

Kerala High Court

Dr.K.C.Chacko vs Corporation Of Cochin on 26 February, 2008

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(C) No. 6578 of 2008(G)

1. DR.K.C.CHACKO,KADAVIL HOUSE
... Petitioner
2. DR.CHINNAMMA CHACKO,RESIDING AT

Vs

1. CORPORATION OF COCHIN,
... Respondent

2. STATE OF KERALA REPRESENTED BY THE

For Petitioner :SRI.SIBY MATHEW

For Respondent : No Appearance

The Hon'ble MR. Justice PIUS C.KURIAKOSE

Dated :26/02/2008

O R D E R

PIUS.C.KURIAKOSE, J.

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W.P.(c).No.6578 OF 2008

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Dated this the 26th day of February, 2008

JUDGMENT

Ext.P1 building permit issued to the petitioners for the construction of a high rise building in the city of Cochin was cancelled by the Secretary of Corporation under Ext.P2. Under Ext.P2 it is stated that Rule 16 is being invoked for cancelling the permit on the basis of instructions received from the

Government. Two reasons are stated for cancelling the permit. First reason being that the FAR exceeds the FAR shown in the approved plan and the second reason is that the proposed construction violates Rule 117 which provides for mandatory open space for facilitating fire fighting arrangements in the building after its construction. On receiving Ext.P2, petitioners submitted Ext.P3 before the Secretary of the Corporation requesting for a reconsideration of Ext.P2 order and for supply of a copy of the Government order pursuant to which Ext.P2 has been issued. Since there was no response to Ext.P3, petitioners submitted Ext.P4 and along with Ext.P4 a revised plan was submitted by the petitioners and it was requested in Ext.P4 that the revised plan may be considered and Ext.P1 be revived on the basis of the revised plan. It was claimed in Ext.P4 that the revised plan complies with all the requirements of the Kerala Municipalities Building Rules. Finding that there was no response even to Ext.P4 and the revised plan, petitioners submitted Ext.P5 further representation to the Secretary of the Corporation dated 11/10/2007 and along with that a further revised plan was submitted and it was requested that the above revised plan may be considered and permit may be granted. Noticing that the Corporation was inert on Ext.P5 also, petitioners preferred Ext.P6 representation before the Minister. It is submitted by that petitioners that Minister has forwarded Ext.P6 to the Corporation for appropriate action.

2. When the writ petition came up for consideration, Sri.C.M.Suresh Babu, Advocate, took notice on behalf of the Corporation. Sri.K.J.Mohammed Ansar, Government Pleader took notice on behalf of the second respondent. I have heard Sri.Philip.J.Vettickattu, learned counsel for the petitioner and Sri.Mohammed Ansar and Sri.C.M.Suresh Babu.

Sri.Philip.J.Vettickattu would submit that powers under Rule 16 are to be exercised by the Secretary on his own and not on the directions or instructions of any other authority, even if the authority be the Government.

3. I find merit in the above submission. But the relevant question is whether the constructions violate Rule 117 or whether there is any deviation from the plan in respect of which Ext.P1 had been issued or whether there is violation in the matter of permitted FAR or any other illegality.

4. The claim of the petitioners is that the revised plan which was lastly submitted by them along with Ext.P5 rectifies all possible defects and would satisfy the requirements of the Kerala Municipalities Building Rules. Sri.Philip.J.Vettickattu further submitted that only the piling works of the proposed building have been completed and it would be possible for the petitioners to comply with any direction which may be given by the Corporation so that the construction upon its completion will satisfy the requirements of the Rules.

5. Sri.C.M.Suresh Babu submitted that though a direction of the Government is referred to in Ext.P2, it was on the basis of independent enquiries conducted by the Secretary and on satisfaction entered to by the Secretary on the basis of such enquiry that Ext.P2 order was issued.

6. Having heard the rival submissions addressed at the Bar and the claims of the petitioner made in the writ petition, I am of the view that the Corporation should consider the revised plan which was submitted by the petitioners along with Ext.P5, notwithstanding Ext.P2 order of cancellation and

decide whether a permit can be issued to the petitioners after approving the said revised plan. I record the undertaking given by the petitioners to this court that petitioners will be prepared to abide by any instruction which may be issued to them by the Secretary of the Corporation during the course of the construction and that the mandatory fire fighting arrangements including open space necessary under Rule 117 will be available in the building once the construction is over.

7. The writ is accordingly disposed of with the following directions:

The Corporation will consider the revised plan submitted by the petitioners along with Ext.P5, conduct necessary local inspection and ascertain as to whether it is possible for the petitioners to provide the mandatory open space necessary under Rule 117 and issue permit. Periodical inspections will be conducted in the construction site by the Corporation and all necessary directions will be issued to the petitioners so as to ensure that the construction do not violate the permit which may be issued on considering the revised plan and that the building upon completion satisfies the Kerala Municipalities Building Rules in all respects. The Corporation will ensure compliance of all these directions and the direction regarding consideration of the revised plan and issuance of building permit will be complied with by the Corporation at the earliest and at any rate within a period of one month of receiving a copy of this judgment. Final orders regarding grant of approval to the revised plan will be passed by the Corporation only after hearing the petitioners also.

PIUS.C.KURIAKOSE JUDGE *sv.*