

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 11TH DAY OF SEPTEMBER 2015/20TH BHADRA, 1937

WP(C).No. 29671 of 2014 (H)

PETITIONER(S):

P.R.GOPAKUMAR,
S/O.RADHAKRISHNAN, 18/664, PUTHAN VEEDU
THEKKETHARA, KOTTEKAD, PALAKKAD.

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENT(S):

1. PALAKKAD MUNICIPALITY
REPRESENTED BY ITS SECRETARY, MUNICIPAL OFFICE
PALAKKAD-678001.

2. THE ASSISTANT ENGINEER
PALAKKAD MUNICIPALITY, MUNICIPAL OFFICE, PALAKKAD
PIN-678001.

R1 BY ADV. SRI.T.C.SURESH MENON

R1 BY ADV. SRI.P.S.APPU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
11-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 29671 of 2014 (H)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1 : TRUE COPY OF THE POSSESSION CERTIFICATE DT.15 JUNE 2014
ISSUED BY THE VILLAGE OFFICER, PALAKKAD-II VILLAGE.

EXHIBIT P2 : TRUE COPY OF THE LOCATION SKETCH IN RESPECT OF THE PLOT.

EXHIBIT P3 : TRUE COPY OF THE BUILDING PERMIT ISSUED TO THE
PETITIONER.

EXHIBIT P4 : TRUE COPY OF THE STOP MEMO DT.5 OCTOBER 2014 SERVED ON
THE PETITIONER.

EXHIBIT P5 : TRUE COPY OF THE ORDER (STYLED AS A NOTICE) DT.28
OCTOBER 2014 ISSUED BY R1.

RESPONDENT(S) ' EXHIBITS

NIL

/TRUE COPY/

PS TO JUDGE

vgs

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 29671 of 2014

Dated this the 11th day of September, 2015

J U D G M E N T

The petitioner has come up before this Court aggrieved by the direction of the 2nd respondent to demolish a building, the construction of which was completed, without pointing out the irregularities of the construction and without even affording him an opportunity to explain.

2. The petitioner alleges that the 2nd respondent issued a building permit to the petitioner enabling him to construct a house in his plot, the structural work of which is almost over. On 05.10.2014, a stop memo was served on the petitioner, which speaks about a complaint against the petitioner. The petitioner alleges that in spite of the petitioner's persistent requests, copy of the complaint was not given to him and even the identity of the complainant was not revealed. As evident from Ext.P2

..2..

location sketch, the property is not bounded by any public pathway and the property is accessed through a private pathway along the ancestral property. The petitioner shares his boundaries with his near relatives. According to him, he has not deviated from the approved plan and permit in any manner. Now, the petitioner has received Ext.P5, directing him to demolish the alleged illegal construction and to report within seven days. According to him, the total extent of the petitioner's plot is less than 3 cents; and thus, it would qualify to be a building in small plot entitled for the benefits of the special provisions for construction in small plot laid down in Chapter VIII of the Kerala Municipality Building Rules. The petitioner has not violated any of the building rules and has strictly adhered to the approved plan and permit; according to him. The petitioner's grievance is that in spite of his requests, respondents did not reveal the identity of the complainant and they did not furnish copy of the alleged inspection report by the officer of the

..3..

municipality. As the 2nd respondent has directed him to demolish the construction without pointing out the irregularities about the construction and without even affording him an opportunity to explain, the petitioner has come up before this Court.

3. Arguments have been heard.

4. Opposing the writ petition, the learned Standing Counsel for the respondent municipality would submit that Ext.P5 was issued calling upon the petitioner to demolish the construction, which was in violation of the building rules. According to the learned Standing Counsel, the construction over hangs the property of another. It is pointed out that there was a complaint from a third party that the space as mandated by the rules has not been left between the petitioner's building and the neighbouring property.

5. In answer to the said submission, the learned counsel for the petitioner invited my attention to Ext.P2 location sketch, which would reveal that the petitioner's

..4..

property does not share the boundary with any public pathway. It was argued that now, the respondent municipality has raised a new allegation that there is aerial trespass as the construction overhangs the adjoining properties.

6. As rightly pointed out by the learned counsel for the petitioner, in Ext.P5, what is alleged is that the construction is against the sub rules (2), (3) & (10) of Rule 62 and sub rule (10) of Rule 24 of the Kerala Building Rules, 1999. No specific allegation is stated in Ext.P5. Admittedly, the construction is over. As could be seen from Ext.P2 sketch, the adjoining properties are the properties of the relatives of the petitioner. According to the petitioner, none of his relatives has made any complaint against the petitioner to the respondent municipality.

7. Though it was argued by the learned Standing Counsel for the respondent municipality that a third party has made a complaint, the name of the said third party is

..5..

not made mention of anywhere. Had it been done, the petitioner could have impleaded that person also for a proper adjudication of the matter. As the petitioner's property does not share any boundary with a public pathway and as the adjoining land owners are the petitioner's relatives, who have not raised any objection to the construction, this Court is of the view that the construction of the petitioner can be regularized on an application submitted by the petitioner for the same.

Therefore, the writ petition is disposed of permitting the petitioner to approach the respondent municipality with an application for regularization of the construction within one month; and in the event of making such an application, the same shall be considered and disposed of in accordance with law after affording the petitioner an opportunity of being heard within a period of two weeks thereafter.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-