

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

TUESDAY, THE 11TH DAY OF AUGUST 2015/20TH SRAVANA, 1937

WP(C).No. 2920 of 2015 (L)

PETITIONER:

HASNIYA ISLAMIC CENTRE
P.O.ULLANAM, PARAPPANANGADI
MALAPPURAM DISTRICT. REP. BY ITS PRESIDENT ABDURAHIMAN MUSLIYAR
VEMBALA PUTHATTAYI HOUSE, P.O.ULLANAM NORTH
PARAPPANANGADI.

BY ADVS.SRI.R.K.MURALEEDHARAN
ATHIRA A MENON

RESPONDENTS:

1. THE DISTRICT COLLECTOR
MALAPPURAM.
2. THE PARAPPANANGADI PANCHAYATH
REP.BY ITS SECRETARY, POST PARAPPANANGADI
MALAPPURAM DISTRICT-676303.
3. CHALERI SUBRAMANIAN
UNNICHAM VEEDU PARAMBU HOUSE, P.O.ULLANAM NORTH
MALAPPURAM DISTRICT-676303.
4. VALERI RAMESAN
UNICHAM VEEDU PARAMBU HOUSE, P.O.ULLANAM NORTH
MALAPPURAM DISTRICT-676303.

R3 & 4 BY ADV. SRI.SAJU.S.A
R3 & 4 BY ADV. SRI.M.DEVESH
R2 BY ADV. SRI.JAMSHEED HAFIZ
R1 BY GOVERNMENT PLEADER SRI P.V.ELIAS

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

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT-P1: A TRUE COPY OF THE RELEVANT PAGES OF THE APPLICATION ALONG WITH THE CHELAN.
- EXHIBIT-P2: A TRUE COPY OF THE RELEVANT PORTION OF GO(P) NO.217/05/HOME DATED 25.07.2005.
- EXHIBIT-P3: A TRUE COPY OF THE LETTER DATED NIL AUGUST 2014 BY THE POLICE CHIEF TO THE DISTRICT COLLECTOR.
- EXHIBIT-P4: A TRUE COPY OF THE REPORT OF THE RDO.
- EXHIBIT-P5: A TRUE COPY OF THE AFFIDAVIT IN STAMP PAPER BY THE PETITIONER.
- EXHIBIT-P6: A TRUE COPY OF THE UNDERTAKING SUBMITTED BY THE PETITIONER.
- EXHIBIT-P7: A TRUE COPY OF THE CONSENT GIVEN BY THATTARUKANDY KRISHNAN AND THATTARUKANDY GOPALAN IN STAMP PAPER.
- EXHIBIT-P8: A TRUE COPY OF THE CONSENT IN STAMP PAPER GIVEN BY CHALERI VASU AND CHALERI SUNDHARAN.
- EXHIBIT-P9: A TRUE COPY OF THE ORDER OF THE 1ST RESPONDENT DATED 19.01.2015.

RESPONDENT(S)' EXHIBITS: NIL

TRUE COPY

P.S.TO JUDGE

ANIL K. NARENDRA, J.

W.P.(C)No.2920 of 2015

Dated this the 11th day of August, 2015

JUDGMENT

The petitioner, who is the president of Hasaniya Islamic Centre (Reg.No.701/2013), Ullanam North P.O., Malappuram District has filed this writ petition seeking a writ of certiorari to quash Ext.P9 order dated 19.01.2015 issued by the 1st respondent and seeking a writ of mandamus commanding respondents 1 and 2 to issue permission to construct the building as per Ext.P1 application submitted by him within a time frame that may be fixed by this Court.

2. Going by the averments in the writ petition, one Manjammattil Ali, S/o Kammu, who was the absolute owner in possession of two items of properties having an extent of 2.772 Ares and 2.073 Ares in R.S.No.96/1 and 86/1 of Neduva Amsom of Ullanam Desom, executed a registered Wakf Deed in favour of the petitioner, vide a registered deed dated 19.10.2013 of SRO, Thirurangadi. The purpose of creating the Wakf in favour of the petitioner was for constructing a mosque to follow the method of

prayers of Sunni sect. To fulfill the object and purpose of the Wakf, the petitioner submitted Ext.P1 application for building permit before the 2nd respondent by remitting the requisite fee. As per the Proviso to Rule 5(8) of the Kerala Panchayat Building Rules, 2011, prior approval shall be obtained from the District Collector concerned by following the conditions stipulated in the 'Manual of Guidelines to Prevent and Control Communal Disturbances and to Promote Communal Harmony' (hereinafter referred to as the 'Manual of Guidelines'). Therefore, Ext.P1 application for building permit was forwarded to the 1st respondent by the 2nd respondent, for his concurrence.

