

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 10TH DAY OF DECEMBER 2015/19TH AGRAHAYANA, 1937

WP(C).No. 28268 of 2015 (G)

PETITIONER(S) :

M/S. KESAVAM
GURUVAYOOR, A PARTNERSHIP FIRM
REPRESENTED BY ITS MANAGING PARTNER, RAVISANKER
S/O.LATE VIJAYAN NAIR, PUTHENVEETIL KUNNATH HOUSE
PARUITHIPILLI DESOM PERINGOTTUKURUSI VILLAGE
ALATHUR TALUK, PALAKAD
THROUGH HIS POWER OF ATTORNEY HOLDER MR.RATHEESH BABU
S/O.BHARATHAN, KUNNATH PUTHENVEETIL
PARUITHIPILLI P.O., PALAKKAD.

BY ADVS.SRI.BABU KARUKAPADATH
SMT.M.A.VAHEEDA BABU
SRI.K.A.NOUSHAD
SRI.P.U.VINOD KUMAR
SRI.MITHUN BABY JOHN
SRI.J.RAMKUMAR

RESPONDENT(S) :

- 1. THE GURUVAYOOR MUNICIPALITY
GURUVAYOOR, REPRESENTED BY ITS SECRETARY.

2. THE SECRETARY,
GURUVAYOOR MUNICIPALITY, GURUVAYOOR.

R1-R2 BY ADV. SRI.P.A.AHAMMED
R1-R2 BY ADV. SRI.M.SREEKUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
10-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S) ' EXHIBITS

P1: A TRUE COPY OF THE BUILDING PERMIT DATED 6/6/2007 ISSUED IN FAVOUR
OF SHRI.SATHEESH MENON AND SUBSEQUENTLY TRANSFERRED IN FAVOUR OF THE
MANAGING PARTNER OF THE PETITIONER, ON ITS BEHALF.
P2: A TRUE COPY OF THE COMPLETION CERTIFICATE DATED 17/4/2015 SUBMITTED
BY THE PETITIONER TO THE RESPONDENTS

RESPONDENT(S) ' EXHIBITS

NIL

TRUE COPY

SKS

P.A TO JUDGE

K.HARILAL, J.

W.P(C)NO. 28268 OF 2015

Dated this the 10th day of December, 2015

JUDGMENT

The petitioner obtained a building permit and approved plan from the respondents for constructing a residential flats with 200 apartments in five blocks in the property comprised in Sy.No.158/17A and 19 in Iringapuram Village and completed the construction of the building within the stipulated time. While the construction of the building was in progress, the petitioner has entered into agreements with the prospective purchasers of the apartments. Thereafter, the petitioner approached the respondents with Ext.P2 completion certificate for obtaining occupancy certificate for the building and also for numbering the same. Despite a long lapse of time, after submitting Ext.P2 completion certificate, the occupancy certificate has not been issued to the petitioner in compliance with Rule 22 of the Kerala Municipality Building Rules.

2. The respondents entered appearance, filed a counter affidavit admitting that the construction has been completed and submitted necessary certificates from the Pollution Control Board, NOC from Fire and Rescue Department and an application for

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completion certificate has been submitted by the petitioner in accordance with the rules. But it is stated that one Sri.Ajayakumar filed a complaint stating that there was a pond in the property and the construction of the property was carried out after filling up the pond. On receipt of the said complaint the concerned Tahsildar was directed to submit a report regarding the allegation. Though a remainder was sent, no reply has been received from the Tahsildar so far. Thereafter, the Vigilance Department and Town Planning Department initiated enquiry and site inspection was also conducted by the said Departments. But so far no communication in this regard has been received pursuant to the said enquiry.

3. Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent Municipality.

4. Going by the counter affidavit filed by the respondent itself, it stands admitted that the petitioner has completed the construction of the apartments in accordance with the building plan and permit issued by the Municipality and the Municipality has no case that there is any violation of the Kerala Municipality Building Rules. So also, the Municipality has admitted that the

petitioner has produced all certificates required under various statutes such as certificate from the Pollution Control Board, certificate from the Fire and Rescue Department etc. According to the respondent, the issuance of occupancy certificate was delayed on the sole reason that one Sri.Ajayakumar filed a complaint stating that there was a pond in the property and the construction of the property was carried out after filling up the pond and the same is being examined by the revenue authorities.

5. The learned Standing Counsel for the respondent submits that this is the only reason for which the issuance of occupancy certificate is being delayed.

6. The point to be considered is whether the Municipality is justified in withholding the occupancy certificate merely on the reason that a complaint has been received stating that there was a pond in the property where the constructions were made. This Court is of the opinion that the allegations raised in the said complaint is a matter which ought to have been considered before the approval of the building plan and grant of permit. After the approval of the said plan, issuance of building permit and completion of the building thereunder, such a complaint itself

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is unsustainable and no purpose will be served by making any enquiry on such a bogus complaint. After the issuance of building permit, the scope of enquiry by the Municipality is confined to the question whether there is any violation of approved plan or the provisions of Kerala Municipality Building Rules only. Here the Municipality has no such allegation. If that be so, the Municipality is liable to issue occupancy certificate forthwith. Needless to say, the Municipality is not justified in withholding the issuance of occupancy certificate.

5. In the above view of the matter, the Municipality is directed to issue occupancy certificate to the petitioner and number the apartments, within a period of two weeks from the date of receipt of a copy of this judgment.

This writ petition is disposed of accordingly.

sks

K.HARILAL, JUDGE