

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE N. NAGARESH

THURSDAY, THE 11<sup>TH</sup> DAY OF AUGUST 2022 / 20<sup>TH</sup> SRAVANA, 1944

WP(C) NO. 25545 OF 2020

PETITIONER:

USHA RAJAN  
AGED 64 YEARS  
W/O. LATE RAJAN, VELAYUDHAM PARAMPIL (PUNARTHAM)  
TEKKUMBAGAM, TRIPUNITHURA,  
ERNAKULAM DISTRICT, PIN - 686001.  
BY ADVS.  
SREELAL N. WARRIER  
SRI. BIJU MATHEW  
SHRI. SHAN V. SHINE

RESPONDENTS:

- 1 TRIPUNITHURA MUNICIPALITY  
TRIPUNITHURA, ERNAKULAM DISTRICT - 682020,  
REPRESENTED BY ITS SECRETARY.
- 2 KERALA STATE ELECTRICITY BOARD  
TRIPUNITHURA, REPRESENTED BY THE EXECUTIVE  
ENGINEER - 682020.
- 3 KERALA WATER AUTHORITY  
TRIPUNITHURA, REPRESENTED BY THE EXECUTIVE  
ENGINEER - 682020.  
BY ADVS.  
SRI. C. V. MANUVILSAN, SC, TRIPUNITHURA MUNICIPALITY  
SRI. P. BENJAMIN PAUL, SC, KERALA WATER AUTHORITY  
SRI. A. ARUNKUMAR, SC, KERALA STATE ELECTRICITY  
BOARD

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 11.08.2022, ALONG WITH WP(C).6151/2021, THE  
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE N. NAGARESH

THURSDAY, THE 11<sup>TH</sup> DAY OF AUGUST 2022 / 20<sup>TH</sup> SRAVANA,

1944

WP(C) NO. 6151 OF 2021

PETITIONER:

S. UMESH SHENOY, AGED 55 YEARS  
S/O LATE SRI. SREENIVAS SHENOY,  
RESIDING AT CC DOOR NO. 44/4394,  
SANKARASSERI ARCADE, CHITTOOR ROAD,  
ERNAKULAM, KOCHI-682018.

BY ADVS.

R. LAKSHMI NARAYAN

SMT. R. RANJANIE

SHRI. NEVIL ZACHARIA MATHEW

RESPONDENTS:

- 1 THE TRIPUNITHURA MUNICIPALITY  
TRIPUNITHURA, ERNAKULAM, PIN-682020,  
REPRESENTED BY ITS SECRETARY.
- 2 THE SECRETARY, TRIPUNITHURA MUNICIPALITY,  
TRIPUNITHURA, ERNAKULAM, PIN-682020.
- 3 USHA RAJAN, AGED 64 YEARS, W/O RAJAN,  
VELAYUDHAN PARAMBIL, PUNARTHAM CHEKKUMBHAGOM,  
TRIPUNITHURA, ERNAKULAM, PIN-686001.
- 4 M/S NILA HOMES PRIVATE LIMITED, 28/205-A, INDIRA  
GANDHI ROAD, PADANNAYIL JUNCTION, TRIPUNITHURA,  
PIN-682301. REPRESENTING ITS MANAGING DIRECTOR.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 11.08.2022, ALONG WITH WP(C).25545/2020, THE  
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

## **JUDGMENT**

Dated this the 11<sup>th</sup> day of August, 2022

[WP(C) NOS.25545 of 2020 & 6151 of 2021]

The petitioner in WP(C) No.25545/2020 is a Property Developer, who has constructed a multi-storeyed residential apartment complex named 'Padmaraga' in Thripunithura Municipality. The petitioner in WP(C) No.6151/2021 is a purchaser of an apartment unit in the said building.

2. The petitioners state that a multi-storeyed residential building 'Padmaraga' was constructed on the property, on the basis of a Building Permit issued by the Municipality on 03.11.2011. The period of Building Permit was extended from time to time and it was valid upto 28.10.2020. The petitioner in WP(C) No.25545/2020 completed the construction and submitted an application for Occupancy

Certificate on 24.04.2018.

3. The grievance of the petitioners is that the Corporation Authorities are not issuing Occupancy Certificate. The petitioners are therefore before this Court seeking to direct the Tripunithura Municipality to issue Occupancy Certificate to the petitioners in the prescribed format in compliance of Rule 20(3) of the Kerala Municipality Building Rules, 2019.

4. Counsel for the petitioners urged that the Occupancy Certificate is being denied to the building for the reason that the land where the building is constructed is a wetland. In view of Section 14 of the Kerala Conservation of Paddy Land and Wetland Act, 2008, the Corporation cannot issue Occupancy Certificate in respect of a building constructed in a paddy land/wetland.