3. Para.23 of Ext.P2 Manual of Guidelines deals with construction of religious place, which can be made only after obtaining prior permission from the District Authorities. On receipt of Ext.P1 application for building permit, the 1st respondent called for report from the Revenue Divisional Officer and also from the District Police Chief. The District Police Chief as per Ext.P3 letter reported that there is no objection from the public and the construction will not create any law and order

problem and hence, recommended for grant of building permit. The Revenue Divisional Officer, as per Ext.P4 report has reported that respondents 3 and 4 who are residing adjacent to the proposed construction are apprehending difficulties and therefore, they have not given their consent. The apprehension of respondents 3 and 4 is that the building will be used for big gatherings and will adversely affect their peaceful living. Further, the toilet facilities that are to be provided may be insufficient for such a large gathering. In such circumstances, the Revenue Divisional Officer in Ext.P4 reported that the proposed construction may lead to law and order problems and granting of permission may not be proper.

4. On receipt of Exts.P3 and P4 reports, the 1st respondent issued a notice to the petitioner as well as to respondents 3 and 4 for arriving at a consensus. The petitioner submitted Ext.P5 affidavit before the 1st respondent undertaking that the construction will not cause any disturbance to the neighbours and that, the remaining property will not be used as a burial ground, etc. Since respondents 3 and 4 were not satisfied with Ext.P5,

the petitioner submitted Ext.P6 undertaking to the effect that the proposed construction will not cause any pollution from toilets or by sound. The petitioner would contend that, the Ooralan of the Bhagavathi Temple situated 250 meters on the south-eastern side of the property in question and also that of another temple situated about 150 meters on the south-eastern side of the said property have given Exts.P7 and P8 consent letters stating that they have absolutely no objection in the construction proposed in Ext.P1 application for building permit. But the 1st respondent, by Ext.P9 order dated 19.01.2015, rejected the prior consent for the construction for the reason that some of the local residents apprehended that it will cause disturbance to their peaceful living and that, the attempt to arrive a consensus was also failed and therefore, the application for building permit stand rejected.

5. It is aggrieved by Ext.P9 order passed by the 1st respondent, the petitioner is before this Court in this writ petition seeking various reliefs.

6. A statement has been filed on behalf of the 2nd respondent contending that, based on the information obtained at

the time of hearing of the parties, the 1st respondent is convinced that the construction of a new mosque in the premises will create law and order situation. The Revenue Divisional Officer has stated that some neighbouring occupants have objected to the construction of the mosque for the reason that it may cause pollution due to gathering of people in future. Therefore, it is for maintaining communal harmony and peace, the District Administration decided not to grant permission for the proposed construction.

7. An Additional affidavit has also been filed on behalf of the 1st respondent in which it has been stated that the Secretary of the 2nd respondent Panchayat has forwarded the application submitted by the petitioner for granting permission for the construction of a new mosque in Re-Survey No.96/1 and 86/1 of Neduva Village in Parappanangadi Grama Panchayat. In terms of Ext.P2 Manual of Guidelines the matter was got enquired through the District Police Chief and the Revenue Divisional Officer. The District Police Chief was directed to enquire about the law and order issues likely to arise due to the permission being granted

for the proposed construction. The Revenue Divisional Officer was directed to enquire and report all the matters pertaining to the construction of the new mosque. According to the 1st respondent, the Revenue Divisional Officer is generally bound to investigate the matters including the pollution, violation of Paddy Land and Wet Land Act, consent of the neighbouring residents, ownership of the land and any other issues relating to law and order, etc. The District Police Chief submitted Ext.P3 report considering the law and order issues only and according to the 1st respondent, the said report is not a conclusive one to straight away accord sanction for construction of the proposed mosque.

