

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 21ST DAY OF DECEMBER 2015/30TH AGRAHAYANA, 1937

WA.No. 2432 of 2015 IN WP(C).22062/2013

AGAINST THE JUDGMENT IN WP(C) 22062/2013 DATED 20-08-2015

APPELLANT/1ST RESPONDENT :

JOY SCARIA
S/O.SCARIA, PULIKUNNEL, THONNIPPARA HOUSE
POOVATHODU.P.O., BHARANANGANAM, KOTTAYAM DISTRICT
PIN-686 578.

BY ADVS.SRI.V.G.ARUN
SRI.T.R.HARIKUMAR

RESPONDENTS/PETITIONER & RESPONDENTS 2 7 3 :

1. K.T.THOMAS
KAVUMKAL HOUSE, POOVATHODU.P.O.
KOTTAYAM DISTRICT. PIN-686 578.
2. MEENACHIL GRAMA PANCHAYATH
MEENACHIL
KOTTAYAM DISTRICT. PIN-686 589. REP. BY SECRETARY.
3. THE TOWN PLANNER
DISTRICT TOWN PLANNING OFFICE, COLLECTORATE
KOTTAYAM. PIN-686 001.

R1 BY SRI.GEORGEKUTTY MATHEW
R2 BY SRI. P.C.HARIDAS, SC
R3 BY SPL.GOVERNMENT PLEADER, SMT. GIRIJA GOPAL.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 21-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

W.A. No. 2432 OF 2015

Dated this the 21st day of December, 2015

JUDGMENT

Shaffique, J.

This appeal has been filed by the 1st respondent in W.P.(C) No. 22062 of 2013 challenging the judgment dated 20.08.2015 by which the learned Single Judge while modifying Ext.P11 order passed by the Tribunal for Local Self Government Institutions directed the Town Planner, District Town Planning Office, Kottayam to conduct an inspection in the presence of the petitioner, 1st respondent and the Panchayat with reference to an access road which was the subject matter of the petition.

2. The 1st respondent herein is the writ petitioner who challenged Ext.P11 order passed by Tribunal by which the Tribunal having set aside the order passed by the Panchayat directed the Secretary of the Panchayat to issue building permit to the appellant for starting a metal crusher unit. The said application was disposed of in an appeal filed by the

appellant herein challenging the order passed by the Panchayat refusing to grant permission to put up metal crusher unit.

3. Learned Single Judge after evaluating the respective contentions urged by the parties observed that in terms of Rule 61(4) of the Kerala Panchayat Building Rules, 2011 the unit can be permitted to be constructed in the said area only if access to the unit is having a width of 7 meters. As the materials available on record were not sufficient to arrive at such conclusion, a direction as sought above had been issued.

4. Heard learned counsel for the appellant and learned counsel appearing for the respondents.

5. During the pendency of the above writ petition we have called upon the 3rd respondent to file a statement before this Court in terms of measurement conducted as per the directions issued by learned Single Judge and accordingly, a statement has been filed producing Annexure A report which gives the measurement of the access road, taken on the basis of site inspection held on 18.11.2015. On a perusal of Annexure A report would indicate that in several areas in the chainage between the

main street and the petitioner's premises, the width of the road is less than 7 meters.

6. Learned counsel for the appellant would however submit that this measurement, now produced as Annexure A, is contrary to the earlier documents relied upon by the competent authorities and that the measurement shown in the present report is on account of encroachment and no action is being taken by the Panchayat to remove the encroachment.

7. Be that as it may the question to be considered is whether the Unit can be put up in a location, if it does not have access of 7 meters width road from the main street. Rule 61(4) of the Kerala Panchayat Building Rules reads as under:

“(4) The minimum clear width of access to a building as well as the width of the street giving access to the plot from the main street shall be 7 metres and shall be motorable:

Provided that, in the case of building(s) with total floor area up to 300 sq.metres, crematoria or burial grounds, the width shall not be less than 3 metres and shall be motorable.

Provided further that, in the case of Type C magazines as per the provisions contained in the Explosives Rules, 2008, such width shall not be less than 3.6 metres.”

8. Having regard to the aforesaid statutory provision, the minimum width of the road should be 7 meters. If there is a report of the Town Planner stating that the width of the road is not 7 meters, then there will not be any obligation on the part of 2nd respondent Panchayat to grant permission.

9. However, learned counsel for the appellant has a contention that the present report cannot be accepted as it is contrary to the earlier reports available on record.

10. We are of the view that, it is for the Panchayat to consider whether the report submitted before this Court is acceptable. At any rate it has to be accepted that the 7 meters wide access road is a pre-requisite for getting permission to install an industrial unit of the like nature.

In the said circumstances we do not think that the learned Single Judge had committed any error in disposing of the writ petition as per judgment dated 20.08.2015. Accordingly, the Writ Appeal is dismissed. However, it shall be open for the writ

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petitioner to rely upon such materials and take all contentions as available under law to establish his rights.

**Ashok Bhushan,
Chief Justice.**

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

ttb/21/12