

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC  
&  
THE HONOURABLE SMT.JUSTICE P.V.ASHA

THURSDAY, THE 1ST DAY OF OCTOBER 2015/9TH ASWINA, 1937

W.A.No. 1691 of 2011 IN WP(C).23331/2010

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AGAINST THE JUDGMENT IN WP(C) 23331/2010 of HIGH COURT OF KERALA DATED 24-10-2011

APPELLANTS/APPELLANTS:  
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1. K.V.BHASKARAN PILLAI, S/O.VELU PILLAI,  
AGED 51 YEARS, KADAPLAKKAL HOUSE, ERATTUPETTA.
2. M.S.CHANDRASEKHARA PILLAI, AGED 53 YEARS  
S/O SANKARA PILLAI, MUTTATH HOUSE, ERATTUPETTA.

BY ADVS.SRI.K.RAMAKUMAR (SR.)  
SMTSARITHA DAVID CHUKKATH

RESPONDENTS:  
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1. THE TRIBUNAL FOR LOCAL SELF GOVERNMENT,  
THIRUVANANTHAPURAM-695 001.
2. THE ERATTUPETTA GRAMA PANCHAYTH,  
REPRESENTED BY ITS SECRETARY, ERATTUPETTA-686 121
3. THE SECRETARY, ERATTUPETTA GRAMA  
PANCHAYTH, ERATTUPETTA-686 121.
4. STANSILVUS @ JOSHI, S/O.DEVASIA,  
PERUNILATHU HOUSE, ERATTUPETTA, KOTTAYAM  
PIN-686 001.
5. THE DISTRICT TOWN PLANNER,  
THE DISTRICT TOWN PLANNING OFFICE, KOTTAYAM-686 001.
6. THE SECRETARY TO GOVERNMENT,  
LOCAL SELF GOVERNMENT DEPARTMENT, SECRETARIAT  
THIRUVANANTHAPURAM-695 001.

R BY SR. GOVERNMENT PLEADER SRI.SHYSON P MANGUZHA.  
R BY SRI.JOHN JOSEPH VETTIKAD  
R BY SRI.V.K.MOHAMMED YOUSUF

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 01-10-2015, THE COURT ON  
THE SAME DAY DELIVERED THE FOLLOWING:

**ANTONY DOMINIC & P.V.ASHA, JJ.**

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**Writ Appeal No.1691 of 2011**  
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**Dated this the 1<sup>st</sup> day of October, 2015**

**JUDGMENT**

**Antony Dominic, J.**

Petitioners in W.P.(C)23331/2010 are the appellants. They filed the Writ Petition challenging Ext.P12 order passed by the first respondent, the Tribunal for Local Self Government Institutions allowing Appeal No.528/10 filed by the fourth respondent. By the judgment under appeal, the learned Single Judge dismissed the Writ Petition. It is this judgment, which is challenged before us.

2. We heard the Senior Counsel for the appellants, the learned counsel appearing for respondents 2 and 3, counsel appearing for the fourth respondent and the Government Pleader appearing for others.

3. Briefly stated, the facts of the case are that after a spate of litigations, Ext.P6 building permit was issued by the third respondent entitling the fourth respondent to undertake the construction of the building as permitted therein. By Ext.P7 resolution, the Panchayat unanimously resolved to cancel the building permit. That decision of the Panchayat was challenged by the fourth respondent in Appeal No.528/10

before the first respondent Tribunal. In Ext.P12 order, taking the view that the cancellation of the building permit as per Ext.P7 resolution was in violation of the provisions contained in Kerala Municipality Building Rules 1999, the Tribunal allowed the appeal and set aside Ext.P7 resolution. This order of the Tribunal was confirmed by the learned Single Judge.

4. The main contention raised by learned Senior Counsel appearing for the appellant was that the appeal filed before the Tribunal against resolution passed by the Panchayat was not maintainable. Secondly, he further contended that the Panchayat was well within its powers to cancel a building permit issued by the Secretary of the Panchayat. Both these contentions were refuted by the learned counsel appearing for the fourth respondent.

5. Insofar as the first contention that the appeal filed before the Tribunal was not maintainable as it was against the resolution passed by the Panchayat is concerned, we may at the outset itself state that such a contention was neither raised before the Tribunal nor before the learned Single Judge. For that reason itself, we find no reason why the

appellant should be permitted to urge that contention for the first time before us.

6. Even otherwise we are not satisfied that there is any substance in what is contended. Section 276 of the Kerala Panchayat Raj Act provides for appeal and revision. As per Sub Section 5 of this Section, an appeal on any notice issued, order passed, or action taken by the Panchayat shall lie to the Tribunal constituted under Section 271S. Rule 8(1) of the Tribunal for Kerala Local Self Government Institutions Rules, 1999 provide that a petition submitted to the Tribunal shall be an appeal or revision against a notice, order or proceedings of the Village Panchayat, or the Secretary in respect of any matter specified in the schedule appended to the rules or added to the schedule by the Government from time to time by notification.

7. A comparative reading of Section 276(5) and Rule 8(1) shows that though Section 276(5) restricts the scope of appeal only to the matters enumerated in clause (a) and (b) thereof, this restriction contained in Section 276(5) has been enlarged taking advantage of the provisions contained in 276(5) itself that appeal on other subjects shall

be maintainable before the Tribunal only if there is a prescription to that effect in the rules. Schedule to the Rules show that regulation of building construction is one of the matters that constitute cause for filing appeal before the Tribunal for Local Self Government Institutions. Therefore, in respect of a matter relating to the regulation of building construction if any action is taken by the Panchayat, an appeal under Section 276(5) is maintainable before the Tribunal.

8. It cannot be disputed that the Panchayat acts through its resolutions. Therefore, when a resolution passed by the Panchayat is prejudicial to the interest of the citizen, such a resolution can be called in question before the Tribunal. If that be so, the contention raised before us that the appeal filed by the fourth respondent before the first respondent Tribunal was not maintainable is only to be rejected and we do so.

9. The second contention raised is that the conclusion of the Tribunal, which was confirmed by the learned Single Judge, that the Panchayat could not have cancelled the building permit and that cancellation could only have been in terms of Rule 16 of the Kerala

Building Rules, 1999, is illegal. According to the learned Senior Counsel the provisions of the Kerala Panchayat Raj Act empower the Panchayat to interfere with orders or decisions of the Secretary including those relating to building permits. The issue relating to building permits is governed by the provisions of Chapter XXI of the Kerala Panchayat Raj Act. Reading of the provisions of Section 235 show that the legislature has conferred the entire power in this behalf on the Secretary. The provisions of Kerala Municipality Building Rules, particularly Rule 16 thereof, shows that suspension and revocation of such building permits is also the power of the Secretary.

10. Therefore, on the one hand, while the legislature has chosen to confer power on the Secretary to grant permits and to suspend and revoke the same, no where in the Acts or in the Rules, has the legislature chosen to confer any power on the Panchayat to sit in judgment over that power of the Secretary. Since the statutory scheme is as above, we are unable to accept the contention raised by the learned Senior Counsel.

11. We, therefore, fully endorse the view taken by the learned Single Judge upholding the order of the Tribunal holding that the Panchayat could not have passed impugned resolution cancelling the building permit.

Resultantly, we do not find any illegality in the judgment of the learned Single Judge. Appeal fails and it is dismissed accordingly.

**ANTONY DOMINIC  
JUDGE**

**P.V.ASHA  
JUDGE**

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