8. In Ext.P4 report submitted by the Revenue Divisional Officer, he has reported certain objections by the neighbouring residents against the proposed mosque. Respondents 3 and 4, who are residing adjacent to the proposed construction have not given their consent for the construction and they contended that the building will be used for big gathering and it will create problems in their peaceful living and that, the toilet facilities may be insufficient for a large gathering. The 1st respondent

conducted a hearing on 01.10.2014 in which respondents 3 and 4 raised severe objections against the proposed construction of the mosque. On going through Ext.P4 report of the Revenue Divisional Officer and the connected records and after hearing the parties, the 1st respondent came to the conclusion that the construction of the mosque will create law and order situation in the locality. It was in such circumstances, taking note of the guidelines laid down in Ext.P2 Manual of Guidelines, the request for permission to construct a mosque in the property in question was rejected by Ext.P9 order dated 19.01.2015.

9. A counter affidavit has been filed on behalf of the 3rd respondent contending that the plot where the mosque is proposed to be constructed is only four meters away from his residential house. Similarly, the residential house of the 4th respondent is also very near to the proposed site. If the mosque is constructed in the property in question, various activities conducted therein will cause serious hardships to the residents of the locality. It will also cause water pollution, difficulties in waste removal, etc. These facts were brought to the notice of the

Revenue Divisional Officer, who conducted a detailed enquiry in the matter, and he was satisfied that the construction of the proposed mosque will seriously affect respondents 3 and 4. It was accordingly, he filed Ext.P4 report before the 1st respondent. In the personal hearing conducted by the 1st respondent, respondents 3 and 4 were also called and the 1st respondent was satisfied that, it is not advisable to give permission to construct a mosque in the proposed property. It was after considering the facts and circumstances of the case, the 1st respondent came to the above conclusion in Ext.P9 order, which is perfectly legal.

10. I heard the arguments of the learned counsel for the petitioner, the learned Government Pleader appearing for the 1st respondent and also the learned counsel appearing for respondents 3 and 4.

11. The sole issue that arises for consideration in this writ petition is the legality or otherwise of Ext.P9 order passed by the 1st respondent by which the permission sought for constructing a building as per Ext.P1 application for building permit was turned down by the 1st respondent.

12. Going by the Proviso to Rule 5(8) of the Kerala Panchayat Building Rules, in the case of development or redevelopment for religious purpose or worship, prior approval or clearance or permission and concurrence as the case may be, of the District Collector shall be obtained and also the conditions stipulated in the 'Manual of Guidelines to Prevent and Control Communal Disturbances and to Promote Communal Harmony' which is in force have to be complied with. Application for renovation without involving additional built up area or structural alterations of existing buildings for religious purpose or places of worship can be considered by the Secretary after informing the District Collector in Appendix-N duly filed in triplicate by the applicant and verified by the Secretary. The permit shall be issued only after receipt of concurrence by the District Collector.

13. The Government have issued Ext.P2 Manual of Guidelines to prevent and control communal disturbances and to promote communal harmony. Going by Para.23 of Ext.P2 Manual of Guidelines, any construction of religious place should be made only with prior approval of the District Authorities and at the

earmarked place. Cases of construction of unauthorized religious places should be dealt with severely under existing laws. Negligence on the part of the District Administration in implementing this direction will be seriously viewed and the guilty dealt with. Going by Clause (a)(ii) of Para 23 of Ext.P2 Manual of Guidelines, any new construction of a place of worship shall be done only with clearance of the District Administration. Any religious activities centered around a newly established place of worship should not precipitate communal tension or law and order situation. Before sanctioning requests for construction of new places of religious worship, the District Administration should ensure this. In such cases, the District Administration may take recourse to shift the places of worship after arriving at a consensus with the parties concerned.

14. In the case on hand, on receipt of Ext.P1 application for building permit from the 2nd respondent Panchayat, the 1st respondent called for report from the District Police Chief and also from the Revenue Divisional Officer concerned. Ext.P3 is the report submitted by the District Police Chief, as per which there is

no objection from the public against the proposed construction and it was also reported that the construction will not create any law and order problem and as such, the District Police Chief recommended for grant of permission.

