

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

WP(C).No.7242 of 2009 (A)

PETITIONER :

venu k.b., S/O.BAHULEYAN,
KAVUNKAL HOUSE, EDAVANAKKAD VILLAGE, ERNAKULAM-682502.

BY SRI.JOHN JOSEPH VETTIKAD

RESPONDENTS :

1. THE EDAVANAKKAD GRAMA PANCHAYATH,
EDAVANAKKAD, REP. BY ITS SECRETARY.
2. THE STATE OF KERALA,
REP. BY THE PRINCIPAL SECRETARY,
DEPT. OF SCIENCE & TECHNOLOGY, THIRUVANANTHAPURAM.
3. THE KERALA STATE COASTAL ZONE MANAGEMENT AUTHORITY,
REP. BY ITS CHAIRMAN,
SASTRABHAVAN, PATTOM, THIRUVANANTHAPURAM.

R1 BY SRI.K.I.ABDUL RASHEED -SC
R3 BY SRI. K.R. SUNIL SC
SRI.P.V.ELIAS- G.P.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
29-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No.7242 of 2009 (A)

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 : COPY OF THE TAX RECEIPT ISSUED BY THE VILLAGE OFFICER, EDAVANAKKAD DTD.22.7.2008.
- EXT.P2 : COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT DTD.7.11.08.
- EXT.P3 : COPY OF THE LETTER DTD.10.2.09 ISSUED BY THE 1ST RESPONDENT.
- EXT.P4 : COPY OF THE INTERIM ORDER DTD.6.3.2007 IN W.P. (C)No.6035/07.

RESPONDENTS' EXHIBITS : NIL.

True copy

P.A to Judge

ANIL K.NARENDRA, J.

W.P.(C).No.7242 of 2009

Dated this the 29th day of June, 2015

JUDGMENT

The petitioner, who is stated to have 7 cents of land in survey No.151/15 of Edavanakkad Village covered by document No.1650/2000 and 1651/2000 of Kuzhuppilly Sub Registry, has filed this writ petition seeking a writ of certiorari to quash Ext.P3 order passed by the first respondent by which the application submitted by him for construction of a building was rejected stating that the land in question falls within CRZ-I and hence no permit can be granted.

2. On 27.8.2009 this Court granted an interim order to the effect that, the petitioner's building will be provisionally numbered subject to further orders.

3. Going by the averments in the writ petition the petitioner is a fisherman by profession, who owns 7 cents of land in Sy.No.151/15 of Edavanakkad Village, in respect of which he is paying basic tax as evidenced by Ext.P1 receipt issued by the Village

Officer, Edavanakkad. After purchasing the property the petitioner put up a small hut using bamboo mat and roofing tiles. For the purpose of getting ration card and electric connection the petitioner approached the first respondent Grama Panchayat for allotting a building number, as provided under Section 235 of the Kerala Panchayat Raj Act, 1994 by submitting Ext.P2 application dated 7.11.2008. But the said application was rejected by Ext.P3 order dated 10.2.2009 stating that, the property in question comes within the CRZ-I as per the Coastal Zone Management Plan of Kerala issued by the second respondent.

4. It is aggrieved by Ext.P3 the petitioner has approached this Court in this writ petition seeking a writ of certiorari to quash Ext.P3 order passed by the first respondent; a writ of mandamus directing the first respondent to grant building number to the house constructed by the petitioner in the property covered by Ext.P1; a writ of mandamus commanding the third respondent to make necessary modifications or amendments in the Coastal Zone Management Plan of Kerala in such a way as to allow the residents of Vypin Island to make construction in their respective property.

5. Heard the arguments of Sri.John Joseph Vettikad, the learned counsel for the petitioner, Sri.K.I.Abdul Rasheed, learned Standing Counsel for the first respondent Grama Panchayat, Sri.P.V.Elias, the learned Government Pleader appearing for the second respondent and also Sri.K.R.Sunil, the learned Standing Counsel for the third respondent Coastal Zone Management Authority.

6. During the course of arguments, the learned counsel for the petitioner would submit that, going by the CRZ Notification of 2011, the land in question will fall under CRZ-III. Relying on Clauses I and III of CRZ for Kerala, the learned counsel for the petitioner would contend that, the construction within 50 mts. from the High Tide Line of the backwater islands existing dwelling units of local communities may be repaired or reconstructed however no new construction shall be permitted. The learned counsel for the petitioner would also rely on paragraph 115 of the judgment of a Division Bench of this Court in **Ratheesh Vs. State of Kerala 2013 (3) KLT 840** to buttress his submission in this regard.

7. On the other hand, the learned Standing Counsel for the 3rd respondent Coastal Zone Management Authority would submit that, the permission sought for by the petitioner was declined in Ext.P3 on

the ground that the land in question falls within CRZ-I. The question whether the said land now falls under CRZ-III in view of CRZ notification of 2011 is something which has to be decided by the 3rd respondent Authority based on an inspection to be conducted. The learned Standing Counsel for the 3rd respondent would submit that, if Ext.P2 application submitted by the petitioner along with necessary report is forwarded by the 1st respondent Grama Panchayat to the 3rd respondent, necessary action in this regard can be taken.

8. The sole issue that arises for consideration in this Writ Petition is as to whether on the basis of CRZ notification of 2011 the property in question falls within CRZ-III and whether the petitioner is entitled to get the building numbered taking the benefit of Clauses-I and III of CRZ for Kerala. Such an issue can be decided only on the basis of an inspection being conducted by the competent authority namely the 3rd respondent.

9. In such circumstances, this Writ Petition is disposed of with the following directions:-

1. If Ext.P2 application submitted by the petitioner is still with the first respondent Grama Panchayat, on production of a certified copy of

this judgment, the first respondent shall forward it to the 3rd respondent, with necessary remarks.

2. On receipt of such an application along with necessary remarks of the first respondent Grama Panchayat, the 3rd respondent shall consider the same and pass appropriate orders thereon and communicate its decision to the first respondent Panchayat within a period of three months thereafter. It would be open to the 3rd respondent to conduct a local inspection before forwarding its recommendation on Ext.P2 application made by the petitioner, to the first respondent Panchayat.

It is made clear that, this Court has not expressed anything on the merits of the claim made by the petitioner and it is for the 1st and 3rd respondents to consider the request made by the petitioner in Ext.P2 application, strictly in accordance with law.

No order as to costs.

ANIL K.NARENDRA, JUDGE

skj