

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 4TH DAY OF NOVEMBER 2015/13TH KARTHIKA, 1937

WP(C).No. 1846 of 2015 (E)

PETITIONERS:

1. JALEEL,
S/O. MOHAMMED KANI, AGED 60 YEARS,
KOCHUPUTHENVILAYIL (H),MANGARAM KARA,
PANDALAM P.O., PATHANAMTHITTA DISTRICT.
2. P.G.ANILKUMAR,
S/O. GOPALA PILLAI, AGED 43 YEARS,
PARAPALLIKANDATHIL (H),MANGARAM KARA,
PANDALAM P.O., PATHANAMTHITTA DISTRICT.
3. SULAIMAN RAWTHER,
S/O. AZIZ RAWTHER,AGED 65 YEARS,
RIYAZ MANZIL, MANGARAM KARA,
PANDALAM P.O., PATHANAMTHITTA DISTRICT.
4. SIVAN NAIR,
S/O. GOPALA PANIKER,AGED 68 YEARS,
KAVIL (H), MANGARAM KARA,
PANDALAM P.O., PATHANAMTHITTA DISTRICT.

**BY SRI.K.GOPALAKRISHNA KURUP,SENIOR ADVOCATE
ADV. SMT.G.VIDYA**

RESPONDENTS:

1. THE DISTRICT TELECOM COMMITTEE,
REPRESENTED BY THE CHAIRMAN DISTRICT COLLECTOR,
CIVIL STATION, PATHANAMTHITTA-689 501.
2. THE SECRETARY,
PANDALAM GRAMA PANCHAYATH, PANDALAM,
PATHANAMTHITTA DISTRICT-689 501.
3. PANDALAM GRAMA PANCHAYATH,
REPRESENTED BY THE SECRETARY, PANDALAM,
PATHANAMTHITTA DISTRICT-689 501.

WP(C).NO.1846/2015

4. M/S. ATC TELECOM TOWER CORPORATION PVT. LTD.,
(FORMERLY KNOWN AS M/S. ESSAR TELECOM
INFRASTRUCTURE (P) LTD. NO. 36/2624,
1ST FLOOR, CHERAMANGALAM (H), SHENOY ROAD,
COCHIN-682 017.

R1 BY GOVERNMENT PLEADER SMT.ANITHA RAVINDRAN
R2 & R3 BY ADV. SRI.K.R.RADHAKRISHNAN NAIR
R4 BY ADVS. SRI.SATHISH NINAN
SRI.SANTHOSH MATHEW
SRI.ARUN THOMAS
SRI.JENNIS STEPHEN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 12-08-2015 , THE COURT ON 04-11-2015 DELIVERED THE
FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1- THE TRUE COPY OF THE BUILDING PERMIT N. 181/2013-2014 DATED 13-08-13.
- EXHIBIT P2- THE TRUE COPY OF THE NOTICE NO. A7-7672/13 ISSUED BY THE 2ND RESPONDENT DATED 26-09-13 & ENGLISH TRANSLATION.
- EXHIBIT P3- THE TRUE COPY OF THE MEMORANDUM OF APPEAL NO. 1039/2013.
- EXHIBIT P4- THE TRUE COPY OF THE ORDER IN APPEAL NO. 1039/2013, DATED 26-08-14 IS PASSED BY TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM.
- EXHIBIT P5- THE TRUE COPY OF THE G.O.(MS)NO. 25/2014/ITD DATED 02-08-2014.

RESPONDENT(S)' EXHIBITS

- EXHIBIT R4(A)- TRUE COPY OF THE APPLICATION SUBMITTED BY THE 4TH RESPONDENT BEFORE THE 2ND RESPONDENT PANCHAYATH ON 15/6/2013
- EXHIBIT R4(B)- TRUE COPY OF THE APPROVED PLAN.
- EXHIBIT R4(C)- TRUE COPY OF THE APPLICATION DATED 26/9/2014 SUBMITTED BY THIS RESPONDENT BEFORE THE 2ND RESPONDENT
- EXHIBIT R4(D)- TRUE COPY OF THE RECEIPT ISSUED BY THE 2ND RESPONDENT FOR REMITTANCE OF FEE BY THE RESPONDENT HEREIN
- EXHIBIT R4(E)- TRUE COPY OF THE BUILDING PERMIT DATED 6/12/2014 ISSUED BY THE 2ND RESPONDENT TO THIS RESPONDENT
- EXHIBIT R4(F)- TRUE COPY OF THE GOVERNMENT ORDER G.O.(MS) NO.31/2014/ITD DATED 5/11/2014.
- EXHIBIT R4(G)- TRUE COPY OF THE JUDGMENT IN WRIT PETITION(C) NO.28641/2013 OF THIS HONOURABLE COURT DATED 5/2/2015.

