

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 27TH DAY OF JULY 2015/5TH SRAVANA, 1937

WA.No. 1551 of 2015 () IN WP(C).17589/2015

AGAINST THE JUDGMENT IN WP(C) 17589/2015 DATED 19.6.2015.

APPELLANTS/RESPONDENTS 4 & 5 IN THE W.P.(C) :-

1. POOTHAKULAM GRAMA PANCHAYATH
POOTHAKULAM P.O., KOLLAM TALUK, KOLLAM DISTRICT
REPRESENTED BY ITS SECRETARY.
2. SECRETARY
POOTHAKULAM GRAMA PANCHAYATH, POOTHAKULAM P.O.
KOLLAM TALUK, KOLLAM DISTRICT.

BY ADV. SRI.V.VENUGOPALAN NAIR

RESPONDENTS/PETITIONER & RESPONDENTS 1 TO 3 IN THE W.P.(C) :-

1. NALINAKSHAN, AGED 65 YEARS
S/O.PAPPU, "AKSHAYA", PUTHANKULAM P.O.
POOTHAKKULAM VILLAGE, KOLLAM TALUK, KOLLAM DISTRICT.
2. THE GOVERNMENT SECRETARIAT
DEPARTMENT OF LOCAL SELF GOVERNMENT INSTITUTIONS
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.
3. THE DEPUTY DIRECTOR OF PANCHAYATH
OFFICE OF THE DEPUTY DIRECTOR OF PANCHAYATH, KOLLAM.
4. THE DISTRICT OFFICER/EXECUTIVE ENGINEER
GROUND WATER DEPARTMENT, DISTRICT OFFICE, KOLLAM
PIN - 691 009.

BY ADV.SRI.K.V.ANIL KUMAR

BY SR.GOVERNMENT PLEADER SRI.P.I.DAVIS

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 27-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

W.A. No.1551 of 2015

Dated this the 27th day of July 2015

J U D G M E N T

Ashok Bhushan, CJ

Heard the learned counsel for the appellants, the learned counsel appearing for the first respondent/petitioner as well as the learned Government Pleader.

2. This writ appeal has been filed against the judgment dated 19.6.2015 in W.P.(C) No.17589 of 2015. The first respondent had filed the writ petition challenging the decision, Ext.P5, issued by the Secretary of the Poothakulam Grama Panchayat informing the petitioner that his application for issuance of permission for construction of tube well is rejected. Petitioner's case in the writ petition was that he had submitted an application seeking permission to construct a tube well in his property, for which, he had obtained feasibility certificate, Ext.P2, also. It is submitted that a stop memo was issued by the Panchayat and at the instance of certain local people, his application was rejected. The learned Single Judge noted in the writ petition that the petitioner is doing agriculture in his 10.90 Ares of property in Re-survey No.518/6 and due to shortage of

water, the petitioner decided to construct a tube well and obtained Ext.P2 feasibility certificate. On a perusal of the feasibility certificate would indicate that the same was issued with the condition that "water shall be used only for domestic purpose". Petitioner's application for permission from the Panchayat has been brought on record as Ext.P4. On a perusal of the said application, it is noticed that it does not indicate the purpose for which permission was sought.

3. Learned counsel appearing for the Panchayat submits that the property, where permission is sought for to construct the tube well is across the road and the petitioner's house is situated in the other side of the road. If the petitioner sought permission to construct the tube well for domestic purpose, he would have to seek permission to construct the same within his property, where his house is situated.

4. We have considered the submissions of the parties and perused the records.

5. In view of the fact that the petitioner's application did not mention any purpose and the feasibility certificate was given for using the water for domestic purpose only, the case of the petitioner as contended that the tube well shall be used for

-: 3 :-

agricultural purpose does not appeal to us and the learned counsel for the Panchayat is right in his submission that there is contradiction in the submissions made and the feasibility certificate obtained. We are of the view that ends of justice be served in setting aside the judgment of the learned Single Judge and the petitioner shall be given opportunity to file fresh application indicating proper purpose for construction of the tube well, for which, appropriate enquiry shall be conducted by the Panchayat and thereafter decision shall be taken as well.

In the result, this writ appeal is disposed of setting aside the judgment of the learned Single Judge dated 19.6.2015.

**Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE**

**Sd/-
A.M. SHAFFIQUE
JUDGE**

//TRUE COPY//

P.A. TO JUDGE

Jvt`