

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 31ST DAY OF AUGUST 2015/9TH BHADRA, 1937

WA.No. 1892 of 2015 () IN WP(C).16985/2013

AGAINST THE JUDGMENT IN WP(C) 16985/2013 DATED 04-08-2015

APPELLANT(S)/PETITIONER :-

SANTHOSH T.P., AGED 31 YEARS, S/O.PARAMU
THEROTH HOUSE, MALIPURAM P.O, VALAPUU
ELANKUNNAPUZHA, ERNAKULAM DISTRICT.

BY ADVS.SRI.K.C.SANTHOSHKUMAR
SMT.K.K.CHANDRALEKHA

RESPONDENT(S)/RESPONDENTS :-

1. THE STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
DEPARTMENT OF LOCAL SELF INSTITUTIONS
THIRUVANANTHAPURAM -695001.
 2. THE ELAMKUNNAPUZHA GRAMA PANCHAYATH
ELAMKUNNAPUZHA -682 503
REPRESENTED BY ITS SECRETARY.
 3. THE SECRETARY
ELAMKUNNAPUZHA GRAMA PANCHAYATH
ELAMKUNNAPUZHA -682 503.
 4. UNNI, S/O.MICHAEL
PAYYAPPILLY HOUSE, OCHANTHURUTH -682 508.
- R1 BY SPL.GOVERNMENT PLEADER SMT.GIRIJA GOPAL
R4 BY SRI.P.VISWANATHAN
SRI.K.V.VINOD

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 31-08-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

jvt

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

W.A. No.1892 of 2015

Dated this the 31st day of August 2015

J U D G M E N T

Ashok Bhushan, CJ.

Heard.

2. This writ appeal has been filed against the judgment dated 4.8.2015 in W.P.(C) No.16985 of 2013. The petitioner, aggrieved by the construction of a residential building by his neighbour, the 4th respondent, had earlier filed a writ petition, W.P.(C) No.11301 of 2012, which was disposed of by this Court directing the Panchayat to enquire the complaint and take a decision thereafter. The said judgment was passed by this Court on 1.6.2012. Thereafter, Ext.P3 order was passed by the Panchayat, aggrieved by which, the petitioner filed W.P.(C) No.16985 of 2013, wherein, the following reliefs were claimed :-

- “i) A direction against the 2nd respondent to pass a final order on the basis of data collected at the time of inspection conducted on 14.9.2012.
- ii) Issue a writ of mandamus or any other writ order or direction against the 2nd respondent to initiate strict action including that of demolishing the illegal construction undertaken by the 4th respondent as mandated under the provisions of Kerala Panchayat Building Rules, 2011.”

The learned Single Judge, heard the parties and by the judgment impugned in this writ appeal, has dismissed the writ petition. The learned Single Judge referred to relevant rules; namely, the Kerala Panchayat Building Rules, 2011, specifically, Rule 25 sub-clause (3). The learned Single Judge also noticed the commission report and found that there is no merit in the claim raised by the petitioner for issuing any further direction in the matter.

3. Learned counsel for the appellant, challenging the said judgment, contends that the permissible tolerance as contemplated under Rule 25(3) is only upto 5%, whereas, the variance is little more. The learned Single Judge, in paragraph 12 of the said judgment noticed the submission made by the learned counsel for the 4th respondent that when the width is measured upto the outer side of the compound wall, ie; upto the boundary to his property, it is more than what is required under the rules and when the width of the basement is also taken, it comes to 93 centimeters on one side and 83 centimeters on the other side. The learned Single Judge, agreeing with the said contention, held that no grounds have been made out to interfere in the writ petition.

4. Looking into the facts of the present case and submissions made by the learned counsel for the parties, we are of

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the view that the learned Single Judge did not commit any error in exercising discretion in not entertaining the writ petition on the above alleged violation, which was minor in nature. Exercise of writ jurisdiction is not to be undertaken for each and every violation alleged. It is for the Court to examine the claim and take a decision as to whether the violation alleged is fit to invoke the jurisdiction of this Court under Article 226 of the Constitution of India. We do not find any error in exercise of jurisdiction in dismissing the writ petition.

Accordingly, this writ appeal is dismissed.

Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE
JUDGE

//TRUE COPY//

P.A. TO JUDGE