

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

WP(C).No. 656 of 2015 (F)

PETITIONER :

**MOIDEEN K., AGED 47 YEARS
S/O.MUHAMMED HAJI K.P., BAITHUL ANAR, MUTHIYAKKAL
BEKAL P.O., KASARAGOD DISTRICT.**

**BY ADVS.SRI.M.SASINDRAN
SRI.V.VENUGOPAL**

RESPONDENT(S) :

- 1. THE DIVISIONAL RAILWAY MANAGER/WORKS/
PALAGHAT DIVISIONAL OFFICE, WORKS BRANCH,
PALAKKAD-678 001.**
- 2. THE SECRETARY
UDUMA GRAMA PANCHAYATH, UDUMA P.O.- 671 319
KASARAGOD DISTRICT.**
- 3. UDUMA GRAMA PANCHAYATH
REPRESENTED BY ITS SECRETARY, UDUMA P.O.- 671 319
KASARAGOD DISTRICT.**

**R1 BY ADV. SRI.C.S.DIAS, SC
R2 & R3 BY ADV. SRI.SURESH KUMAR KODOTH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONERS' EXHIBITS :

- EXHIBIT P1. COPY OF THE BUILDING PLAN OF THE PROPOSED BUILDING.
- EXHIBIT P2. COPY OF THE SITE PLAN OF THE PROPOSED BUILDING.
- EXHIBIT P3. COPY OF THE COMMUNICATION DATED 29.4.09 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P4. COPY OF THE RECEIPT OF PAYMENT REMITTED AS PROCESSING FEE.
- EXHIBIT P5. COPY OF THE LETTER ISSUED BY THE 1ST RESPONDENT TO THE 2ND RESPONDENT.
- EXHIBIT P6. COPY OF THE COVERING LETTER DATED 5.3.13.
- EXHIBIT P6(a).COPY OF THE FOUNDATION DETAILS AND TRIAL PIT DETAILS OF THE PROPOSED CONSTRUCTION.
- EXHIBIT P7. COPY OF THE NO OBJECTION CERTIFICATES ISSUED BY THE 1ST RESPONDENT FOR CONSTRUCTION AT PROPERTIES WHICH LAY ADJACENT TO THE RAILWAY BOUNDARY, THAN THAT OF THE PETITIONERS PROPERTY.
- EXHIBIT P8. COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WP(C) NOS. 2767 OF 2012 AND WP(C) NO. 2890 OF 2012 DATED 1.8.12.
- EXHIBIT P9. COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN WP(C) NO. 4725 OF 2013 DATED 2.4.13.
- EXHIBIT P10. COPY OF THE JUDGMENT IN WP(C) NO. 27209 OF 2013 DATED 7.8.14.
- EXHIBIT P11. COPY OF THE COMMUNICATION DATED 6.8.14 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P12. COPY OF THE ORDER DATED 20.10.14 ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT P12(a).COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P12.

RESPONDENT(S)' EXHIBITS : **NIL**

//TRUE COPY//

P.A. TO JUDGE

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A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.656 of 2015

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Dated this the 25th day of June, 2015

JUDGMENT

The grievance of the petitioner is that the 2nd respondent as per Ext.P12 communication rejected his application for building permit without considering Exts.P7 to P9 as ordered by this Court in Ext.P10 judgment.

2. The petitioner is the owner in possession of the property comprised in R.S No.24/9 of Udma Grama Panchayat. He wants to construct a residential building. For that, he submitted Et.P1 application along with Ext.P2 plan before the 2nd respondent. The petitioner alleges that his property situates at a distance of 3 metres from the railway boundary and 14.5 metres from the railway track.

3. According to him, if the proposed construction is within 30 metres from the railway boundary, as per Rule 7(6) of the Kerala

Panchayat Building Rules, the Secretary shall consult with the railway authority concerned before any permission is granted. In accordance with the above provision, the 3rd respondent panchayat has consulted the 1st respondent by letter dated 12.3.2009 to which Ext.P3 communication has been issued by the 1st respondent directing the petitioner to remit ₹1,000/- towards processing charge and accordingly, the petitioner remitted the same; it is alleged.

4. Thereafter, the 1st respondent issued Ext.P5 directing the 2nd respondent to make available the documents regarding the proposed construction and thereby the 2nd respondent directed to forward the same to the 1st respondent which is evidenced by Exts.P6 and P6(a). The petitioner further alleges that as per Ext.P7, the railway authorities have granted NOC to those persons whose properties are lying at a shorter distance than that of the petitioner and by Ext.P8 judgment this Court set aside the orders issued by the railway authorities declining the NOC.

5. When there was a delay in issuing NOC, the petitioner approached this Court and this Court by Ext.P10 judgment, based on the submission of the learned standing counsel for the 1st respondent, disposed of the writ petition directing the 2nd respondent to consider the application filed by the petitioner taking note of the communication sent by the 1st respondent and pass orders by taking into consideration Exts.P7 and P9. However, the 2nd respondent as per Ext.P12 communication rejected the petitioner's application for building permit. It is with this background, the petitioner has come up with this writ petition.

6. Arguments have been heard.

7. The learned standing counsel for the respondent panchayat on instructions submitted that the petitioner's application was rejected as it was objectionable as per Rule 5(6) of the Kerala Panchayat Building Rules and on account of that the railway has raised objections. However, the fact remains that the decision now taken is

without considering Exts.P7 to P9 as ordered by this Court in Ext.P10 judgment. Therefore, this Court is of the view that the matter requires re-consideration by the respondent panchayat.

In the result, the writ petition is disposed of directing the respondent panchayat to consider the application for building permit submitted by the petitioner in the light of Exts.P7 to P9 referred to in Ext.P10 and also in the light of Ext.P11 objection, after affording the petitioner and the first respondent an opportunity of being heard, within a period of one month from the date of receipt of a copy of this judgment.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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The Resurvey Number "24/9" occurring in the 2nd line in paragraph 2 of the judgment dated 25/06/2015 in W.P(C) No.656/2015 is corrected and substituted as "R.S No.124/9" as per order dated 21/10/2015 in I.A 15041/2015 in W.P(C) No.656/2015.

Sd/-

REGISTRAR(JUDICIAL)