



2023/KER/83956

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

MONDAY, THE 18<sup>TH</sup> DAY OF DECEMBER 2023/27TH AGRAHAYANA, 1945

WP (C) NO. 30055 OF 2023

PETITIONER :

JOSEPHEENA T.T. ,

BY ADVS.

SRI.K.J.MANU RAJ

SRI.RAVI KRISHNAN

SMT.K.VINAYA

SRI.JOBY JOSEPH (THRISSUR)

RESPONDENTS :

- 1 THRISSUR MUNICIPAL CORPORATION,  
REPRESENTED BY ITS SECRETARY,  
OFFICE OF THE THRISSUR CORPORATION,  
THRISSUR, PIN - 680 001
- 2 THE SECRETARY, THRISSUR MUNICIPAL CORPORATION  
OFFICE OF THE THRISSUR CORPORATION,  
THRISSUR, PIN - 680 001

BY ADV SANTHOSH P.PODUVAL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 18.12.2023, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:



"C.R."

**BECHU KURIAN THOMAS, J.**-----  
**W.P.(C) No.30055 of 2023**  
-----**Dated this the 18<sup>th</sup> day of December, 2023****JUDGMENT**

The effect on a building permit when the property involved in the permit was subjected to a sale without informing the local authority needs to be resolved in this writ petition.

2. Petitioner's application for a completion certificate and occupancy certificate was rejected due to the failure to inform the sale of the property over which the building permit existed. Petitioner challenges the said order of rejection.

3. Petitioner had purchased an extent of 3.24 Ares of property in Re-survey No.246/40 of Nettisserry Village as per Ext.P1 sale deed. Before the sale, the prior owner had obtained a permit to construct a building on the said property. Though the permit was in existence, the transfer of property was not informed to the local authority. After the purchase, petitioner constructed the building based on the permit and applied for a completion certificate and occupancy certificate. However, the first respondent rejected the application, stating that the transfer of property was not intimated to the Corporation as required under Rule 19 of the Kerala Municipality Building Rules, 2019 (for



short, 'KMBR'). Petitioner alleges that the impugned order is arbitrary and opposed to law.

4. In the counter affidavit of the respondents, it is averred that Rule 19 of the KMBR stipulates that whenever there is a transfer of the whole or any part of the property unless the work has been executed in full, the intention to transfer the permit and the transfer of property itself, ought to be intimated to the Secretary of the local authority. It is further stated that the transferee also has a duty to inform the Secretary before the commencement of the work, and if the Secretary is convinced that the transfer will not, in any way, affect the development or construction, permission to transfer the permit can be issued. Since neither the petitioner nor his predecessor-in-title had informed the transfer, a completion certificate or occupancy certificate cannot be issued.

5. I have heard Sri.K.J.Manu Raj, the learned counsel for the petitioner as well as Sri. Santhosh P. Poduval, the Standing Counsel for the respondent Corporation.

6. The prior owner of the petitioner had obtained a permit on 05.04.2018 to construct a building, as evidenced by Ext.P3. The validity of the said permit was extended till 31.10.2026, as is seen from the endorsement on the permit. On a perusal of Ext.P1 sale deed and its schedule, it is noticed that there is no reference to any building



in existence. Thus, obviously, at the time of sale, there was no structure on the property, and only the building permit existed.

7. Rule 19 of the KMBR deals with intimation of transfer of plots and reads as below:-

**“19. Transfer of plots to be intimated.-**(1) Every person holding development permit or building permit shall, unless the work has been executed in full and development or occupancy certificate obtained, inform the Secretary, every transfer of the whole or part of any property involved in the permit together with the name and address of the transferee and his intention to transfer or otherwise of the permit.

(2) Every person, in whose favour any property is transferred along with a development or building permit by the transferor, shall, before commencing or continuing the work obtain permit of the Secretary in writing.

(3) The request for permission to commence or continue work shall be submitted in white paper along with documents regarding the ownership and possession certificate and fee of Rs.100.

(4) The Secretary shall, if convinced that the transfer will not in any way badly affect the development or construction, issue permission in writing, transferring the permit and allowing the commencement or continuation of work, within 15 days from the date of receipt of the request.

(5) Permit issued becomes invalid if part of the plot included in the approved plan is transferred/ sold to any other person. “

8. Rule 19 of KMBR requires the prior owner, as well as the purchaser of a property over which a building permit has been issued,



to inform the Secretary regarding the transfer or proposed transfer of permit. The obligation to inform the Secretary about the proposed transfer of the permit or the transfer of property arises when the building has either not been constructed or when the building has not been completed. The transferor, as well as the transferee, has to inform the local authority about the transfer. The question that arises is whether the building permit already issued will become invalid due to the failure to inform the transfer when the building has not been constructed or completed.

9. The transfer of a property is governed by the Transfer of Property Act, 1886, and the provisions of the KMBR cannot override the said Statute. A failure to intimate the transfer to the Local Self-Government cannot render the ownership of the property already acquired by the title deed invalid. As an owner of a plot of land, a person has the right to construct and use the property in the manner he desires, subject, of course, to the regulatory provisions of law.

