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Indira Vs Corporation of Kozhikode

Writ Petition (C) No. 32941 of 2011

Court: High Court Of Kerala

Date of Decision: March 7, 2013

Citation: (2013) 3 KHC 244 : (2013) 4 KLJ 385 : (2013) 3 KLT 223

Hon'ble Judges: T.R. Ramachandran Nair, J

Bench: Single Bench

Advocate: M. Krishnakumar, for the Appellant; K.D. Babu, Jacob Abraham and C.R. Syam Kumar, Sr. Government Pleader, for the Respondent

Final Decision: Dismissed

Judgement

T.R. Ramachandran Nair, J.
Mainly, it is a case where the petitioner is aggrieved by the permit granted by the Corporation of Kozhikode

as per Ext.P1 to respondent Nos. 2 to 5 for construction of a building having total plinth area of 219.23 sq.mts. in three floors; viz., with a plinth

area of 70.67 sq.mts. in the ground and first floors and, 70.67 sq.mts and 7.22 sq.mts. in the second floor. The petitioner is a neighbouring owner.

According to the petitioner, respondents 2 to 5 are apartment builders who have been granted permission to build three floors in a small plot of 3

cents. It is stated that the same violates the provisions contained in Rr. 60 to 64 of the Kerala Municipality Building Rules, 1999 as well as Ext.P4

order passed by the Government clarifying the position under the relevant Rules. Heard both sides.

2. It is submitted by the learned counsel for the petitioner that R. 60 and proviso therein as well as R. 61 if read along with Ext.P4 will show that

the maximum plinth area can only be 150 sq.mts. Herein, what is sanctioned is above the said limit and, therefore, the permit will not be one in tune

with the provisions under the Rules and Ext.P4 Government Order. Reliance is placed on the decision of the learned Single Judge in K. Premajan

Vs. Corporation of Kozhikode and Others, .

3. Learned counsel appearing for respondent Nos. 2 to 5 submitted that Ext.P4 cannot have an application in a case like this, which is clear from a

reading of the opening paragraph of the said order itself.

4. The same applies in a case where in the document of title the total area is more than 125 sq.mts. but the actual plot available for construction is

less than 125 sq.mts. In such cases, it is stipulated that the plinth area shall be confined to 150 sq.mts. for one residential house. When we read

R.60 and its proviso, along with R. 61, one of the main conditions is that the number of floors have to be limited to 3 under R. 61. The Rr. 60,

61(1) and 64 are extracted below:

60. Special provisions for construction in small plots-The provisions in the Kerala Municipality Building Rules shall apply to construction of building

under residential and or commercial occupancy, in plots not exceeding 125 sq. metres of area subject to the modifications in this chapter:

Provided that permit shall not be granted under this chapter to one and the same person or with his consent to another person, for constructing

different buildings, whether separately or abutting each other, in plots formed by division of one or more plots, he remaining as owner of more than

one such divided plots or if that person has another plot abutting the proposed plot.

61. Number of floors to be limited.--The number of floors allowed shall be three.

62. Conditions regarding set back.--(1) The minimum distance between the plot boundary abutting any street other than National Highways, State

Highways, district roads and other roads notified by the Municipality and the building other than a compound wall or fence or outdoor display

structure, shall be 2 metres:

Provided that any restriction under street alignment or building line or both, if any fixed for the area and any development plan or any detailed town

planning scheme or approved road widening proposal or any other rules or byelaws shall also apply simultaneously to all buildings in addition to the

provisions contained in sub-rule (1).

64. Application and its disposal.--The provisions for submission and disposal of application for permit and filing of completion certificate and

extension and renewal of permits and similar matters shall be as described in Chapter II.

(2) The application fee and permit fee shall be as in Schedule I and Schedule II respectively.

5. The proviso to R.60 restricts grant of permit in a case where construction proposed is with regard to different buildings whether separately or

abutting each other, by dividing the plots and by giving consent to another person.

6. Herein, respondent Nos. 2 to 5 are joint owners of the plot and they have been granted permit for construction of three floors, and the same

therefore complies with the R.61. There is no violation of the proviso also since the plain terms of the proviso are not attracted to the facts of this

case.

7. Then the question is whether Ext.P4 is violated. Before going into the said question, I shall refer to the contents of Ext.P4 itself. Therein the

Government received a complaint to the effect that for small plots of area equal to 125 sq.mts. or below the same, and wherein the document of

title provides for an extent of more than 125 sq.mts. but the space available for construction is equal to 125 sq.mts. or below it, the benefit under

R.60 is not being obtained. The same was examined by the Government under R. 161 of the Building Rules. It was clarified that if the actual extent

available for construction in such cases is only upto 125 sq.mts., then the benefit can be granted for construction of one residential building having

plinth area of 150 sq.mts. Evidently, the order may not apply in this particular case since there is no plea that herein the document of title provides

for an area of more than 125 sq.mts. and the space available for construction is equal to 125 sq.mts. or less than that. Therefore, as rightly pointed

out by the learned counsel appearing for respondent Nos. 2 to 5 and the learned Government Pleader, the said order will not apply to the facts of

this case.

8. I shall now refer to the decision of this Court in Premarajan"s case (supra) wherein the complaint was with regard to a building permit issued by

the Corporation for a 3 storied building in a property having 3 cents. This Court examined the combined effect of R.60 to 64 and lastly the very

same order Ext.P4 was also considered. It was explained by the learned Judge thus:--

...The resultant position is that only one building of maximum 3 floors shall be permitted to be constructed and that too not exceeding a total plinth

area of 150 sq. meters in a small plot.

9. Therein, the plea regarding applicability of the said order was rejected because the building permit was issued prior to the issuance of the same.

Evidently, the attention of this Court was not invited to the opening paragraph of Ext.P4 and the fact that clarification is limited to cases where the

area covered by the document is more than 125 sq.mts. and the space available for construction is less than or equal to 125 sq.mts. Even though

the learned counsel for the petitioner heavily relied upon the above quoted sentence in the last paragraph of the Judgment, it cannot be said that this

Court has declared that in all cases where the construction proposed is in a small plot, the total plinth area cannot exceed 150 sq.mts. Evidently,

such an interpretation as sought for by the petitioner will violate the plain terms of R.60 also. The decision relied on by the petitioner is

distinguishable on the facts of this case. In that view of the matter, I cannot agree with the contention of the learned counsel for the petitioner. It is

also the submission of the learned counsel for respondent Nos. 2 to 5 that constructions have already been completed. For all these reasons, the

Writ Petition is dismissed.