

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

WP(C).No. 24720 of 2014 (L)

PETITIONER:

NIKUNJAM CONSTRUCTIONS (P) LTD.,
REGISTERED OFFICE AT TC 4/2554-3, INDRAPRASTHAM,
PATTOM-KOWDIAR ROAD, PATTOM P.O., TRIVANDRUM-695 004,
REPRESENTED BY ITS MANAGING DIRECTOR, KRISHNAKUMAR,
S/O.SIVASANKARA KURUP.

BY ADVS.SRI.R.S.KALKURA
SMT.R.BINDU
SRI.M.S.KALESH
SRI.HARISH GOPINATH
SRI.JOHNSON JOSE PANJIKKARAN

RESPONDENTS:

1. THE CORPORATION OF TRIVANDRUM,
REPRESENTED BY ITS SECRETARY, CORPORATION BUILDING,
MUSEUM JUNCTION, TRIVANDRUM-695 033.
2. THE SECRETARY,
THE CORPORATION OF TRIVANDRUM,
REPRESENTED BY ITS SECRETARY, CORPORATION BUILDING,
MUSEUM JUNCTION, TRIVANDRUM-695 033.

R1-R2 BY ADV. SRI.N.NANDAKUMARA MENON (SR.)
R1-R2 BY ADV. SRI.P.K.MANOJKUMAR,SC,TVPM CORPORATION

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
05-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1 : TRUE COPY OF THE SALE DEED NO.2949 OF 2011 DATED 28.04.2011.
- EXT.P2 : TRUE COPY OF THE PLAN PREPARED BY THE TALUK SURVEYOR AND APPROVED BY THE EXECUTIVE MAGISTRATE AND ADDITIONAL TAHSILDAR DATED 22.01.2009.
- EXT.P3 : TRUE COPY OF THE TAX RECEIPT DATED 24.04.2014 ISSUED BY THE VILLAGE OFFICER, KADAKAMPALLY.
- EXT.P4 : TRUE COPY OF THE PERMIT DATED 28.05.2013 APPROVED AND ISSUED BY THE CORPORATION OF TRIVANDRUM.
- EXT.P5 : TRUE COPY OF THE APPROVED SITE PLAN DATED 28.05.2013 APPROVED AND ISSUED BY THE CORPORATION OF TRIVANDRUM.
- EXT.P6 : TRUE COPY OF THE APPLICATION FOR APPROVAL SUBMITTED BY THE PETITIONER BEFORE THE CORPORATION OF TRIVANDRUM FOR ADDITIONAL CONSTRUCTION.
- EXT.P7 : TRUE COPY OF THE PLAN FOR APPROVAL SUBMITTED BY THE PETITIONER BEFORE THE CORPORATION OF TRIVANDRUM FOR ADDITIONAL CONSTRUCTION ON 28.08.2013.
- EXT.P8 : TRUE COPY OF THE ACKNOWLEDGMENT DATED 29.08.2013 ISSUED BY THE FIRST RESPONDENT'S OFFICE TO THE PETITIONER ACKNOWLEDGING THE RECEIPT OF THE SAID APPLICATION.
- EXT.P9 : TRUE COPY OF THE LETTER DATED 27.09.2013 ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER.
- EXT.P10 : TRUE COPY OF THE LETTER DATED 15.10.2013 ISSUED BY THE PETITIONER TO THE FIRST RESPONDENT.
- EXT.P11 : TRUE COPY OF THE ACKNOWLEDGMENT DATED 21.10.2013 ISSUED BY THE FIRST RESPONDENT.
- EXT.P12 : TRUE COPY OF THE APPLICATION FOR REFERENCE SUBMITTED BY THE PETITIONER DATED 20.11.2013 BEFORE THE COUNCIL OF THE CORPORATION.
- EXT.P13 : TRUE COPY OF THE APPLICATION FOR REFERENCE SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPONDENT'S COUNCIL AND THE ENDORSEMENT TO THAT EFFECT ISSUED BY THE FIRST RESPONDENT AUTHORITIES.
- EXT.P14 : TRUE COPY OF THE LETTER DATED 28.12.2013 ISSUED BY THE PETITIONER TO THE SECOND RESPONDENT.

