

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY, THE 20TH DAY OF JANUARY 2015/30TH POUSHA, 1936

WP(C).No. 946 of 2015 (P)

PETITIONER(S):

**P.P. JAMALUDEEN,
MANAGING PARTNER, MALABAR ICE PLANT,
KAITHAKKAD, CHERUVATHUR, HOSDURG TALUK,
KASARAGOD - 671 381.**

**BY ADVS.SRI.A.SUDHI VASUDEVAN,
SMT.K.PUSHPAVATHI,
SRI.R.SYLESHWAREN NAIR,
SRI.JOSE JONES JOSEPH.**

RESPONDENT(S):

- 1. SECRETARY,
CHERUVATHUR GRAMA PANCHAYATH,
CHERUVATHUR, KASARAGOD - 671 320.**
- 2. CHERUVATHUR GRAMA PANCHAYAT,
REPRESENTED BY ITS PRESIDENT,
CHERUVATHUR GRAMA PANCHAYATH,
CHERUVATHUR, KASARAGOD - 671 320.**

BY ADV. DR.K.P.PRADEEP.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 20-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1: A TRUE COPY OF THE CONSENT TO ESTABLISH AT THE PROPERTY OWNED BY THE PETITIONER AND HIS PARTNERS BY THE KERALA STATE POLLUTION CONTROL BOARD.
- EXT.P2: A TRUE COPY OF THE LETTER DATED 22.12.2014 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER WITH ENGLISH TRANSLATION.
- EXT.P3: A TRUE COPY OF THE DECISION NO. 428/2014 DATED 04/12/2014 OF THE 2ND RESPONDENT REJECTING THE APPLICATION FOR BUILDING PERMIT OF THE PETITIONER WITH ENGLISH TRANSLATION.

RESPONDENT'S EXHIBITS:-

NIL.

//TRUE COPY//

P.A TO JUDGE

rs.

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 946 of 2015

Dated this the 20th day of January, 2015

JUDGMENT

Heard the learned counsel for the petitioner and the learned counsel for the respondents, apart from perusing the record. Since the issue lies in a narrow compass, this Court proposes to dispose of the writ petition at the admission stage itself.

2. Briefly stated, the petitioner, being the Managing Partner of a firm, namely 'Malabar Ice Plant', has a grievance that his application for building permit was rejected by the second respondent Grama Panchayat, rather than by the first respondent, who is said to be the competent authority. The fact, however, remains that the order of rejection, Exhibit P3, which came to be passed by the second respondent was communicated by the first respondent. Assailing Exhibit P3 as being ultra vires, the petitioner filed the present writ petition.

3. The learned counsel for the petitioner has drawn my

attention to a judgment dated 11.11.2014 rendered by a learned single Judge of this Court in W.P. (C) No. 26682/2013. He has contended that it is only the first respondent who is competent to pass orders on the application for building permit.

4. The learned counsel for the respondents, on the other hand, has submitted that the application submitted by the petitioner is a comprehensive one, inasmuch as the petitioner has sought not only a building permit, but also permission to install heavy machinery. According to the learned counsel, insofar as installation of heavy machinery is concerned, it is the second respondent that is competent. Under those circumstances, the first respondent Secretary, contends the learned counsel, has placed the matter before the second respondent, who eventually passed the orders of rejection taking into account various aspects, including the objections from the people in the vicinity.

5. Be that as it may, no provision has been brought to my notice by the respondents to show that the first respondent Secretary is entitled to delegate or abdicate power assigned to him concerning taking a decision

regarding building permit. In the absence of any express provision to delegate the power, the first respondent ought to have decided the application to the extent of building permit on his own, rather than abdicating the statutory power.

6. In the facts and circumstances, Exhibits P2 and P3 orders are set aside; consequently the first respondent Secretary is directed to consider the petitioner's application to the extent of building permit and pass appropriate orders thereon as expeditiously as possible, at any rate, within a period of six weeks from the date of receipt of a copy of this judgment. It is made clear that if the application contains any other request which is beyond the power of the first respondent, he can as well forward the application, after taking necessary decision concerning the building permit, to the authority concerned, who in turn can take appropriate decision in that regard.

With the above observation, this writ petition is disposed of.

**DAMA SESHADRI NAIDU
JUDGE**

DMR/-