



GOVERNMENT OF KERALA
Abstract

Local Self Government Department – Judgment dated 29.11.2017 of Hon'ble High Court of Kerala in W.A. Nos.406 and 411 of 2010 filed by Smt. M.A. Zohra, - Court direction complied with - Orders issued.

LOCAL SELF GOVERNMENT (RB) DEPARTMENT

G.O.(Rt) No. 3234/2018/LSGD.

Dated, Thiruvananthapuram, 24/12/2018.

- Read: -
- 1) Judgment dated 29.11.2017 of Hon'ble High Court in W.A Nos. 406 and 411 of 2010 filed by Smt. M.A.Zohra.
 - 2) Report No.D/2989/18 of Senior Town Planner, Ernakulam dated 15/11/2018
 - 3) Report of Secretary, Kochi Corporation No.ISO/MOP1/35028/18 dated 29/11/2018.

ORDER

The Hon'ble High Court in its judgment dated 29.11.2017 in W.A Nos. 406 & 411 of 2010 directed the Secretary, LSGD (Second Respondent) to consider the complaint of the appellant against the construction made by the first respondent in the light of the Commission reports submitted by the Advocate Commissioner in these cases and in the light of the objections to the same dated 27.07.2017 filed in W.A. No. 406 of 2010. It is also directed that the second respondent shall consider the matter afresh after affording an opportunity of being heard to appellant (Smt. M.A.Zohra) as well as the first respondent (M/s. Cochin Firetech) and the Secretary of Kochi Municipal Corporation and shall pass appropriate orders in the matter, as expeditiously as possible and at any rate within a period of two months of the date of receipt of a copy of the judgment.

2. The appeals were filed by the petitioner against a common judgment dated 22.02.2010 in WP (C) No. 22360 of 2009 and 9228 of 2009. The allegation in these cases relates to a construction made by the first respondent (M/s Cochin Firetech represented by its managing partner M.P. Sreekumar), which, according to the appellant, is in violation of the provisions of the Kerala Municipality Act, 1994 and Kerala Municipality Building Rules 1999.

3. The first respondent is the owner of a plot of land admeasuring 4 cents comprised in Sy. No. 193/6 of the Elamkulam Village, Kannayannur Taluk, Ernakulam District. The first respondent firm had constructed a four storied building with basement in the said plot of land. The appellant in both these appeals is the owner of the property adjacent to that of the first respondent. Her complaint is that, the construction has been made in gross violation of the Act and the Rules. She filed W.P. (C) No. 9228 of 2009 for the issue of appropriate orders to stop the illegal construction and for cancellation of the Occupancy Certificate that has been issued. She had also

complained to the Government. The Government considered the matter and issued exhibit P26 proceedings directing the Corporation of Cochin to cancel the Occupancy Certificate that was granted and to take steps to see that the Construction conforms to the stipulations in the rules. Accordingly the Corporation issued an order, Exhibit P24 dated 16.06.2009 cancelling the occupancy Certificate that was granted to the first respondent. By exhibit P25 dated 20.06.2009, the tax assessment in respect of the building was also cancelled. As stated above, both the above proceedings were issued pursuant to the directions contained in exhibit P26 Government order dated 14.05.2009. It was challenging exhibits P24, 25 and 26 that the first respondent has filed W.P. (C) No. 22630 of 2009. W.P. (C) No. 22630 of 2009 was allowed setting aside the impugned proceedings exhibits P24, P25 and P26. The Secretary of the Corporation has been directed to take appropriate action in the matter, in accordance with law. W.P. (C) No. 9228 of 2009 was also disposed of with the said direction. Aggrieved by the said judgment the above appeals are filed.

4. During the pendency of the appeal, as per order dated 23.06.2017 in I.A. No. 757 of 2017 in W.A. No. 406 of 2010 filed by the appellant, an Advocate Commissioner was deputed from the Hon'ble Court to conduct a local inspection of the disputed building for the purpose of ascertaining and submitting a report to the Court detailing violations, if any. Accordingly, the Advocate Commissioner conducted an inspection and has placed a report on record dated 18.07.2017. After, the said report was placed before the court respondents 1 and 2 in W.A. No. 406 of 2010 filed I.A. No. 1064 of 2017 and sought for an order deputing the same Advocate Commissioner again for the purpose of conducting a further inspection and to report on the matters sought to be ascertained. Accordingly, as per order dated 21.08.2017, the very same Advocate Commissioner was directed to conduct another inspection of the building and to place on record a report on the aspects sought to be ascertained. Thus, another inspection was conducted and a second report dated 14.11.2017 has been placed before the Hon'ble Court supported by rough sketches prepared by the Advocate Commissioner. The first respondent has submitted objections dated 27.11.2017 to the report.

5. The occupancy certificate issued to the first respondent by the corporation is challenged in the Hon'ble High Court in WP (C) No. 30612 of 2017 which is still pending. The Hon'ble High Court has directed Government to consider the violations noted by the Advocate Commissioner and to take a fresh decision in the matter.