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: 3 :

PETITIONER'S EXHIBITS:

- EXT.P15 : TRUE COPY OF THE ACKNOWLEDGMENT GIVEN BY THE
OFFICE OF THE FIRST RESPONDENT TO EXHIBIT P15
DATED 28.12.2013.
- EXT.P16 : TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE
PETITIONER BEFORE THE MAYOR OF THE FIRST
RESPONDENT DATED 29.01.2014.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P.A. TO JUDGE

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 24720 of 2014 (L)

Dated this the 5th day of March, 2015.

JUDGMENT

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent Corporation, apart from perusing the record.

2. Briefly stated, the petitioner, a Company engaged in the construction and sale of apartments, commercial spaces etc., filed an application on 28.05.2013 for building permit, which in course of time was granted. Subsequently, in the light of what are said to be the changed circumstances, the petitioner submitted a revised plan through Ext.P7 on 28.08.2013. Through Ext.P9 dated 27.09.2013, the respondent Corporation sought clarification, which in fact had been duly provided by the petitioner through Ext.P10 dated 15.10.2013. Though the petitioner claims that it has the benefit of the deeming provision of acceptance of the petitioner's revised plan, it has not gone ahead with any construction; instead, it has come before this Court by filing the present writ petition.

3. The learned Senior Counsel for the respondent Corporation

has submitted that the respondent Corporation is willing to consider Ext.P10 explanation submitted by the petitioner in response to the objections raised by the Corporation in Ext.P9. He has further submitted that within a span of 30 days appropriate orders will be passed on the petitioner's Ext.P7 application for revised building permit.

4. Though this Court was initially inclined to pass an order of quotidian quality; namely, a direction to the respondent Corporation to pass appropriate orders 'as expeditiously as possible, at any rate within 30 days', the learned counsel for the petitioner, however, has brought to my notice that even though the explanation was submitted on 15.10.2013 i.e., more than 16 months ago, so far the respondent Corporation has not taken any decision in that regard.

5. The legislature, perhaps, has abundant faith in the civic administration; precisely for that reason it has kept a deeming provision in the statute book with the confidence, which is — one may realise with hindsight — regrettably misplaced, that the authorities would dispose of all the applications expeditiously within 30 days, lest the spectre of deeming provision should loom large.

6. Indeed, illegal constructions are the order of the day, rather

than an exception. Every person files an application for building permit, and remains rather presumptuous that it may not be disposed of within the stipulated time, eventually he goes ahead with construction, which is usually illegal, under the cover of deeming provision. It leads to explosion of litigation and hardship to the general public, resulting in chaos in civic administration, especially concerning amenities.

7. In ***M.I. Builders (P) Ltd. v. Radhey Shyam Sahu***, (1999) 6 SCC 464, the Hon'ble Supreme Court, while considering the judicial discretion in determining whether a provision, being mandatory, has been breached, and whether the so-called administrative inconvenience can be a convenient excuse, has observed thus:

"Administrative inconvenience:

Is administrative inconvenience a proper reason for rebutting the presumption that a decision which violates a statutory provision is unlawful (and therefore that the provision is, in the circumstances not 'mandatory')? Administrative inconvenience is an accepted criterion in relation to remedies provided by the courts in judicial review. For example, where a series of commercial transactions have been undertaken in reliance upon the impugned decision the court may, in its discretion, fail to quash that decision in view of the administrative chaos that would result from such a remedy. Judicial discretion is employed here to balance fairness to the individual against the general public interest. *The task, however, of deciding the force of a statutory provision does not involve judicial discretion. It involves the faithful construction of the objects and purposes of an act of Parliament in the context of the particular decision. Although aspects of public policy may play a part in this*

exercise, it would be wrong of the courts to impute any general implication that Parliament may intend administrative inconvenience to excuse in advance the violation of its statutes. Such an implication invites careless administration and assumes that the legislature would too easily excuse a breach of its statutes. It is suggested, therefore, that administrative inconvenience is not normally a proper criterion to guide the question of whether a statutory provision is 'mandatory'."

