

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 22ND DAY OF JANUARY 2015/2ND MAGHA, 1936

WA.No. 239 of 2014 (C) IN WP(C).37621/2010

AGAINST THE JUDGMENT IN WP(C) 37621/2010 DATED 19-12-2013

APPELLANT/2ND RESPONDENT :

ST.JOHNS LP SCHOOL, MANAPPILLY,
AYYAMPILLY P.O. ERNAKULAM DISTRICT,
REPRESENTED BY ITS MANAGER, SMT.MINI ANTONY,
AGED 44 YEARS, W/O.VARGHESE,
RESIDING AT MALIAKKAL HOUSE, THONNYAKAVU,
PARAVUR P.O., ERNAKULAM DISTRICT.

BY ADVS.SRI.T.R.RAVI
SRI.JAWAHAR JOSE
SRI.V.VINAY MENON
SMT.CISSY MATHEWS

RESPONDENTS :

1. THE KUZHIPILLY GRAMA PANCHAYATH,
AYYAMPILLY P.O., ERNAKULAM DISTRICT - 682 501,
REPRESENTED BY ITS SECRETARY.

Addl. 2. THE GOVERNMENT OF KERALA,
REPRESENTED BY ITS SECRETARY
LOCAL SELF GOVERNMENT INSTITUTIONS
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM PIN - 695 001.

Addl. 3. THE DIRECTOR OF PUBLIC INSTRUCTIONS
POOJAPURA P.O., THIRUVANANTHAPURAM, PIN - 695 012.

Addl. 4. THE ASSISTANT EDUCATIONAL OFFICER
VYPEEN, EDAVANAKKAD P.O., ERNAKULAM DISTRICT
PIN - 682 502.
(ADDL.R2 TO R4 ARE IMPEADED AS PER ORDER DATED 13.02.2014
IN IA 169/14).

R1 BY SRI.H.B.SHENOY,SC,KUZHUPPALLY GRAMA PANCHAYATH
R2 TO R4 BY SR.GOVERNMENT PLEADER, SRI.P.I. DAVIS

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 22-01-2015, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

WA.No. 239 of 2014 (C)

APPENDIX

APPELLANT'S EXHIBITS :

ANNEXURE A : TRUE COPY OF DESHABHIMANI DAILY DATED 27.12.2013.

ANNEXURE B : TRUE COPY OF JANAYUGAM DAILY DATED 23.12.2013.

RESPONDENTS' EXHIBITS:

NIL

/TRUE COPY/

PA TO JUDGE

ASHOK BHUSHAN, Ag.C.J. & A.M. SHAFFIQUE, J.

W.A. No. 239 OF 2014

Dated this the 22nd day of January, 2015

JUDGMENT

Shaffique, J.

Petitioner is the appellant who has filed W.P.(C) No.37621 of 2010 challenging Ext.P5 and for a direction to the respondent to issue building permit to the petitioner for constructing the school building.

2. The facts involved in the writ petition would show that the petitioner, claiming to be in ownership of an extent of 14.04 Ares of land in RS No.132/13of Kuzhuppilly Village in Ernakulam District, applied for building permit for construction of additional three class rooms and other facilities. The same came to be rejected by Ext.P5 on the ground that the petitioner could not produce the title deed as well as possession certificate. According to the petitioner, the property originally belonged to one Smt.Annamma Jacob. She permitted one Sri.M.V.Chacko to establish a school in the year 1930. Sri. Chacko was the Manager of the School till 01.12.1982. The ownership and management of the School

was transferred to the staff of the school as evident from Ext.P2 dated 01.12.1982. It is submitted that the school was being managed by staff and Headmistress of the school is the present manager of the school. In the school there are about 105 students and 4 teachers and the school intends to construct three additional class rooms and other facilities for which necessary fund had been allotted by Government, on the basis of which an application was submitted for building permit, but it came to be refused by Ext.P5. Petitioner relied upon Ext.P4 certificate issued by the Village Officer to indicate that the petitioner was in possession of the property and therefore the Panchayat ought to have considered the application based on the possession certificate.

3. The learned Single Judge, after considering the factual issues involved in the matter, dismissed the writ petition. During the pendency of the appeal, petitioner produced Ext.P7 order issued by the Local Self Government Department to the Secretary of the Panchayat *inter alia* directing the Secretary to

obtain necessary affidavit from the School management and after appropriate publication, take necessary steps to grant the building permit.

4. The learned counsel for the respondent Panchayat submits that the petitioner could not produce the title deed or the possession certificate and thereafter even the possession register has not been produced to evidence that petitioner is in possession of the property, therefore building permit was refused.

5. But on a perusal of Ext.P7 it is clear that the Government has considered the entire issue and directed the Panchayat to reconsider the matter after taking appropriate affidavit from the school management. It is not in dispute that Headmistress is the Manager of the school and the staff of the school is entrusted with the management of the School in terms of Ext.P2. But since the ownership in the property has not changed, there is no entry in the revenue records that school property is in the possession of the Manager. However, it is clear

that the school is functioning since 1930 and from 1982 the school was managed by the staff of the school wherein the Headmistress is the Manager. Under such circumstances when the Government has already taken a decision in terms of Ext.P7, it is for the Panchayat to consider Ext.P7 and pass appropriate orders.

In the result, this Writ Appeal is allowed directing the respondent Panchayat to consider the application for building permit in the light of Ext.P7 and pass appropriate orders.

**Ashok Bhushan,
Acting Chief Justice.**

**A.M. Shaffique,
Judge.**