

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

FRIDAY, THE 30TH DAY OF JANUARY 2015/10TH MAGHA, 1936

WP(C).No. 33600 of 2009 (T)

PETITIONER :

AGY GEORGE, S/O.K.A.GEORGE
KOCHIKUZH, ANIKKAD.P.O, MALLAPPALLY
PATHANAMTHITTA.

BY ADVS.SRI.P.SANTHALINGAM (SR.)
SRI.S.SHARAN

RESPONDENTS :

1. STATE OF KERALA
REP. BY CHIEF SECRETARY TO GOVERNMENT, SECRETARIAT
THIRUVANANTHAPURAM.
2. THE PRINCIPAL SECRETARY,
LOCAL SELF GOVERNMENT DEPARTMENT
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.
3. SECRETARY, (SPECIAL GRADE),
THRIKKAKARA GRAMA PANCHAYAT, THRIKKAKARA.
4. KUDILUMUKKU RESIDENTS ASSOCIATION,
REPRESENTED BY ITS PRESIDENT K.J.DIVAKARAN
VARISSERY HOUSE, THRIKKAKARA.P.O, KOCHI-21.
5. SENIOR TOWN PLANNER,
DEPARTMENT OF TOWN & COUNTRY PLANNING
REGIONAL TOWN PLANNING OFFICE, ERNAKULAM.

R3 BY ADV. SRI.S.SHANAVAS KHAN

R4 BY ADVS. SRI.M.JITHESH MENON

SRI.R.RAJESH PILLAI

SRI.K.B.SAJEESH

R BY SR.GOVERNMENT PLEADER SRI.E.M.ABDUL KHADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30-01-2015,
ALONG WITH W.P.(C).NO.27777/2008, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C).No. 33600 of 2009 (T)

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF THE CERTIFICATE NO.A4-1/2000 DTD.12/10/2006 ISSUED BY THE 3RD RESPONDENT

EXT.P2 : COPY OF THE CIRCULAR NO.37348/RB.1/07/LAD DTD.3/7/2007 ISSUED BY GOVERNMENT OF KERALA

EXT.P3 : COPY OF THE NOTICE NO.A1/763/07 DTD 24/7/2007 ISSUED BY 3RD RESPONDENT

EXT.P4 : COPY OF THE JUDGMENT DTD.31/10/2008 IN WP(C)NO.26931/2007 OF THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM

EXT.P5 : COPY OF THE LETTER NO.A1-4030/08 DTD.22/11/2008 ISSUED BY 3RD RESPONDENT

EXT.P6 : COPY OF THE REPORT NO.A3/3579/08 DTD.15/12/2008 ISSUED BY 5TH RESPONDENT TO THE CHIEF TOWN PLANNER, THIRUVANANTHAPURAM

EXT.P7 : COPY OF THE PROCEEDINGS NO.A3-3573/08 DATED 21/1/2009 TOGETHER WITH COVERING LETTER FILED BY THE PETITIONER BEFORE THE 5TH RESPONDENT

EXT.P8 : COPY OF THE PHOTOGRAPHS OF RAFT FOUNDATION CARRIED OUT BY THE PETITIONER

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P.A TO JUDGE

AV

K.SURENDRA MOHAN, J.

W.P.(C) Nos.33600 of 2009 & 27777 of 2008

Dated this the 30th day of January, 2015

J U D G M E N T

The dispute in both these writ petitions relate to the claim of the petitioner in W.P.(C).No.33600/2009 that, he is entitled to construct an eleven storied building in his property. In W.P.(C).No.27777/2008, an association of residents of the locality has challenged the construction activities of the petitioner in the former writ petition. Since both writ petitions relate to the same subject matter, they are considered and disposed of together. W.P.(C).No.33600/2009 is treated as the leading case and the parties as well as documents are referred to in the manner in which they are referred to the said writ petition.

