

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE

WEDNESDAY, THE 18TH DAY OF NOVEMBER 2015/27TH KARTHIKA, 1937

WP(C).No. 2681 of 2012 (I)

PETITIONER(S):

**ROBIN MATHEW,
S/O.MATHEW, KEECHERIL MATTACKAL HOUSE,
PARIYARAM.P.O., MALLAPILLY.**

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENT(S):

- 1. THE KALLOPARA GRAMA PANCHAYAT,
KALLOPARA,
REPRESENTED BY ITS SECRETARY. PIN.689 001.**
- 2. THE SECRETARY,
KALLOPARA GRAMA PANCHAYAT, KALLOPARA,
PATHANAMTHITTA DISTRICT, PIN.689 001.**
- 3. EAPEN OOMMEN,
VADAKKEMURI MARIRA, PARIYARAM.P.O.,
MALAPPILLY, PIN.689 585.**

**R1,R2 BY ADV. SRI.R.GIREESH VARMA
R3 BY ADV. SRI.JOHN K.GEORGE**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S) EXHIBITS

- EXHIBIT P1- COPY OF THE COMPLAINT FILED BY PETITIONER BEFORE PANCHAYAT DATED 16.04.10.**
- EXHIBIT P2- COPY OF THE NOTICE ISSUED BY 2ND RESPONDENT DATED 25.05.2010.**
- EXHIBIT P3- COPY OF THE REPORT OF THE OVERSEER OF THE PANCHAYATH.**
- EXHIBIT P4- COPY OF THE OBJECTION FILED BY PETITIONER.**
- EXHIBIT P5- COPY OF THE ORDER DATED 23.09.2010 IN W.P.(C)NO.28423/10.**
- EXHIBIT P6- COPY OF THE ORDER PASSED BY FIRST RESPONDENT DATED 29.10.2010.**
- EXHIBIT P7- COPY OF THE REPORT OF THE ASSISTANT ENGINEER.**
- EXHIBIT P8- COPY OF THE ORDER DATED 07.10.2011 ISSUED BY TRIBUNAL.**
- EXHIBIT P9- COPY OF THE ORDER DATED 23.01.12 ISSUED BY 2ND RESPONDENT**
- EXHIBIT P10- COPY OF THE NOTICE DATED 23.01.12 ISSUED BY 2ND RESPONDENT.**

RESPONDENTS' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.M.SHAFIQUE, J

W.P.C.No.2681 of 2012

Dated this the 18th day of November 2015

J U D G M E N T

Petitioner challenges Ext.P8, an order passed by the Tribunal for Local Self Government Institutions while allowing an appeal filed by the 3rd respondent directing the Secretary of the Panchayat to confirm the order under Section 235 W (3) of the Kerala Panchayat Raj Act after hearing the parties.

2. The issue involved in the writ petition relates to the car shed constructed by the petitioner in his property. 3rd respondent alleges that there is violation of the Kerala Panchayat Building Rules, 2011 (hereinafter referred to as 'the Building Rules') and it is totally unauthorised.

3. Though the Secretary, after conducting an enquiry, proceeded on the basis that there is no violation, in an appeal filed by the 3rd respondent, the Tribunal took a different view. The reports produced in the case especially Exts.P6 and P7 apparently proceeds on the basis that there is no violation of the Building Rules as the pathway which leads to the petitioner's property is a private road. Whereas the main contention urged by the 3rd

respondent was that the road is a public road and therefore the distance factor mentioned in the relevant Rules clearly indicates that the construction of the shed was against the Building Rules.

4. The Tribunal, after considering the question in detail, formed an opinion that the road in question is not a private road whereas it is a public road. To arrive at the aforesaid finding, the Tribunal relied upon the information given under the Right to Information Act which states that the road is a “puramboke way” and that it was constructed using the M.L.A fund treating it as a public road.

5. It is not in dispute that if the road aforesaid is not a public road and that it is a private road, the construction of the car shed shall be in accordance with the Rules. Therefore, the short issue to be considered is whether it is a public road or a private way. The materials relied upon by the Tribunal was, in fact, not made available at the time when the issue was considered by the Panchayat Secretary and it was therefore necessary for the Secretary to have considered the entire issue before arriving at a finding. Instead of that, the Tribunal had proceeded to come to a finding in that regard and confirmed the

fact that there is violation of the Building Rules. The Secretary was directed to issue a proper confirmation order under Section 235 W (3) of the Kerala Panchayat Raj Act, after hearing the parties. This, according to the learned counsel for petitioner, is not the right approach to be taken in the matter. When there is a dispute between the parties regarding the question as to whether the road in question is a public road or a private way. It has to be considered by the local authority taking into consideration the asset register maintained by it and other particulars that are made available. It is relevant to note that one Mr.George John, who is the neighbour of the petitioner, has given an agreement in writing stating that he has no objection in the petitioner constructing the shed in that area and the road in question leads to the house of Mr.George John. The Tribunal rejected the said agreement by forming an opinion that it is a subsequent document. Even if it is a subsequent document, when there is a consent in writing by Mr.George John, it has to be considered at its face value and it was not proper for the Tribunal to have rejected the said material.

6. Having regard to the above factual situation, I am of

the view that the order passed by the Tribunal requires to be set aside.

In the result,

- i) This writ petition is allowed setting aside Ext.P8.
- ii) The Secretary of the Panchayat shall consider the matter afresh and pass appropriate orders in accordance with law after hearing both the parties.
- iii) This shall be done within a period of three months from the date of receipt of a copy of this judgment.

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

jsr