

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 2ND DAY OF FEBRUARY 2015/13TH MAGHA, 1936

WP(C).No. 1323 of 2015 (M)

PETITIONER(S) :

- 1. MR.SAJU.P, AGED 37 YEARS,
S/O.THANKAPPAN, PUTHUVAL HOUSE, AMBALAPUZHA.P.O, PIN-688 005,
REPRESENTED BY THE POWER OF ATTORNEY HOLDER THILAKAN.**
- 2. MRS.SMITHA, AGED 34 YEARS,
W/O.MR.SAJU.P, PUTHUVAL HOUSE, AMBALAPUZHA.P.O, PIN-688 005,
REPRESENTED BY THE POWER OF ATTORNEY HOLDER THILAKAN.**

BY ADV. SRI.T.R.RAJAN

RESPONDENT(S) :

- 1. THE NORTH PARAVUR MUNICIPALITY,
REPRESENTED BY ITS SECRETARY, NORTH PARAVUR,
ERNAKULAM DISTRICT, PIN-683 513.**
- 2. THE SECRETARY,
THE NORTH PARAVUR MUNICIPALITY, NORTH PARAVUR,
ERNAKULAM DISTRICT, PIN-683 513.**
- 3. THE REGIONAL TOWN PLANNER,
KAKKANAD, ERNAKULAM, PIN-682 030.**

R1 & R2 BY ADV. SRI.C.S.AJITH PRAKASH, S.C

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 02-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: TRUE COPY OF THE POWER OF ATTORNEY DATED 10.07.2009 EXECUTED BY THE PETITIONERS.**
- EXHIBIT P2: TRUE COPY OF THE JUDGMENT DATED 28.05.2012 OF THIS HONOURABLE COURT IN WRIT PETITION(C)NO.12117 OF 2012.**
- EXHIBIT P3: TRUE COPY OF THE ORDER DATED 27.09.2013 OF THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM IN APPEAL NO.566/2013.**
- EXHIBIT P4: TRUE COPY OF THE FIR NOC DATED 16.09.2014 ISSUED BY THE DIVISIONAL OFFICER, FIRE AND RESCUE SERVICES, ERNAKULAM.**
- EXHIBIT P5: TRUE COPY OF THE REPORT DATED 26.09.2014 OF THE 1ST GRADE OVERSEER OF THE FIRST RESPONDENT.**
- EXHIBIT P6: TRUE COPY OF THE COMMUNICATION DATED 07.10.2014 OF THE 2ND RESPONDENT TO THE DISTRICT TOWN PLANNER, ERNAKULAM.**
- EXHIBIT P7: TRUE COPY OF THE COMMUNICATION DATED 06.11.2014 OF THE SENIOR TOWN PLANNER, ERNAKULAM TO THE SECOND RESPONDENT.**
- EXHIBIT P8: TRUE COPY OF THE COMMUNICATION DATED 17.12.2014 OF THE POWER OF ATTORNEY HOLDER OF THE WRIT PETITIONERS TO THE SECOND RESPONDENT AND ENCLOSURE.**
- EXHIBIT P9: TRUE COPY OF THE ORDER NO.BA-179/09 DATED 01.01.2015 ISSUED BY THE 2ND RESPONDENT.**

RESPONDENT(S)' EXHIBITS

- EXHIBIT R2(A): TRUE COPY OF THE LETTER DATED 25.11.2014.**

//TRUE COPY//

P.A.TO JUDGE.

Msd.

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 1323 of 2015

Dated this the 2nd day of February, 2015.

JUDGMENT

The petitioners have filed this writ petition aggrieved by Ext.P9 issued by the respondent Municipality rejecting the petitioners' application for regularisation and also issuance of occupancy certificate to the five storied residential-cum-commercial building constructed by the petitioners.