10. Rules 19(1) require the transferor of a property to inform the Secretary about the transfer or the intention to transfer the permit to another person. Rules 19(2) provides that the purchaser of property along with a building permit must also inform the Secretary of the transfer and obtain permission to continue or commence construction. The Secretary of the local authority is given the power to



permit the purchaser to construct if he is satisfied that the transfer will not in any way badly affect the development or construction. Notwithstanding the above requirement to inform, the Rules do not provide for any consequences on the building permit for not intimating the transfer, except in Rule 19(5) of the KMBR.

11. On a close scrutiny of Rule 19(5), it can be understood that its scope is wholly different and applies only in a particular circumstance. The provision in Rule 19(5), which renders the permit invalid, is not attracted whenever a sale of property with a permit takes place. The said provision gets attracted only when a part of the plot included in the approved building plan is transferred or sold to any other person. In other words, the permit becomes invalid only if the plot over which a building is permitted to be constructed by the permit gets divided by the sale. If the transfer does not divide the property over which the building is permitted to be constructed, the failure to inform the sale will not render the permit invalid.

12. As observed earlier, the consequences of sale without intimation in situations other than those contemplated under Rule 19(5) of KMBR have not been specified. If a building permit is valid beyond the date of sale, effacing that permit completely, merely because a sale took place without informing the local authority, does not have any rationale. Even if the sale is informed, the Secretary has



to verify whether the sale will affect the development or construction. If the construction is done on the basis of the permit already existing, failure to inform the sale cannot cause any prejudice as long the construction by the subsequent purchaser adheres to the permit and plan already approved. Thus, the failure to intimate the transfer as per Rule 19(1) and Rule 19(2) of KMBR can only be considered as a curable defect. It needs no elaborate discussion that, while determining the question whether a provision is mandatory or directory, the language alone is not always decisive but regard must be had to the context, the subject matter and the object of the provision. Reference to the decision in **Kailash v. Nanhku** [(2005) 4 SCC 480] would suffice. In the context and the subject matter dealt with in Rule 19(1) and Rule 19(2) of the Rules, it is evident that the requirement to inform the Secretary of the local authority about the transfer is only a directory provision. Therefore, failure to so inform is only an irregularity, which can be cured, especially since, a permit had already been issued to construct.

13. The construction in the instant case was apparently carried out by the petitioner without intimating the factum of transfer to the Municipality. As observed above, since the failure to inform the transfer of property under Rules 19(1) or 19(2) of the KMBR cannot render the permit already issued invalid and a subsequent purchaser



of land can cure the irregularity by informing the factum of transfer later and seek regularisation of the construction.

14. As the failure to inform the Secretary is only an irregularity and curable, the petitioner and the prior owner will be at liberty to apply to the Secretary, intimating him about the transfer and even request for a change of name for the building permit already issued. If such an application is filed, the Secretary of the Municipality ought to take a decision on the same.

15. In this context, it must be mentioned that as per the petitioner's contention, the prior owner has already submitted an application intimating the transfer to the Secretary. Since it has already been held that the failure to inform is only an irregularity, which is a curable defect, the petitioner is also at liberty to apply for the transfer of the building permit to his name. If the prior owner and the petitioner apply to the Secretary intimating the factum of transfer and seek a change of permit in the name of the petitioner, necessarily, the Secretary will be at liberty to consider the same and pass appropriate order in that regard. To enable such a consideration, Ext.P5 ought to be set aside.

16. In view of the above, Ext.P5 communication rejecting the application for a completion certificate and occupancy certificate is set aside. There will be a direction to the second respondent - the





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-:9:-

Secretary of the Corporation, to consider the applications for transfer of name in the permit as well as for occupancy certificate and completion certificate, if any, filed by the petitioner and the predecessor-in-title, as expeditiously as possible, at any rate, within a period of 30 days from the date of receipt of a copy of such application.

The writ petition is allowed as above.

Sd/-

**BECHU KURIAN THOMAS, JUDGE**

RKM

APPENDIX OF WP(C) 30055/2023PETITIONER'S EXHIBITS :

- Exhibit P 1            A TRUE COPY OF THE SALE DEED DATED  
21.7.2022
- Exhibit P 1 [ a ]    A TRUE COPY OF THE TAX RECEIPT ISSUED  
BY THE VILLAGE OFFICER DATED 28.4.2023
- Exhibit P1 [ b ]    A TRUE COPY OF THE POSSESSION  
CERTIFICATE ISSUED BY THE VILLAGE  
OFFICER DATED 10.3.2023
- Exhibit P2            A TRUE COPY OF THE JUDGMENT IN W.P.  
[ C ]NO. 24095 OF 2018 DATED 12.9.2018
- Exhibit P3            A TRUE COPY OF THE BUILDING PERMIT  
DATED 1.11.2018 ALONG WITH TYPED COPY
- Exhibit P4            A TRUE COPY OF THE PROCEEDINGS OF  
THASILDAR (LR) THRISSUR DATED 10.6.2022  
ALONG WITH TYPED COPY
- Exhibit P5            A TRUE COPY OF THE COMMUNICATION DATED  
26.7.2023 ISSUED BY THE 1ST RESPONDENT  
CORPORATION ALONG WITH TYPED COPY
- Exhibit P6            A TRUE COPY OF THE APPLICATION  
SUBMITTED BY THE PETITIONER TO THE 2ND  
RESPONDENT ALONG WITH TYPED COPY