2. The petitioner had obtained a no objection certificate from the Secretary of the erstwhile Thrikkakkara Grama Panchayat, to construct a eleven storied apartment complex in an extent of 30 cents of land owned by him. At that time, the Kerala Municipality Building Rules, 1999 (hereinafter referred to as 'the KMBR' for short) had not been made applicable to the Panchayat. While so, on 06.11.2006, the KMBR was made applicable to the Panchayat. According to the petitioner, after obtaining a no objection certificate on 12.10.2006, he had commenced construction. It is contended that Ext.P8 photographs show the constructions made by the petitioner. However, the petitioner has not been able to carry on his construction, in view of

Ext.P7 order issued by the Senior Town Planner, the 5th respondent.

3. According to the counsel for the petitioner, the petitioner had acting on the strength of Ext.P1 no objection certificate, expended money, laid foundation for the construction of an eleven storied building and had commenced construction as evident from Ext.P8. The pillars have reached the ground level. There is no justification for prohibiting further construction, since the construction has been commenced legally and after obtaining proper permission. It is therefore contended that, this is a fit case in which the petitioner is permitted to carry on and complete the construction.

4. Adv.Sri.S.Shanavas Khan appears for the 3rd respondent. According to the 3rd respondent, though it is true that a no objection certificate had been issued on 12.10.2006 as alleged, the petitioner had not commenced construction on the strength thereof. It is pointed out that Ext.P1 photographs produced in W.P(C).No.27777 of 2008 show that only boundary fencing had been put up, no construction activity having commenced. It is therefore contended that, the factual assertion made on behalf of the petitioner of having commenced construction shortly after the issue of Ext.P1 is without any basis. My attention is also drawn to Ext.P7, a Circular issued by the 2nd respondent containing detailed directions regarding the manner in which orders are to be passed in cases where no objection certificates had been granted before the KMBR was made applicable. It has been

directed in Ext.P7 Circular that, in cases where a no objection certificate had been granted, but no construction had commenced, the construction could be commenced and carried on only after obtaining proper permission under the KMBR. In cases where a no objection certificate had been granted, but the construction had not proceeded beyond the ground level also, further construction could be permitted only after obtaining a building permit as per the KMBR. The above being the position of law, according to the counsel, no permission could be granted to the petitioner to carry on his construction without obtaining a proper building permit under the KMBR. It is further pointed out that, the petitioner's property lacks road access in accordance with the stipulations contained in the KMBR. The width of the road leading to the petitioner's property is only 3.8 metres wide. For permitting the construction of an eleven storied building, a road access of 6 metres width is necessary. It is also pointed out that, the Senior Town Planner has in the impugned order considered all the contentions and has entered definite findings, which include that the petitioner had not commenced any construction, when the site was inspected on 01.03.2007. Therefore, the counsel seeks dismissal of the writ petition.

5. Heard. I have been taken through the impugned order, Ext.P7. The 5th respondent has found that, though a no objection certificate had been issued to the petitioner on 12.10.2006, the KMBR was made

applicable to the Panchayat on 06.11.2006 within a period of less than one month. Upon the provisions of KMBR being made applicable, the permissible Floor Area Ratio changed disentitling the petitioner from carrying on the construction as proposed. The proposed construction would violate the permissible Floor Area Ratio. It has also been found that, based on a complaint from the 4th respondent when the construction site of the petitioner was inspected on 01.03.2007, no construction had started. It has been found that, at any rate the construction has not proceeded beyond the ground level. Even as per Ext.P8 photographs, only the pillars have been cast, that too, only for the basement floor. Therefore, the construction has not reached ground level. In view of Ext.P7 circular therefore, the petitioner cannot claim that, he should be permitted to carry on the construction in accordance with the no objection certificate already issued. The petitioner would have to approach the local authority with a proper application and a fresh plan prepared in accordance with the KMBR. The counsel for the 3rd respondent submits that, if such an application is made, the same would be considered and appropriate orders would be passed thereon, in accordance with law. This is recorded.

In view of the above, these writ petitions are disposed of granting liberty to the petitioner to submit a fresh application for the issue of building permit on the strength of a fresh plan, in accordance with the KMBR. If any such application is submitted, the Secretary of the

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Thrikkakkara Municipality shall consider the same in accordance with law and shall pass appropriate orders thereon, expeditiously.

Sd/-

K.SURENDRA MOHAN, JUDGE.

AV