

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

WP(C) .No. 3594 of 2015 (Y)

PETITIONER(S) :

P. ALI,
S/O.ALIKUTTY (LATE), AGED 58 YEARS,
PALATHINKAL HOUSE, OLD COURT ROAD, PATTAMBI,
PALAKKAD DISTRICT.

BY ADVS.SRI.K.JAJU BABU (SR.)
SMT.M.U.VIJAYALAKSHMI
SRI.BRIJESH MOHAN.

RESPONDENT(S) :

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1. SOUTHERN RAILWAY,
REPRESENTED BY ITS CHIEF ADMINISTRATIVE OFFICER (CONSTRUCTION) ,
EGMORE, CHENNAI - 600 008
 2. THE DIVISIONAL RAILWAY MANAGER,
(WORKS BRANCH), DIVISIONAL OFFICE, SOUTHERN RAILWAY,
PALAKKAD - 678 002.
 3. THE PATTAMBI GRAMA PANCHAYAT,
PATTAMBI P.O,, PALAKKAD, PIN - 679 303,
REPRESENTED BY ITS SECRETARY.

R1, R2 BY SRI.C.S.DIAS, SC, RAILWAYS.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
29-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXT. P1- COPY OF THE LETTER NO.A6/13/08-09 DATED 6.6.2008 ISSUED BY THE PANCHAYAT TO THE 2ND RESPONDENT.
- EXT. P2- COPY OF THE LETTER NO.J/W.280/NOC/12/1468/08 DATED 10.2.2009 ISSUED BY THE 2ND RESPONDENT.
- EXT. P3- COPY OF THE LETTER NO.13/080 DATED 23.5.2009 ISSUED BY THE PANCHAYAT FORWARDING THE REVISED PLAN TO THE 2ND RESPONDENT.
- EXT. P4- COPY OF THE COMMUNICATION NO.W.280/1/2/CN/VOL. XXVI DATED 26.5.2011 ISSUED BY THE 1ST RESPONDENT.
- EXT. P5- COPY OF THE LETTER NO.A7/12856/12 DATED 6.12.2012 ISSUED BY THE PANCHAYAT TO THE 2ND RESPONDENT.
- EXT. P6- COPY OF THE REPLY LETTER NO.J/W. 280/NOC/12/854/12 SIGNED ON 8.12.2012 BY THE 2ND RESPONDENT.
- EXT. P7- COPY OF THE LETTER NO.J/W. 280/NOC/12/854/12 DATED 14.11.2014 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER
- EXT. P8- COPY OF PHOTOGRAPHS SHOWING THE HEIGHT OF THE PROPERTY.

RESPONDENT(S) ' EXHIBITS :

- EXT. R2 (1) - TRUE COPY OF LETTER DATED 05/05/2010 BEARING NO.W.280/I/2/CN/VOL.XXV ISSUED BY THE RESPONDENT.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No.3594 of 2015

Dated this the 29th day of July, 2015.

JUDGMENT

The petitioner is aggrieved by the refusal of NOC by the Southern Railway for the construction of a building in his property, which is lying close to the railway line.

2. The petitioner and his 4 brothers jointly proposed to construct a multi-storied commercial building in Pattambi. The petitioner alleges that since the proposed construction is within 30 metres of the railway track, the third respondent panchayath on receipt of application for building permit sought for NOC from the second respondent. After protracted correspondence and alteration of plan, as per Ext.P3 pursuant to Ext.P2, the first respondent granted the approval; it is alleged. The petitioner points out that, based on the approval dated 5.5.2010 by the first respondent mentioned in Ext.P4, the second respondent ought to have issued the NOC to the petitioner. However, the proposal was again re-submitted.

Now, ultimately as per Ext.P7, the petitioner is again asked to re-submit the proposal. The action of the respondent is arbitrary, discriminatory and violative of the Article 14 of the Constitution of India. It is with this background, the petitioner has come up before this Court.

3. In the counter affidavit filed by respondents 1 and 2 it was stated that it is not in dispute that the secretary of the third respondent had forwarded the petitioner's application for building permit to the Railway Administration, for consultation, as the land is situated within 30 metres from the boundary of the Railway Track maintained by the Railways, as provided in Rule 5(6) of the Kerala Panchayath Building Rules, 2011 (hereinafter referred to as the 'Rules') which reads as follows:

“In the case of an application for development or re-development of any land within 30 metres from the boundary of railway track maintained by Railways, the Secretary shall consult in writing the Railway Authority concerned before the permission is granted. Such officer shall furnish his reply within thirty days from the date of receipt of the

consultation letter if such establishment has any objection to the proposed development. The objection, if any, raised by the Railway Authority within the said 30 days shall be duly considered by the Secretary before issuing permit.”

