condition that they shall provide sufficient land free of cost, if the river view road is widened.

(ii) That the river view road was widened by the PWD and the petitioners had surrendered 0.70 cents of land free of cost.

(iii) That the petitioners have a case that they had completed the construction.

7. Such being the facts, it is for the Special Committee to now regularise the construction of the building. However, there is no reason why the occupancy certificate shall not be issued to the petitioners.

In the said circumstances, this writ petition is disposed of as under;

(1) That the Municipality shall constitute a Special Committee, take into consideration Ext.P1 building permit and pass appropriate orders for regularising the building constructed by the petitioners.

(2) That if the building has been completed, the Municipality shall conduct necessary verification of the same and shall issue the occupancy certificate subject to any decision taken

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by the Special Committee in this regard. This shall be done within a period of two months from the date of receipt of a copy of this judgment.

Sd/-

A.M. SHAFFIQUE, JUDGE

Rp27/11/2015

//True Copy//

PS to Judge