5. Standing Counsel entered appearance on behalf of the Tripunithura Municipality and contested the writ petition.

The Standing Counsel submitted that the land where the building is constructed is admittedly a wetland even according to the respondents. The fact that the Municipality has issued a Building Permit earlier cannot be a reason to issue an Occupancy Certificate at this stage, after the promulgation of the Kerala Conservation of Paddy Land and Wetland Act, 2008. The Municipal Authorities are therefore amply justified in refusing to issue Occupancy Certificate.

6. Counsel for the petitioners, relying on the judgment of this Court in **Leela Santu and another v. Secretary, Kothamangalam Municipality and others** [2020 (4) KLT 1011], urged that when Building Permits were issued prior to 30.12.2017, local body will be estopped from raising objections for grant of Completion Certificate, Occupancy Certificate or for grant of permit for additional construction on the ground that the subject property continued to be described as 'Nilam/Paddy land' in BTR. The judgment of the learned

Single Judge was held with approval in a subsequent Division Bench judgment reported in **Cheranalloor Grama Panchayat v. Joe Thattil** [2020 (5) KLT 763]. In view of the law laid down by this Court in **Leela Santu and another** (supra), the respondents are not justified in refusing Occupancy Certificate to the petitioners.

7. Per contra, the Standing Counsel representing the Municipality submitted that the judgment in **Leela Santu and another** (supra) will not apply to the facts of the petitioners' case. It is a settled proposition of law that there cannot be a question of estoppel against a statutory provision. Even if this Court remits the matter back to the Secretary for reconsideration, the Secretary of the Municipality will be bound by the provisions contained in Section 14 of the Kerala Conservation of Paddy Land and Wetland Act, 2008. The Standing Counsel for the Municipality relied on the judgment of the Apex Court in **Sneh Gupta v. Devi Sarup and others**

[2009 (6) SCC 194] and urged that there cannot be any estoppel against a statutory provision.

8. The counsel for the petitioners would urge that they are not seeking any estoppel against a statutory provision. What is sought for by them is only to grant Occupancy Certificate in terms of the Building Permit legally and validly issued by the Municipal Authorities. The estoppel urged is against the conduct of the respondents, rather than against any statutory provision.

9. I have heard the learned counsel for the petitioners and the learned Standing Counsel representing the Municipal Authorities.

10. In the case of the petitioners, it is evident that a Building Permit was issued on 03.11.2021, before the introduction of Section 27A in the Kerala Conservation of Paddy Land and Wetland Act, 2008. The Building Permit so issued was valid upto 28.10.2020. The petitioner in WP(C)

No.25545/2020 completed the construction in the year 2018 and submitted application for Occupancy Certificate.

11. Defence of the respondents is that after 30.12.2017, the Secretary to the Municipality or for that matter the Municipal Council, is not competent to issue a Building Permit or Occupancy Certificate in respect of a construction carried out in a paddy land or wetland. This Court finds that the specific issue was considered by the learned Single Bench of this Court in **Leela Santu and another** (Supra). Relying on the Circular dated 30.08.2018 issued by the Department of Local Self Government, this Court held as follows:

9. In the instant case, it is beyond any dispute that building permits covered in both these Writ Petitions have been issued long prior to 30/12/2017 (the date of coming into force of the amended provisions of the State Act 28 of 2008 Act). Hence petitioners are fully entitled to get the benefit of the said Government Circular dated 13/08/2018. That apart, this Court has already held in various decisions as in Mahin v. Keezhmad Grama Panchayat (2020 KHC 243:2020 (2) KLT 478:2020 (2) KLJ 598) that in cases where the subject property has

been converted prior to 2008 Act and building permit has been issued by the local body concerned without reference to the nature of the land and after the construction of the building the local body will be estopped from raising objections for grant of completion certificate, occupancy certificate or for grant of permit for additional construction on the ground that subject property continued to be described as 'nilam/paddy land' in the BTR. Those aspects are also reiterated in judgments as in the one rendered on 26/02/2020 in W.P. (C).No.5520/2020 [Ext.P-6 in W.P.(C).No.14707/2020]. In both these cases, the respondent-local bodies have granted building permit to the respective applicants concerned without raising any objection regarding the nature of the land and construction has been completed and they have sought for grant of occupancy certificate and the building permits have been secured much prior to the cut off date of 30/12/2017. In the light of these aspects, the petitioners are also entitled to succeed on the basis of the aspects already dealt with by this Court in Mahin v. Keezhmad Grama Panchayat (2020 KHC 243:2020 (2) KLT 478:2020 (2) KLJ 598), etc. In that view of the matter, it is ordered that the impugned stand of the respondent-local body concerned rejecting the plea of the petitioners for grant of occupancy certificate, etc., is declared to be illegal and ultra vires and the same will stand set aside and quashed and consequential respective applications submitted by the respective petitioners for grant of occupancy certificate will stand remitted to the respective Secretary of the respondent-local body concerned in these cases for consideration and decision afresh.