2. The facts in brief are that, having obtained building permit on 10.09.2009, the petitioner, after completing the construction, submitted building completion report on 22.08.2012. When the respondent Municipality found certain irregularities in the construction, the petitioners submitted an application for regularisation on 25.01.2014. When the respondent Municipality, instead of regularising the petitioner's construction, issued a notice under Section 406(1) of the Kerala Municipality Act, proposing to demolish what is said to be the illegal structures raised by the petitioners, they

filed W.P.(C) No. 12117 of 2012 inviting Ext.P2 judgment, through which this Court directed the respondent Municipality to dispose of the petitioners' application for regularisation within four weeks, after affording an opportunity of personal hearing.

3. When the respondent Municipality passed final orders pursuant to Ext.P2 judgment of this Court, aggrieved thereby, the petitioners filed an appeal before the Tribunal for Local Self Government Institutions, which, in turn, rendered Ext.P3 order. Though the appeal was dismissed, the Tribunal, however, has reserved the liberty for the petitioners to file a proper application for regularisation before the respondent Municipality. The petitioners, in turn, submitted a revised application on 25.09.2014, which, in fact, was rejected by the respondent Municipality through Ext.P9. Eventually, assailing Ext.P9, the petitioners have filed the present writ petition.

4. The respondent Municipality filed its counter affidavit opposing the claims and contentions of the petitioners.

5. The learned counsel for the petitioners has submitted that the petitioners' application for regularisation was rejected solely on the ground that subsequent to the completion of the construction by the petitioners, Master Plan for North Paravur Municipality was published on 27.05.2013, and that the construction that was made by the petitioners in violation of the initial building permit granted on 10.09.2009 was not in conformity with the said Master Plan.

6. Placing reliance on *Nassar v. Malappuram Municipality*¹, the learned counsel for the petitioners has submitted that in terms of the Master Plan, the road leading to the petitioners' construction should have been wider than what it is presently i.e., 12 meters. According to him, it is for the respondent Municipality to acquire any land, if it desires to have the road widened in terms of the ratio laid down in *Nassar* (supra). He has further contended that for regularisation of any construction, what is required to be looked at is the statutory

¹12009(3) KLT 92

position as on the date of completion of the construction, rather than on the date of making the application, which according to whom, is the settled principle of law.

7. The learned Standing Counsel for the respondent Municipality has submitted that the five storied building constructed by the petitioners in Sy. No. 197/9A of Kottuvally Village, Ward No. XVIII of the Paravur Municipality is at present not in tune with the Master Plan as the proposed road in front of the building is 27 meters, but at present the width is only 12 meter. He has further submitted that the entire issue relating to regularisation is integrally connected with the master plan published and hence the Town Planning Department is a necessary party for a proper adjudication of the above case.

8. Heard the learned counsel for the petitioners and the learned Standing Counsel for the respondent Municipality, apart from perusing the record.

9. There are two issues to be considered; namely, whether the construction effected in violation of the initial building plan

issued by the petitioners on 10.09.2009 should be in conformity with the Rules or regulations existing at that point of time, in other words, at a time when the structures were completed, or subsequently when an application was made for regularisation. Second is the impact of Master Plan which came to be notified on 25.09.2013 on the construction which admittedly was completed prior to the said date.

10. Indeed, insofar as the impact of the Master Plan is concerned, this Court in Nassar (supra) has held that if there is any statutory requirement to be fulfilled such as widening of the roads, or earmarking any area for public utility, it is for the Municipality or the local authority to acquire the land in conformity with the Master Plan. Merely because the master plan is notified, the owner of the property cannot be deprived of his rights.

11. Insofar as the regularisation is concerned, it is, however, well established that the Rules or the statutory regulations existing as on the date of completion of the

construction shall apply, rather than those in force at the time of the filing of the application for regularisation.

In the facts and circumstances, this writ petition is allowed setting aside Ext.P9, apart from directing the respondent Municipality to regularise the petitioners' constructions, apart from issuing occupancy certificate, provided the petitioners comply with all other statutory parameters, if any, as expeditiously as possible, at any rate within one month from the date of receipt of a copy of this judgment.

sd/- DAMA SESHADRI NAIDU, JUDGE.

