



GOVERNMENT OF KERALA
Abstract

Local Self Government Department – Kannur Municipality - Judgment in WP(C)No. 11570/2011 filed by Sri. T.P. Narayanan, S/o Narayanan, T.P. House, Kalarivathukkal, Valappattanam, Kannur - Compliance of Court direction --Orders Issued

LOCAL SELF GOVERNMENT (RB) DEPARTMENT

G.O.(Rt) No. 2048/2013/LSGD, Dated, Thiruvananthapuram, 03.08.2013

- Read:-**
1. Judgment dated 25/03/2013 in WP(C)No.11570/2011 filed by Sri. T.P. Narayanan, S/o Narayanan, T.P. House, Kalarivathukkal, Valappattanam, Kannur
 2. Lr.No.G7/13889/13 dated 02/07/2013 from the Secretary, Kannur Municipality
 3. Lr.No.3001/1/Q(DC) dated 5/2013 from DSC, Kannur.
 4. Representation dated 02/7/2013 from Sri. T.P. Narayanan, S/o Narayanan, T.P. House, Kalarivathukkal, Valappattanam, Kannur

ORDER

As per the judgment read as 1st paper above, the Hon'ble High Court had directed the third respondent, (ie. The Secretary LSGD) to consider the matter afresh after issuing notice to the petitioner and necessary parties concerned and after taking into consideration the observations made in the above case as well as the judgment in Heera construction's case (supra) and pass appropriate orders within a period of two months from the date of receipt of a copy of judgment.

2.As ordered by the Hon.H.C. the petitioner and all the parties concerned were heard by the Secretary LSGD (ie. third respondent) on 03/07/2013. In the hearing the petitioner has argued that they have constructed the building as per the permit obtained from the Kannur Municipality. As such any irregularity occurred in this case is not the mistake of the petitioner but it is on the part of officials. Hence the petitioner has requested to discard the objection raised by the station commandant and to give permission to the municipality to issue occupancy certificate to additional 2 floors also and pass appropriate orders for the use of the road proceeding to their property by giving appropriate direction to the District Collector and the District Police Chief to grant protection from the high handed action of the DSC Commandant, Kannur.

3.As per the report furnished by the Secretary, Kannur Municipality read as 2nd paper above, the municipality had issued permit to T.P. Narayanan and T.P. Vasudevan for the construction of B+G+M+FF+SF in Survery No.80 vide E3/BA/280/07 dated 02/7/2008. Further the applicant had applied for revised permit for construction of B+G+M+5 floors on 20/8/2007 for which NOC from

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Fire and Rescue services was obtained. Accordingly, revised permit, for construction of B+G+M+5 floors, was issued on 03/10/2009 to Shri. T.P. Narayanan. Subsequently on 06/10/2010 Station Commandant, DSC has informed the municipality that they have issued NOC only for construction of B+G+3 floors and the applicant is carrying out the construction above the floors and also requested to stop the construction and demolish the unlawful construction. The Municipality had given a reply to the Station Commandant, DSC in the matter intimating that they had forwarded an application for NOC for construction of B+G+M+5 floors on 20/8/2007, and since no response was obtained within 30 days time the permit was issued as per Rule 5(5) of KMBR. It is also reported that the proof of despatch of the above mentioned application could not be found. The Secretary has also reported that the construction above 2nd floor has violations regarding the set back, FAR and CRZ clearance. Since the High court permit the petitioner to finish the constructions up to 2nd floor the municipality was not able to issue any further notice to the petitioner without permission of the Hon.Court. More over the access route used by the petitioner to the construction site is defence land. Hence it is also a violation. The Secretary has also reported that as per report of the DTP, Kannur dated 20/3/2013 the constructed building has violations of KMBR, Rule 33, 35(1), 34(2), 117 and the height of the completed basement floor is 4m instead of 2.7m shown in the approved plan. The DTP has also mentioned that the access to the building is through military land and for this no separate permission is seen to be obtained by the building owner.