This judgment would squarely apply to the petitioners' case.

12. The Standing Counsel for the Municipality pointed out that the judgment was delivered without noting the exact amplitude of Section 14 of the Kerala Conservation of Paddy Land and Wetland Act, 2008. Section 14 of the Kerala Conservation of Paddy Land and Wetland Act, 2008 reads as follows:

14. Refusal of licence by the Local Authority- Notwithstanding anything contained in the Kerala Panchayat Raj Act, 1994 (13 of 1994) or in the Kerala Municipality Act, 1994 (20 of 1994) no Local Authority shall grant any licence or permit under the said Act for carrying out any activity or construction in a paddy land or a wetland converted or reclaimed in contravention of the provisions of this Act.

13. It is evident from Section 14 of the Act that the restraint extended by the provision is for grant of any licence or permit under the Kerala Municipality Act, 1994. What is sought for by the petitioners in the writ petitions is not a licence or permit. In fact, the petitioners were already issued Building Permit for construction of the building. The building was constructed strictly adhering to the said Building Permit.

What is sought for by the petitioners is only a permission to occupy the building legally constructed by the petitioners on the basis of a valid Building Permit. The Occupancy Certificate will not authorise the petitioners to make any construction.

14. In the circumstances, this Court is of the firm view that when a citizen makes an application for Occupancy Certificate in respect of a building which was constructed as per a valid Building Permit issued prior to 30.12.2017, the respondents cannot take umbrage under Section 14 to deny Occupancy Certificate to the building on the ground that the land where the construction is made is a paddy land or wetland.

15. In view of the above, the petitioners are entitled to relief. The respondent-Municipality is therefore directed to issue Occupancy Certificate to the building constructed by the petitioner in WP(C) No.25545/2020, if the petitioner is

otherwise eligible, within a period of one month. After taking a decision on the issuance of Occupancy Certificate, the respondent-Municipality shall consider numbering of the apartment unit of the petitioner in WP(C) No.6151/2021 and assess the apartment unit for property tax.

The writ petitions are disposed of as above.

**Sd/-**  
**N.NAGARESH**  
**JUDGE**

spk

APPENDIX OF WP(C) 25545/2020

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE PHOTOCOPY OF THE RENEWAL OF THE BUILDING PERMIT NO.PW 4-BA-132/11-12 ISSUED BY THE TRIPUNITHURA MUNICIPALITY TO THE PETITIONER UPTO 28.10.2017.
- EXHIBIT P2 TRUE PHOTOCOPY OF THE RENEWAL OF THE BUILDING PERMIT NO.PW 4-BA-132/11-12 ISSUED BY THE TRIPUNITHURA MUNICIPALITY TO THE PETITIONER UPTO 28.10.2020.
- EXHIBIT P3 TRUE PHOTOCOPY OF COMPLETION SKETCH AS CERTIFIED BY SRI. JITTO SAM JACOB, A QUALIFIED ARCHITECT WITH REGN. NO.CA/2011/53613 SUBMITTED BY THE PETITIONER TO THE RESPONDENT NO.1.
- EXHIBIT P4 TRUE PHOTOCOPY OF ACKNOWLEDGMENT OF RECEIPT OF APPLICATION FOR OCCUPANCY CERTIFICATE SUBMITTED BY THE PETITIONER TO THE RESPONDENT NO.1
- EXHIBIT P5 TRUE PHOTOCOPY OF COMMUNICATION UNDER RULE 20(3) OF THE KERALA MUNICIPALITY BUILDING RULES, 2019 SUBMITTED BY THE PETITIONER TO THE RESPONDENT NO.1
- EXHIBIT P6 TRUE PHOTOCOPY OF ACKNOWLEDGEMENT OF RECEIPT OF COMMUNICATION UNDER RULE 20(3) OF THE KERALA MUNICIPALITY BUILDING RULES, 2019.

RESPONDENT'S/S EXHIBITS : NIL

APPENDIX OF WP(C) 6151/2021

**PETITIONER EXHIBITS**

- EXHIBIT P1**                    **THE PHOTOCOPY OF THE SALE DEED DATED  
11.11.2016.**
- EXHIBIT P2**                    **THE PHOTOCOPY OF RENEWED BUILDING  
PERMIT NO.PW4-BA-132/11-12 DATED  
16.12.2014.**
- EXHIBIT P3**                    **THE PHOTOCOPY OF COMPLETION SKETCH.**
- EXHIBIT P4**                    **THE PHOTOCOPY OF REQUEST LETTER DATED  
8/9/2020 SUBMITTED BY THE THIRD  
RESPONDENT ALONG WITH THE  
ACKNOWLEDGEMENT SLIP ISSUED BY THE  
FIRST RESPONDENT.**

**RESPONDENT'S/S EXHIBITS : NIL**