/TRUE COPY/

P.A.TO JUDGE

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.1846 of 2015

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Dated this the 4th day of November, 2015

JUDGMENT

Ext.P4 order issued by the Tribunal for Local Self Government Institutions, Thiruvananthapuram in Appeal No.1039 of 2013 dated 26.8.2014 is under challenge in this writ petition.

2. The petitioners, who are the residents of the 2nd respondent panchayat, allege that the 4th respondent approached the 3rd respondent for permit to construct tele-communication towers and the 3rd respondent upon considering the application, granted permit for erection of telecommunication towers in Sy. Nos.341/5 and 341/7 of Kurampala village in Pandalam taluk. The petitioners further allege that the Assistant Engineer, LSGD, who conducted site inspection, found that the 4th respondent is carrying out construction works in violation of building rules and, therefore, the same was reported to the 2nd respondent. The 2nd respondent on receipt of the report issued notice directing the 4th respondent not

to proceed with further construction. The petitioners point out that the 4th respondent on receipt of the notice approached the Tribunal and the Tribunal after hearing the parties, dismissed the appeal confirming the notice. However, the 2nd respondent was directed to regularise the construction if the application is in order and issued Ext.P4. The petitioners further point out that as per Ext.P5 Government order, the 1st respondent is the authority to give sanction for clearance. It is with this background, the petitioners have approached this Court.

3. Respondents 2 and 3 have filed a statement wherein it was contended as follows:

It is true that the 2nd respondent had issued Ext.P1 permit subject to certain conditions stipulated therein. The Assistant Engineer had reported to the 2nd respondent that the construction of the tower was not in accordance with Ext.P1 and the 4th respondent had violated the permit conditions. Thereafter the 2nd respondent had issued Ext.P2 notice to the 4th respondent to stop the construction. The 4th respondent on receipt of the Ext.P2, challenged the same before the Tribunal for

Local Self Government Institutions, Thiruvananthapuram by filing Ext.P3 appeal.

It was further stated that the Tribunal after hearing the parties dismissed the appeal confirming the notice issued by the 2nd respondent and directed the 2nd respondent to regularise the construction if an application is submitted within one month. The 2nd respondent in accordance with the directions contained in Ext.P4 issued Ext.R4(c) permit dated 6.12.2014 extending the earlier permit.

4. The 4th respondent has also filed a counter affidavit contending as follows:

The 4th respondent has filed an application to construct telecommunication tower before the 2nd respondent on 15.6.2013. Copy of the application is produced as Ext.R4(a). After conducting a site inspection by the 2nd respondent the plan was approved and Ext.P1 building permit was issued to the 4th respondent on 13.8.2013. Copy of the plan is produced as Ext.R4(b).

It was further stated that on 26.9.2013, the 2nd respondent issued Ext.P2 stop memo to the 4th respondent. Immediately, on

receipt of Ext.P2, the 4th respondent preferred Ext.P3 appeal against same before the Tribunal for Local Self Government Institutions. After a detailed consideration, the Tribunal dismissed the appeal and directed the 4th respondent to file an application for regularisation of the construction within a period of one month from 24.8.2014 and the 2nd respondent was directed to regularise the same, if the application is in order, and the construction does not violate any of the provisions of the Kerala Panchayat Building Rules, 2011.

It was further stated that based on above direction, the 4th respondent submitted a fresh application on 26.9.2014 and the fee was also remitted before the 2nd respondent. Copy of the application submitted by the 4th respondent is produced as Ext.R4(c). and the receipt issued by the 2nd respondent for remittance of fee is produced as Ext.R4(d). The 2nd respondent conducted a site inspection and convinced that the construction made by the 4th respondent was in order, and it does not violate any of the provisions of Kerala Panchayat Building Rules, 2011. Therefore, building permit was issued by the 2nd respondent which is produced as Ext.R4(e).

