

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. 1006 of 2015 (A)

PETITIONER:

EDAPATTA GRAMA PANCHAYATH,
EDAPATTA, MALAPPURAM DISTRICT
REP. BY ITS PRESIDENT, GEORGE MATHEW,
S/O.MATHEW, aged 64 years, PUTHANPURAKKAL
HOUSE, EDAPATTA P.O., MALAPPURAM DISTRICT.

BY ADVS.SRI.BABU S. NAIR
SMT.SMITHA BABU
SRI.P.A.RAJESH
SRI.K.RAKESH
SRI.R.RANJITH (K/489/2011)
SMT.M.LISHA

RESPONDENT:

THE STATE OF KERALA REPRESENTED BY THE
PRINCIPAL SECRETARY TO THE GOVERNMENT,
DEPARTMENT OF LOCAL SELF GOVERNMENT,
THIRUVANANTHAPURAM, PIN - 695 001.

BY GOVERNMENT PLEADER SMT.C.K.SHERIN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
20-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 1006 of 2015 (A)

PETITIONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE RESOLUTION NO.v/5 OF THE EDAPATTA GRAMA PANCHAYATH DATED 08/07/2014.

EXT.P1(a): TRUE ENGLISH TRANSLATION OF EXT.P1.

EXT.P2: TRUE COPY OF THE RESOLUTION NO.5(1) OF THE EDAPATTA GRAMA PANCHAYATH DATED 18/09/2014.

EXT.P2(a): TRUE ENGLISH TRANSLATION OF EXT.P2.

EXT.P3: TRUE COPY OF THE DETAILED ESTIMATE PREPARED BY THE ASSISTANT ENGINEER, EDAPATTA GRAMA PANCHAYATH.

EXT.P4: TRUE COPY OF THE COMMUNICATION ISSUED BY THE PETITIONER TO THE DIRECTOR OF PANCHAYATHS, THIRUVANANTHAPURAM DATED 16/07/2014.

EXT.P4(a): TRUE ENGLISH TRANSLATION OF EXT.P4.

EXT.P5: TRUE COPY OF THE ORDER OF THE DIRECTOR OF PANCHAYATHS, THIRUVANANTHAPURAM AS NO.C1/36048/14 DATED 09/10/2014.

EXT.P5(a): TRUE ENGLISH TRANSLATION OF EXT.P5.

EXT.P6: TRUE COPY OF THE COMPLAINT GIVEN BY THREE MEMBERS OF THE GRAMA PANCHAYATH TO THE MINISTER FOR PANCHAYATH DATED 17/12/2014.

EXT.P6(A): TRUE ENGLISH TRANSLATION OF EX.P6.

EXT.P7: TRUE COPY OF THE ORDER OF THE RESPONDENT DATED 18/12/2014 AS NO.80972/D.B.2/14/LSGD.

EXT.P7(A): TRUE ENGLISH TRANSLATION OF EXT.P7.

EXT.P8: TRUE COPY OF THE NOTICE ISSUED BY THE RESPONDENT DATED 24/12/2014.

EXT.P9: TRUE COPY OF THE REPLY GIVEN BY THE PETITIONER BEFORE THE RESPONDENT DATED 22/12/2014.

EXT.P9(A): TRUE ENGLISH TRANSLATION OF EX.TP9.

EXT.P10: TRUE COPY OF THE ORDER PASSED BY THE DEPUTY DIRECTOR OF PANCHAYATHS, MALAPPURAM DATED 06/12/2014.

EXT.P10(a): TRUE ENGLISH TRANSLATION OF EXHIBIT P10.

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.1006 of 2015 A

Dated this the 20th day of January, 2015

JUDGMENT

Heard the learned counsel for the petitioner and the learned Government Pleader for the respondent, 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 Grama Panchayat passed Exhibits P1 and P2 resolutions to demolish an existing building, for which purpose it has also sought permission of the Director of Panchayats. In fact, the Director of Panchayats has also accorded sanction through Exhibit P5.

3. When things stood thus, the respondent issued Exhibit P7 order of stay, which reads as follows:

“It is hereby informed that the procedures adopted for demolition of the building where the Krishibhavan was functioning has to be stopped temporarily. It is directed that a detailed reply with regard to this has to be submitted to the Government within a period of one week.”

4. It further emerges from the record that subsequent to passing of Exhibit P7 order, the Government heard the petitioner Grama Panchayat on the issue and also the complainants, at whose behest the Government is said to have issued Exhibit P7 order. But so far, no decision has been taken after the said hearing. Under these circumstances, complaining of inordinate delay in resolving the issue by the Government, the petitioner has filed the present writ petition.

5. It appears that Government issued Exhibit P7 order in exercise of its power under Section 191 of the Kerala Panchayat Raj Act, 1994. A bare reading of the said provision makes it manifestly clear that the Government is

either suo motu or on a reference by President, Secretary or a member or on a petition received from a citizen, cancel or vary a resolution passed or decision taken by the Panchayat, if, in its opinion, such decision or resolution is not legally passed or taken or is in excess of the powers conferred by this Act or any other law or its abuse or is likely to endanger human life, health, public safety, communal harmony or may lead to riot or quarrel. Even a decision taken in violation of the directions or provisions of grant issued by the Government an order can be passed under Section 191 of the Act.

6. Essentially, the power of the Government, as could be seen, is only to examine the legality of the decision making process on the part of the Grama Panchayat rather than on the merits of the issue, concerning which a decision has been taken by the Grama Panchayat. Having heard the Grama Panchayat and other persons interested in the issue,

the Government ought to have expedited the process and passed orders at the earliest, given the fact that, as has been contended by the learned counsel for the petitioner, the funds earmarked for the purpose are to lapse by March 2015.

In the facts and circumstances, having regard to the respective submissions of the learned counsel for the petitioner and the learned Government Pleader, this Court disposes of the writ petition with a direction to the respondent Government to pass appropriate orders based on the hearing said to have taken place consequent upon the issuance of Exhibit P7, as expeditiously as possible, at any rate, within a period of two weeks from the date of receipt of a copy of this judgment.

Dama Seshadri Naidu, Judge

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