4. As per the report read as 3rd paper above, the DSC Kannur has reported that they had given NOC to the petitioner for the construction of BF+GF+03 floor +Terrace hotel bldg in Ward No3, Block No.2 in RS No.80 in Kannur Municipality. But the petitioner had made construction against the condition stipulated in NOC issued. The petitioner claimed that he had applied for NOC for the revised building plan for BF+GF+5 Floor + Terrace Hotel Building. But the particular letter seeking revised NOC was not received by DSC office. As such the present construction without the consent of the DSC is unauthorised as per the KMBR. The DSC has also reported that access to the building site and the area in front is integral part to A1 defence land and has since been blocked due to security reason. The DSC has also stated that LMA never gives permission for entry and exit to the proposed resort. As per the KMBR it is the responsibility of Municipality to ensure that the owner has proper road access for entry and exit as per the rules existing before issuing permit. DSC presume that A1 defence land will be used for the said purpose is a fallacy of the Petitioner. The DSC stated that in a Judgment of the Division bench of the Hon.H.C. of Andhra Pradesh, the court has ordered that the land in question comes within the category of class A(1) defence land and the whole area is managed and controlled by the military authorities, it is the right of the military authorities to use the said road and the petitioners or the general public have no right to use the same. Based on the above facts they argued that the adjacent building has been granted NOC for 15 storey, and the entry/exit to that building is through an existing road and not through defence land and is therefore irrelevant. In no way the entry/exit will be granted to the petitioner. Moreover they have not received the revised building plan for sanction/NOC through Municipality. Hence the unauthorised construction made beyond 3rd floor need be locked permanently under the supervision of local military authority else to be demolished.

5. The Deputy Collector attended the hearing has also reported that there is no reliable proof for the despatching of the application for revised NOC to the DSC from the municipality. As such without getting NOC from DSC issuance of deemed permit to the petitioner is against the rule. That is reason for recommending Government to take action against the petitioner's building.

6. Government have examined the matter in detail with the report of the Secretary, Kannur Municipality read as 2nd paper above and the arguments of the DSC and the District Collector, Kannur and it is found that the construction made without the consent of the DSC has to be treated as unauthorised construction and as per the existing rule action has to be taken against the building.

The DSC has stated that the construction has no access road, the road now using is the property of the Defence authority. But the petitioner has not obtained any consent letter from the Defence authority in this regard. As such the action of the municipality to give permit to the petitioner is against the existing rule. It is also noted that the Petitioner has no access to the site. Hence the building under question can not be treated as an authorised construction if there is no proof of access or consent from the real owner. As per the existing rule , Rule 7 of KMBR, consent of the Defence authority is necessary for the construction within a distance of 100 mtrs from any property maintained by the Defence. But in the petitioner's case the Defence has not given NOC for the construction beyond 3rd floor. The petitioner has made construction on the basis of the deemed permit. But it can not be treated as real deemed permit with a reason that they could not prove the request for NOC for revised plan was reached in the office of the DSC. More over, the construction violates Rule 33, 35(1), 34(2), 117 of KMBR. Hence the issuance of partial occupancy to the construction without rectifying the violations is irregular. Hence the occupancy given to the petitioner has to be reviewed. More over the construction made without the consent of the DSC can not be regularised.

7. The Hon. H.C. has also ordered to consider the matter afresh considering the observations made by the court in the judgment of Heera Constructions case. In the judgement Hon.H.C. had observed that negligence or mistake committed by the officer is not a ground for the revocation of the permit already granted and acted upon by the parties. But in this case petitioner had made constructions violating from permit sanctioned to the petitioner. As such observation of the Hon.H.C. seems not applicable to this case.

8. Government have examined the matter in detail and reject the petition read as 4th paper above and direct the petitioner to take up the matter of NOC for the additional floors and permission for using the access with DSC through municipality afresh. The Secretary, Kannur Municipality is directed to take necessary action against the unauthorised construction as per KMBR subject to the orders of the Hon.H.C. The direction of the Hon'ble High Court in its judgment dated 25/3/2013 in WP(C)No.11570/11 is thus complied with.

By Order of the Governor
Dr.RAJAN KHOBRADE
Secretary to Government.

To

Sri.T.P.NarayananS/o.Narayanan, T.P. House, Kalarivathukkal, Valappattanam, Kannur

The Advocate General, Kerala Ernakulam(with covering letter)

The District Collector, Kannur.

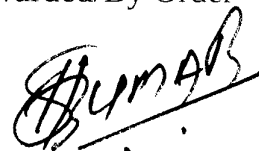
The Station Comandant, DSC, Kannur

The Secretary, Kannur Municipality, Kannur

The District Town Planner, Kannur

✓The Executive Director, IKM, Thiruvananthapuram
stock file / O/C

Forwarded/By Order



Section Officer.

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