6. As directed by the Hon'ble High Court, the appellant and respondents were heard on 01.12.2018. Assistant Engineer and Building Inspector of Kochi Municipal Corporation representing the Secretary of the Corporation attended the hearing. Also, the Assistant Town Planner, Regional Town Planning Office, Ernakulam, Town Planner (Vigilance) and Deputy Town Planner (Vigilance), Local Self Government Department, were present at the time of hearing. The appellant has produced copies of both the reports of the Advocate Commissioner and the first respondent produced copy of the objections to the reports filed before the court.

7. Government examined the matter in detail on the basis of reports submitted by the Advocate commissioner, Secretary, Kochi Municipal Corporation and the Senior Town Planner, Ernakulam. The reports submitted by the Advocate Commissioner lists out a number of violations in the constructions made by the first respondent. The two

major findings in the reports submitted by the Advocate Commissioner are namely (1) Deviation in the built up area and height of the building from the approved plan, (2) required set back is not provided in all four sides of the building.

8. As per the report submitted by Secretary, Kochi Corporation and Senior Town Planner, Ernakulam the building violates Rule 24 (3), 24 (4) and Rule 24 (5) of KMBR 1999, as required set back is not provided on all four sides. It is also reported that the building violates Rule 34 of KMBR 99 as sufficient no. of parking (Car and Two wheeler) is not provided. Also the car parking space provided in the basement as per the approved plan is presently used as a store is not practically feasible to be used for car parking purpose as only a ramp of 1.04m is provided to this basement floor. There is also variation in the height of building from the approved plan. Kochi Corporation has further reported that an application was submitted by the 1st respondent for regularization subsequent to G.O. (P) No. 11/2018/LSGD dated 20.02.2018. The application was considered and due to certain discrepancies Corporation had informed the applicant on 30.05.18 to rectify the discrepancies and to resubmit the same. However, the revised application was not submitted till date.

9. Based on the reports of the Advocate Commissioner, Corporation and the Senior Town Planner, it is confirmed that the building violates the provisions of Setbacks and parking. In addition to this, a violation of the provisions of the Sanctioned Detailed Town Planning Scheme is presently seen. The site under dispute is comprised in Survey No. 193/6 of Elamkulam Village. As per the Sanctioned Detailed Town Planning Scheme for Elamkulam Road Sanctioned vide G.O. (MS) No. 116/75 dated 15.05.1975 the land is to be acquired and developed for residential use. In the scheme rule it is stated as "Any land in the area required for the purpose of the scheme may be acquired by purchase, exchange or otherwise by the Trust at any time subject to the provisions of the Act and without prejudice to the interests of the scheme". The scheme was prepared by Cochin Town Planning Trust and the implementation of the scheme was later handed over to GCDA and now Kochi Municipal Corporation is the concerned authority. Hence it is seen that permit is issued in violation to the provisions of Sanctioned Detailed Town Planning Scheme.

10. However considering the fact that the construction is residential cum commercial building and the said land is to be acquired and developed for residential use and so far no acquisition has been made since 1975, the respondent may be directed to apply for dispensing with or modifying the zoning provision of the Sanctioned DTP Scheme in accordance with the provisions of G.O. (MS) No. 306/2015/LSGD and as per the stipulations in Govt. Circular No. 304282/RD2/15/LSGD dated 18.02.2016 prior to any further action in the building.

11. In order to confirm the constructed building as per rules, the building has to be regularized. Hence, Government are pleased to direct the respondent to complete the above procedures at the earliest and to apply for regularisation of the building before March 2019 under the provisions of G.O. (P) No. 11/2018/LSGD dated 20.02.2018. Under such case, the respondent is also directed to provide sufficient setback as per section 383 (A) of Kerala Municipality Act, 1994 and to confirm the building to all the provisions of the regularisation order. Regularisation can also be

applied for under rule 143 of KMBR, after doing all the structural corrections to comply with the provisions of KMBR 1999. Secretary, Kochi Corporation shall take necessary action as per Rule 18 of Kerala Municipality Building Rules, 1999 if the application for regularization is not submitted by the 1st respondent before 31.3.2019.

12. The Hon'ble High Court has set aside judgment in W.P. (C) No. 22630 of 2009 and W.P. (C) 9228 of 2009 and hence appropriate action as per the directions contained in Ext. P 24, 25 and 26 proceedings shall be taken by Secretary, Kochi Municipal Corporation forthwith.

The direction contained in the judgment read as 1st paper above is thus complied with.

(By Order of the Governor)

SABITHA S.D.

Deputy Secretary to Government

- 1) Smt. M.A. Zohra,
36/2403. A, Prince Cottage, Vattekkattu Road, Kalloor, Cochin.
- 2) Sri. Sreekumar, Partner, M/s. Cochin Firetech, S.N. Complex,
Near North Overbridge, Ernakulam.
- 3) The Advocate General, Ernakulam. (with C/L)
- 4) The Secretary, Kochi Corporation
- 5) The Chief Town Planner, Thiruvananthapuram
- 6) The Senior Town Planner, Ernakulam
- 7) The Executive Director, Information Kerala Mission, Thiruvananthapuram.
✓ (for publishing this order in website)
- 8) Stock File/ Office Copy.

Forwarded By Order

Sabitha S.D.
Section Officer

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