The third respondent had forwarded Ext.P1 requisition to the second respondent, consulting whether the Railway Administration had any objection to the proposed construction by the petitioner. The second respondent had promptly by Ext.P2 informed the third respondent that the proposal was examined in detail and that a minimum distance of 3 metres should be maintained from the proposed building from the Railway boundary and further that the septic tank of the said proposed building had to be located away from the Railway boundary. It was specifically directed that a revised plan had to be submitted after making the necessary alterations. It was thereafter on 23.5.2009, that the third respondent by Ext.P3 forwarded the revised plan for consultation. The second respondent immediately forwarded the application and the

revised plan to the first respondent, who in turn sent the relevant papers to the Deputy Chief Engineer, Kannur, operating department, Palghat and the Senior Commercial Manager, Palghat, for their approval and remarks. Even though the Deputy Chief Engineer, Kannur had given his approval, the operating department found that the proposed building is very close to station building and the height of the proposed building was also dangerous to railway traffic and passenger safety. The said matter was informed to the third respondent, however, there was no response thereafter. It is without any reference to Ext.P3, that the third respondent again by letter dated 4.5.2011 submitted a fresh proposal to the second respondent seeking consultation whether the Railway had any objection to the proposed construction by the petitioner. Immediately, on receipt of the letter dated 4.5.2011, this respondent again sent the relevant papers to the first respondent and other departments for approval and remarks. Accordingly, the first respondent issued Ext.P4 asking

the reason for resubmitting the case again and asking to furnish details of the proposed construction, especially the distance from the centre line of the nearest track and the distance from the railway boundary to the proposed building. A bare reading of Ext.P4 would substantiate that it is only an internal correspondence between the first respondent's office and deputy chief engineer, Kannur. It only speaks of their earlier approval dated 5.5.2010. However, the case was not passed by the second respondent, in view of the objections of the operating department. It is only after that, the third respondent forwarded Ext.P5 letter on 6.12.2012, enclosing the petitioner's application seeking consultation whether the railways had any objection to the proposed construction. Immediately, on receipt of the said letter, the second respondent issued Ext.P6 letter in tune with Rule 5 (9) of the Rules, requesting the third respondent to keep the application under objection until a decision was taken. It is after evaluating the petitioner's application and considering all

aspects, that this respondent issued Ext.P7 letter inter alia holding that the proposed construction was very close to the Railway boundary and the height of the building had to be reduced and requesting the petitioner to submit a revised plan. The third respondent has not passed any orders on granting or declining the petitioner's request for building permit. Therefore, this writ petition is premature. It is for the petitioner to submit the revised plan, after making requisite alteration as mentioned in Ext.P7 and thereafter, for the third respondent to consider the same and pass appropriate orders. It is also pointed out that the petitioner's application is declined by the third respondent, which is appealable before the Tribunal for Local Self Government.

4. The petitioner has filed a reply affidavit along with Ext.P8 photographs.

5. Arguments have been heard.

6. The learned counsel for the petitioner would argue that as per Ext.P2, the petitioner was directed to submit a

revised site plan curing two defects, at least leaving a minimum distance of 3 metres and also shifting the septic tank away from the railway boundary. According to the petitioner, he submitted a revised plan as per Ext.P3 leaving the said distance. In paragraph 5 of the counter affidavit, the receipt of the revised plan is admitted. In Ext.P4 it is stated that the approval was communicated to the office of the first respondent by the second respondent as per the letter dated 5.5.2010. According to the learned counsel for the petitioner, as per Rule 5 (6) of the Railway Rules, the same has to be considered within 30 days.

7. Though the panchayath forwarded the proposal as per Ext.P5, no objection has been raised. The petitioner points out that the present objection is regarding the height of the building. The building is having a total plinth area of 474.46 sq.mt. and a carpet area of 347.42 sq.mt. in two stories. According to the petitioner, the said building is very near to the existing market building and the proposed building has

only a height of less than 6.5 metres which is the normal height of any two storied building. It is also pointed out that the petitioner's property is 4 metres below the railway track, which is evident from Ext.P8 photographs. The petitioner has filed an application for a direction to the respondent to produce the letter dated 5.5.2010. It has been produced by the respondent as Ext. R2(1). What could be discerned from Ext. R2(1) is that the distance from the centre line of nearest track to the proposed building is 21.60 metres and the distance from the railway boundary to the proposed building is 1.60 metres and 2.39 metres only. It is only stated that the yard remodeling work has been completed and fully commissioned. Therefore, granting of necessary NOC was recommended only after duly serving sufficient formalities as per rules.

8. It is an undisputed fact that the proposed construction is 21.60 metres away from the entire line of the nearest track. What was insisted in Ext.P2 was the maintenance of a distance of three metres from the railway

boundary. As per Ext.P3 revised plan, the petitioner has left the said distance. Once the defects which were initially pointed out by the respondent railway have been cured, there is no point in denying NOC to the petitioner.

Therefore, the writ petition is disposed of directing the respondent railway to grant NOC to the petitioner on the submission of a revised plan as ordered in Ext.P2, within one week, if the same has not already been submitted. This shall be done within a period of two weeks from the date of receipt of a copy of this judgment.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.