15. As far as Ext.P4 report submitted by the Revenue Divisional Officer is concerned, he has reported that respondents 3 and 4 who are residing adjacent to the proposed construction apprehend difficulties and therefore they have not given any consensus. A reading of Ext.P4 report of the Revenue Divisional Officer would make it clear that, the apprehensions made by them are that, if the proposed building is used for big gatherings, it will create problems for their peaceful living and further, the toilet facilities may not be sufficient for such a large gathering. It was in such circumstances, the Revenue Divisional Officer in Ext.P4 report reported that the proposed construction may lead to law and order problem and hence, granting of permission may not be proper.

16. As borne out from the counter affidavit filed on behalf of respondents 3 and 4, the objection raised by them is in

relation to the difficulties they have to face if the construction of the mosque is permitted in the proposed land, which is very adjacent to their residential building. The apprehension of respondents 3 and 4 is that, if various activities are conducted in the property in question after constructing the mosque, it will cause serious hardships to the residents in that area. The function of the mosque will also cause water pollution, difficulties in wastage removal, etc.

17. It is mainly relying on Ext.P1 report submitted by the Revenue Divisional Officer, the 1st respondent came to the conclusion in Ext.P9 that the permission cannot be granted for the proposed construction. A reading of Ext.P9 order passed by the 1st respondent would show that the rejection of permission is mainly for the reason that the petitioner could not settle the objections raised by respondents 3 and 4. As I have already noticed, going by the provisions under the Kerala Panchayat Building Rules, read with Ext.P2 Manual of Guidelines, construction of a place of worship can be carried out only with the clearance obtained from the District Administration. While

considering such a request, in exercise of the powers under the Proviso to Rule 5(8) read with Para 23 of Ext.P2 Manual of Guidelines, the District Administration has to consider whether the construction of a place of worship or any religious activities centered around a newly established place of worship would precipitate communal tension or law and order situation. In the case on hand, there is total dearth of materials to indicate that, other than the objection raised by respondents 3 and 4, there is no objection from the public against construction of the mosque in the land in question. Exts.P7 and P8 consent letters issued by the Ooralans of two temples situated 250 meters and 150 meters away from the property in question would show that, they have absolutely no objection in the construction of a mosque in the land in question. Neither Exts.P3 and P4 reports submitted by the Revenue Divisional Officer and the District Police Chief nor Ext.P9 order passed by the 1st respondent would indicate any communal tension in the locality or law and order situation in connection with the proposed construction.

18. In **Fr. Geevarghese v. District Collector (2014 (4)**

KLT 553), a learned Judge of this Court, after referring to the judgment of the Apex Court in **Ashok Kumar v. Delhi Administration (AIR 1982 SC 1143)** and **Angoori Devi v. Union of India (1989 (1) SCC 385)** has held that law and order is referring dispute between individuals or group of individuals on identifiable issues and resolution of such issues are not referable to any communal harmony focus. Paragraphs 5, 6, 7, 8, 10 and 11 of the judgment read thus:

"5. The source of power to issue manual regulating religious freedom based on public order referable to Article 25 and Article 26 of the Constitution. In this context 'public order' has to be understood as any disorder in the society resulting imbalance in relationship due to exercise of religious freedom among followers of different religious communities. Thus, any revulsion in relationship is bound to have repercussion in communal harmony warranting State interference. State steps in to restore the relationship and to sustain the balance to have a communal harmony and peace. It is to be noted that communal harmony is a facet of secularism professed under the constitution. On the other hand, law and order is referable to dispute between individuals or group of individuals on identifiable issues having reflection on corporeal interests. Resolution of such issues are not

referable to any communal harmony focus. The objective line of resolution in both type of disputes are different. The State interest is focused in public order and interest of parties are focused in law and order issues. Thus, this distinction has to be borne in mind while considering the application for permission in terms of manual.

6. There are three categories of disputes which normally arise in respect of construction of religious places, namely, (i) Interfaith disputes, (ii) Intra faith disputes and, (iii) Disputes over title, interest of religious places among different denomination of same faith.