5. Arguments have been heard.

6. In Ext.P4, the learned Tribunal directed the 4th respondent to file an application for regularisation within a period of one month and the respondent panchayat was directed to regularise the construction if the application is in order and the construction does not violate the provisions of Kerala Panchayat Building Rules, 2011. According to the petitioners, the said direction is beyond the scope of appeal and, therefore, liable to be interfered with.

7. According to the petitioners, the 4th respondent has applied for building permit in Pandalam village and the 2nd respondent granted building permit to Sy. Nos.341/5 and 341/7 of Kurampala village in Padalam taluk. However, the 4th respondent started construction in different places and, therefore, there is violation of building rules; so submitted the learned Senior Counsel for the petitioners.

8. The Tribunal confirmed Ext.P2 notice. However, it gave a direction to regularise the construction without considering the

Government order constituting the District Telecom Committee appointing the District Collector as the Chairman; so submitted the learned Senior Counsel. In answer to the said submission, the learned counsel for the 4th respondent submitted that Ext.R4(a) submitted by the 4th respondent would show that the building permit was applied for construction of a telecommunication tower in Sy. No.58/11 in Pandalam revenue village, Adoor taluk, Pathanamthitta district. According to the 4th respondent, while issuing Ext.P1 building permit, the 2nd respondent committed a clerical mistake by showing Survey Nos. 341/5 and 34/7 in Kurambala village, Pandalam taluk, Pathanamthitta district instead of Sy. No.58/11 in Pandalam revenue village, Adoor taluk, Pathanamthitta district. It was also pointed out that in the plan issued by the 2nd respondent it is clearly stated that the construction is in Sy. No.58/11 in Pandalam revenue village and the clerical mistake committed by the 2nd respondent in Ext.P1 has been corrected by the 2nd respondent in Ext.R4(d) building permit.

9. The argument advanced by the petitioners that prior clearance from the Chairman, District Telecom Committee is mandatory for the issue of building permit for construction of telecommunication tower is absolutely incorrect in the light of Ext.R4(f) Government order dated 5.11.2014 which clarifies that no prior clearance from the DTC is required for issuance of permit by the concerned Local Self Government Institutions for installation of telecommunication tower. It is submitted that based on Ext.P1 permit, the petitioners had taken steps to construct the telecommunication tower. However, certain residents of the locality headed by the 1st petitioner obstructed the construction and the 4th respondent filed WP(C) No.2861 of 2013 seeking police protection. The above writ petition was closed and the contentions of the respondents were left open to be decided in this case as evident from Ext.R4(g) judgment.

10. In **Essar Telecom Infrastructure Pvt. Ltd. v. C.I of Police, Angamaly Police Station** [2010(2) KHC 445] a Full

Bench of this Court observed that if the petitioners have obtained all requisite licenses/permits in accordance with the relevant statute/order/notification in force and started construction/functioning of a mobile base station, nobody can cause any physical obstruction to such work/operation. However, it is open to them to raise a dispute and seek remedies available under law.

11. Here, the 4th respondent has obtained all requisite licence from the authorities concerned for construction of the telecommunication tower. As per Rule 160 of the Kerala Municipality Building Rules, any person aggrieved by an order approving or disapproving building site or granting or refusing permit to execute work may prefer an appeal before the Tribunal for Local Self Government Institutions. Therefore, against Ext.P2 stop memo, the 4th respondent has approached the Tribunal who after considering the entire issue passed the impugned order. It can be seen that the 2nd respondent had issued permit in Sy. Nos.341/5 and 341/7 for construction of telecommunication tower

and in Ext.R4(c) extension order also, the very same survey numbers are shown.

12. As it is evident from records that the entire complications have arisen on account of a clerical mistake committed by the respondent panchayat, this Court is of the view that the petitioner is not entitled to the reliefs prayed for.

In the result, the writ petition fails and accordingly, it is dismissed.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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P.A to Judge