

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

WP(C).No. 3160 of 2015 (T)

PETITIONER :

**M/S. CONFIDENT PROJECTS INDIA PVT. LTD.,
CONFIDENT HOUSE, T C 94/3674, KANNAMOOLA
MEDICAL COLLEGE P O, THIRUVANANTHAPURAM
REP BY ITS MANAGING DIRECTOR, T. A. JOSEPH,
AGED 51 YEARS, S/O.LATE ALEXANDER THERUVIPARAMBIL,
33/2652D, THERUVIPARAMBIL HOUSE, VENNALA P. O.,
KOCHI, ERNAKULAM**

**BY ADVS.SRI.S.SHANAVAS KHAN
SMT.S.INDU**

RESPONDENTS :

- 1. THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS,
THIRUVANANTHAPURAM - 695001**
- 2. THE KADINAMKULAM GRAMA PANCHAYATH
REP BY ITS SECRETARY, KADINAMKULAM, CHITTATTUMUKKU P.O.,
THIRUVANANTHAPURAM-695558**
- 3. THE SECRETARY
KADINAMKULAM GRAMA PANCHAYATH, REP BY ITS SECRETARY,
KADINAMKULAM, CHITTATTUMUKKU P.O.,
THIRUVANANTHAPURAM-695558**
- 4. LENIN LAL. M.,
S/O.MANIKANDAN, LENIN LAL HOUSE, KALPANA NAGAR,
CHITTATTUMUKKU P. O., MENAMKULAM,
THIRUVANANTHAPURAM - 695558.**

**R1 BY GOVERNMENT PLEADER SMT. K.A. SANGEETHA
R2 & R3 BY ADV. SRI.M.R.SASITH
R4 BY ADVS. SRI.P.G.SURESH
SRI.G.SUDHEER (THURAVOOR)
SRI.RAJAN VISHNURAJ
SRI.V.HARISH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 09-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- P1:- TRUE COPY OF THE POWER OF ATTORNEY DTD 10/9/2013.
- P2:- TRUE COPY OF THE STOP MEMO DTD 10/2/2014 ISSUED BY THE 3RD RESPONDENT.
- P3:- TRUE COPY OF THE ORDER DTD 3/7/2014 IN WPC NO 16868/2014 OF THIS HON'BLE COURT
- P4:- TRUE COPY OF THE JUDGMENT DTD 14/10/2014 IN WPC NO 16868/2014 OF THIS HON'BLE COURT.
- P5:- TRUE COPY OF THE BUILDING PERMIT APPLICATION SUBMITTED BEFORE THE 2ND RESPONDENT.
- P6:- TRUE COPY OF THE DECISION NO 1(A)DTD 20/3/2014 F THE 2ND RESPONDENT.
- P7:- TRUE COPY OF THE LETTER DTD 10/9/2014 OF THE 3RD RESPONDENT.
- P8:- TRUE COPY OF THE ORDER DTD 29/11/2014 IN APPEAL NO 1008 OF 2014 OF THE 1ST RESPONDENT.
- P9:- TRUE COPY OF THE NO OBJECTION CERTIFICATE DTD 10/12/2014 ISSUED BY THE COMMANDANT GENERAL FIRE AND RESCUE SERVICES, THIRUVANANTHAPURAM.
- P10:- TRUE COPY OF THE NO OBJECTION CERTIFICATE FOR HEIGHT CLEARANCE DTD 11/11/2014 ISSUED BY AIRPORTS AUTHORITY OF INDIA.
- P11:- TRUE COPY OF INTEGRATED CONSENT TO ESTABLISH ISSUED BY THE KERALA STATE POLLUTION CONTROL BOARD.
- P12:- TRUE COPY OF THE COMMUNICATION RECEIVED FROM THE 3RD RESPONDENT DTD 29/12/2014.
- P13:- TRUE COPY OF THE INFORMATION DTD 18/10/2014 OBTAINED UNDER RIGHT TO INFORMATION ACT FROM THE EXECUTIVE ENGINEER.
- P14:- TRUE COPY OF THE LETTER DTD 1/1/2015 SUBMITTED BY PETITIONER BEFORE 3RD RESPONDENT.
- P15:- TRUE COPY OF THE LETTER DTD 21/3/2014 OF THE DISTRICT OFFICER, GROUND WATER DEPARTMENT , THIRUVANANTHAPURAM

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 3160 of 2015 (T)

Dated this the 9th day of February, 2015.

JUDGMENT

Heard the learned counsel for the petitioner, the learned counsel for the respondent Grama Panchayath and the learned Government Pleader, 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, a private limited company, being desirous of constructing a multi storied residential apartment complex, submitted Ext.P5 application for building permit before the 3rd respondent. Instead of the 3rd respondent, the committee of the 2nd respondent Grama Panchayath issued Ext.P6 proceedings rejecting the petitioner's application for building permit. Aggrieved thereby, when the petitioner took the matter in appeal before the Tribunal for Local Self Government Institutions,

Thiruvananthapuram, the Tribunal passed Ext.P8 order holding that it is the 3rd respondent, who is to decide. At any rate, while allowing the statutory appeal, the learned Tribunal has additionally observed that the 3rd respondent will take a decision on Ext.P5 application with the help, if necessary, of any experts on the issues of drainage system and availability of water etc. Laying challenge against the said additional direction in Ext.P8 order, the petitioner has filed the present writ petition.

3. The learned counsel for the petitioner has submitted that through Exts.P9 to P11 and P15, the petitioner obtained all the necessary no objection certificates and other certificates of consent from all the departments concerned, including the Ground Water Department. According to him, neither the Kerala Panchayath Raj Act nor the Kerala Municipality Building Rules contemplates any certification or reference to any water management authorities, especially with regard to the availability of ground water. According to him, it is an extra legal direction, which is unsustainable. In support of his

submissions, the learned counsel has placed reliance on the judgment of this Court in Dharmadom Paristithi Samrakshana Samithi v. Dharmadom Grama Panchayath¹

4. Sri. Sasith Panicker, the learned counsel for the respondent Grama Panchayath, on instructions, has submitted that the 3rd respondent is willing to consider Ext.P5 application of the petitioner in accordance with law. He has further submitted that if the petitioner has complied with all other statutory parameters, the 3rd respondent does not have any objection to further process the petitioner's application.

As could be seen from the ratio laid down by this Court in Dharmadom Paristithi Samrakshana Samithi (supra), it is categorically held thus:

“The other reason stated by the Tribunal in Ext.P5 order is that grounds mentioned for cancellation of the building permit are not traceable to R.16 of the Kerala Municipality Building Rules which has been implemented in the Panchayat area. R.16 also confers power on the Secretary himself to suspend or cancel building permit and the grounds on which such power can be exercised are also enumerated in the Rule itself. A comparison of the Rule with Exts.P1 and P4 show that the grounds mentioned in Exts.P1 and P4 do not find place in R.16. If that be so, this conclusion of the Tribunal also cannot be faulted.”

¹ 2010(2) KLT 194

5. It is axiomatic to hold that a statutory authority is required to act strictly within the confines of the statute, and that any direction to the said authority to take recourse to methods which have not been provided for under any regulation or Rule cannot be sustained.

In the facts and circumstances, having regard to the respective submissions of the learned counsel for the petitioner and the learned counsel for the respondent Grama Panchayath, the writ petition is allowed modifying Ext.P8 by way of removing the direction to the 3rd respondent to consult, if necessary, the experts regarding the drainage system and ground water etc. Consequently, the 3rd respondent is directed to consider Ext.P5 application of the petitioner in accordance with law, 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.