7. It is necessary to understand each category of disputes:

i) Inter faith disputes:- these disputes arise normally between two different faith or two different religious community members against establishment or construction of religious places. These are more of incorporeal disputes. There may be occasion when disputes may arise between two different faith or two or more religious denominations with regard to interest or title over religious places. Thus, there can be corporeal disputes in inter faith disputes also.

ii. Intra faith dispute: These are essentially different denomination of same faith on account of their differences in religious

practices or following different leaders of same faith which results in disputes. There are also possibility of corporeal disputes in intra faith disputes.

iii) Disputes of title, management etc.:- In these disputes, the disputes are purely on right, interest or title or possession etc. of immovable or movable property.

8. The approach required by the District Administration in the above categories of disputes shall be as follows:

i) Any construction of religious place must require prior permission of District Administration. The District Administration while making enquiry for grant of permission only need to consider potential communal violence and any threat to communal harmony for peaceful co-existence.

ii) The scope of enquiry is not directed against disturbances based on dispute referable to title or interest in the immovable property, but against communal disharmony. The permission granted not with reference to immovable property but as an approval on satisfaction relating to public order.

iii) The permission granted will not confer any right on grantee over any immovable property.

iv) The objective of the manual is to secure communal harmony. Therefore, while exercising the power by the District Administration, it has to distinguish between 'public order' and 'law and order' with reference to the objective of the manual and Guidelines. In case the dispute is purely a corporeal dispute, the District Administration need not deny any permission for constructing place of worship subject to any decision by competent civil court or other authority, which is competent to hear the dispute regarding title or interest. This is because there is no issue relating to public order in such situation and only a law and order relating to dispute over title or interest over the immovable property. Of course, in appropriate cases, the Authority can invoke Section 145 of Criminal Procedure Code but that cannot be a reason to deny permission in terms of manual for construction of religious places as an enquiry under the manual is not with respect to particular land over which construction of religious place is proposed. However, in case of incorporeal disputes, the District Administration can refuse permission unless a consensus is arrived among different religious faith or the District

Administration feels to issue appropriate order in the light of objective of manual. The purpose of manual is only to secure public order and not law and order. Law and order is totally a different subject and has to be dealt differently, not under the guidelines. It is in the above back ground this writ petition has to be examined.

9. xxx xxx xxxx

10. Any maintenance of law and order is obviously not in contemplation of the above manual on account of dispute regarding title or interest or management of the above property. Therefore, a dispute on account of title of immovable property or management of the Church cannot have a bearing for grant of permission under the manual.

11. As has been noted above, no permission can be declined on account of the dispute over title, interest or management over the property as the enquiry under the manual is not directed against any title or interest over the property. On the other hand based on public order, to obviate potential threat to communal harmony, the corporeal disputes between denominations of same faith cannot be a reason to deny permission under the manual for establishing religious place. It appears that by such disputes, District Administration also fall into recognise corporeal disputes over property and management in exercising their power under the manual. Such disputes

are outside the purview of District Administration while seeking permission for establishing worship places. The permission granted under the manual cannot be used as a right to construct a religious place in particular land or property. It is only an approval of existence of public order for constructing a religious place and nothing beyond that."

19. If Ext.P9 order passed by the 1st respondent is viewed in the light of the principle laid down by this Court in Fr. Geevarghese's case (supra), the conclusion is irresistible that the 1st respondent declined clearance for construction of the mosque in the absence of any apprehending circumstances warranting such an action. When there is no law and order situation or circumstances to precipitate communal tension, the 1st respondent ought not to have declined clearance for the construction of a new mosque in the property in question.

20. In the result, Ext.P9 order passed by the 1st respondent is set aside and the 1st respondent is directed to forward necessary clearance for Ext.P1 application to the 2nd respondent Grama Panchayat, within a period of one month from the date of receipt of a certified copy of this judgment, so as to enable the Grama Panchayat to take an appropriate decision on

the said application.

21. In view of the undertaking given by the petitioner in Ext.P5 affidavit, any clearance granted by the 1st respondent will be subject to the condition that, the remaining property will not be used as a burial ground.

The Writ Petition is disposed of as above. No order as to costs.

Sd/-
ANIL K. NARENDRA,
JUDGE