(emphasis supplied)

8. It is further illustrative to draw on the same judgment of the Hon'ble Supreme Court to appreciate the attitude of zero-tolerance adopted by the Apex Court in the matters of illegal constructions. Their Lordships have observed as under:

"73. The High Court has directed dismantling of the whole project and for restoration of the park to its original condition. This Court in numerous decisions has held that no consideration should be shown to the builder or any other person where construction is unauthorised. This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. *Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency.* Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles. As will be seen in moulding the relief in the present case and allowing one of the blocks meant for parking to stand we have been guided by the obligatory duties of the Mahapalika to construct and maintain parking lots."

(emphasis supplied)

9. In the same vein is another pronouncement of the Hon'ble Supreme Court in ***Dipak Kumar Mukherjee v. Kolkata Municipal Corpn.***, (2013) 5 SCC 336, wherein it is held as follows:

"8. What needs to be emphasised is that illegal and unauthorised constructions of buildings and other structures not only violate the municipal laws and the concept of planned development of the particular area but also affect various fundamental and constitutional rights of other persons. The common man feels cheated when he finds that those making illegal and unauthorised constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/zonal plan. The reports of demolition of hutments and jhuggi jhopris belonging to the poor and disadvantaged section of the society frequently appear in the print media but one seldom gets to read about demolition of illegally/unauthorisedly constructed multi-storeyed structures raised by economically affluent people. The failure of the State apparatus to take prompt action to demolish such illegal constructions has convinced the citizens that planning laws are enforced only against poor and all compromises are made by the State machinery when it is required to deal with those who have money power or unholy nexus with the power corridors."

10. It is not unusual to find cases where a lot of illegal constructions have been raised right under the nose of the civic administration and gullible purchasers have been made to pay for the illegality committed by the builders. In one instance, in ***Dipak Kumar Mukherjee v. Kolkata Municipal Corpn.***, the Hon'ble Supreme Court has ordered also demolition of multi storied residential buildings and asked the civic administration to pay

compensation to the unvaried purchasers from the builder, essentially based on the lapses on the part of the authorities concerned in taking expeditious action. In that instance, in fact, the Hon'ble Supreme Court has directed to recover money from the salary of the employees responsible and then to pay the purchasers.

11. In the present instance, I do not see any explanation forthcoming from the respondent Corporation why the petitioner's application could not be processed within the stipulated time. Despite the deeming provision, the petitioner has submitted an explanation through Ext.P10; still after a lapse of 16 months, the respondent authorities remained insouciant and unconcerned. To a specific query from this Court, the learned Senior Counsel has submitted that the delay is due to work pressure. It is regrettable to note that the answer is far from satisfactory and in fact borders on nonchalance on the part of the respondent Corporation.

12. In the facts and circumstances, I do not see any justifiable reason for the inordinate delay in considering Ext.P10 explanation submitted by the petitioner except gross official apathy, which cannot be countenanced. This Court, therefore, disposes of the writ petition with a direction to the respondent Corporation to consider the

petitioner's Ext.P10 objections in the face of Ext.P9 proceedings issued by the respondent Corporation and pass appropriate orders thereon, as expeditiously as possible, at any rate within one month from the date of receipt of a copy of this judgment.

Before parting, it is made clear that for the inordinate delay in discharging their duties, despite the statutory mandates that all the applications for building permit are required to be processed within a strict time frame, this Court is of the considered opinion that the respondent Corporation is to be saddled with a cost of ₹ 10,000/-, which the respondent Corporation is at liberty to required to collect from the erring officials, who are responsible for the inordinate delay at the time Ext.P9 was issued and Ext.P10 remained unconsidered, to be paid to the Legal Services Authority.

sd/- DAMA SESHADRI NAIDU, JUDGE.

