IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

WP(C).No. 4201 of 2015 (A)

PETITIONER(S):
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1. PERUMKADAVILA GRAMA PANCHAYATH,
   REPRESENTED BY ITS SECRETARY,
   PERUMKADAVILA P.O.,
   THIRUVANANTHAPRUAM DISTRICT.

2. THE SECRETARY,
   PERUMKADAVILA GRAMA PANCHAYATH,
   PERUMKADAVILA P.O.,
   THIRUVANANTHAPRUAM DISTRICT.

BY ADV. SRI.R.GOPAN.

RESPONDENT(S):

THE SECRETARY,
MARAYAMUTTOM SERVICE CO-OPERATIVE SOCIETY LTD.NO.984,
MARAYAMUTTOM P.O., NEYYATTINKARA,
THIRUVANANTHAPURAM-695 001.

R1 BY ADV. SRI.P.B.KRISHNAN
R1 BY ADV. SRI.P.M.NEELAKANDAN
R1 BY ADV. SRI.P.B.SUBRAMANYAN
R1 BY ADV. SRI.SABU GEORGE
R1 BY ADV. SRI.S.NITHIN (ANCHAL).

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/07/2015, THE COURT ON 22-07-2015 DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S)' EXHIBITS :

EXT.P1. THE PHOTOCOPY OF THE APPLICATION FOR CONSTRUCTING A PETROL OUTLET UNIT IN THE PROPERTY DATED 13/4/2009.

EXT.P2. THE PHOTOCOPY OF THE APPROVED LAYOUT SUBJECT TO FULFILLMENT OF CERTAIN CONDITIONS ISSUED BY THE CHIEF TOWN PLANNER ALONG WITH ENGLISH TRANSLATION OF EXT. P2.

EXT.P3. THE PHOTOCOPY OF THE ACKNOWLEDGEMENT CARD SIGNED BY THE RESPONDENT LETTER.

EXT.P4. THE PHOTOCOPY OF THE APPEAL MEMORANDUM NO.97/2014 FILED BY THE RESPONDENT BEFORE THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM.

EXT.P5. THE PHOTOCOPY OF THE APPLICATION SUBMITTED BY THE RESPONDENT DATED 17/10/2014 BEFORE THE PANCHAYATH FOR REGULARIZING THE WHOLE CONSTRUCTION.

EXT.P5(A). THE PHOTOCOPY OF THE SITE PLAN APPENDED TO EXT.P5 APPLICATION FOR REGULARIZATION.

EXT.P6. THE PHOTOCOPY OF THE ORDER DATED 8/12/2014 IN APPEAL NO.97/2014 PASSED BY THE COURT OF TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUIONS.

EXT.P7. THE PHOTOCOPY OF THE SHOW CAUSE NOTICE DATED 23/03/2015 ISSUED BY THE HON. TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPRUAM.

RESPONDENT(S)' EXHIBITS :

EXT.R1(A). TRUE COPY OF THE NOC BEARING NO.A 17/39896/2008 ISSUED BY DISTRICT COLLECTOR DATED 30/01/2009.

EXT.R1(B). TRUE COPY OF THE STAY ORDER IN IA NO.150/2014 IN APPEAL NO.97/2014 OF THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUIONS, THIRUVANANTHAPRUAM DATED 27/01/2014.

EXT.R1(C). TRUE COPY OF THE INTERIM ORDER IN WP(C)NO.24922/2014-M OF THIS HON'BLE COURT DATED 25/09/2014.

EXT.R1(D). TRUE COPY OF THE CIRCULAR NO.11775/D1/2001/LSGD DATED 27/03/2001.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.4201 of 2015

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Dated this the 22nd day of July, 2015

JUDGMENT

Under challenge in this writ petition is Ext.P6 order passed by the Tribunal for Local Self Government Institutions in Appeal No.97/2014 by which, the petitioner panchayat was directed to issue permit and licence to the unit of the respondent.

2. The respondent society is the title holder in possession of 63 cents of land. The respondent submitted an application on 13.4.2009 for constructing a petrol outlet in the said property. Since the petrol outlet comes under hazardous occupancy, the application was duly forwarded to the Chief Town Planner. The Chief Town Planner vide proceedings No.D4/4361/ 09/D.Dis dated 2.9.2009 approved the layout subject to the fulfillment of certain conditions. The petitioner alleges that the order sent to the petitioner from the office of the Chief Town Planner was duly communicated to the respondent, and the respondent failed and neglected to obtain building permit from the panchayat pursuant to the letter. It is alleged that the respondent started construction of the petrol bunk without obtaining building permit from the panchayat. The

respondent installed one more distributing machine for which there was no approval by the Chief Town Planner in Ext.P2 approved layout. The respondent made the additional construction at a stretch by violating the layout approved by the Chief Town Planner.

3. The respondent started and completed the construction of the petrol bunk in the year 2009 itself and immediately thereafter started functioning of the petrol bunk illegally as it has not obtained building permit and licence from the respondent panchayat; it is alleged. Thereafter the respondent submitted applications seeking licence to run the petrol bunk which was constructed without obtaining permit from the Panchayat. On 4.1.2014, the respondent again submitted an application seeking licence to run the petrol bunk for the year 2013-2014. The petitioner issued provisional order temporarily restraining the function of the petrol bunk which was challenged by the respondent before the Tribunal for Local Self Government Institutions. The learned Tribunal vide Ext.P6 order directed the petitioner to issue permit and licence to the unit which has already been completed construction as per the layout approved by the Chief Town Planner and as regards the additional distributing unit constructed, the respondent was directed to file an application for regularisation within a period of one month and the

petitioner was directed to dispose of the same in accordance with law. It is with this background, the petitioner has come up before this Court.

4. In the detailed counter affidavit filed by the respondents, they would contend as follows:

The respondent society acquired an extent of 63 cents of land in Sy. No.634 of Perumkadavila village on 22.6.2006 on the side of Neyyattinkara- to Marayamuttom Perinkada Vilaa Road and the respondent is in possession and enjoyment of the same. During 2007, the respondent applied for construction of a building having four shop rooms for its office and other related activities. Accordingly, a plan and application for building permit were submitted before the respondent panchayat. The respondent panchayat on 19.11.2007 approved the plan and permitted construction. The construction was completed in a time bound manner and the panchayat allotted numbers to the room. Later on, new numbers were also given as 1,2,3 and 4.

While so, some time in the year 2009, the Indian Oil Corporation invited applications to conduct and run a petrol bunk under the Kisan Seva Kendra (KSK) Scheme. The scheme aims at providing help to farmers. The respondent applied for allotment of the said petrol bunk in the 63 cents acquired by them in 2006 in which already a building existed as narrated earlier. The bunk was decided to be operated in the remaining portion. Accordingly, a layout was prepared for construction showing the location of the existing buildings. The application along with plan was submitted before the panchayat showing the existing building as its office. The panchayat forwarded the same to the Chief Town Planner for approval. The Chief Town Planner approved the same vide Ext.P2 order dated 2.9.2009 and directed the respondent panchayat to impose appropriate conditions after the Secretary of the panchayat verified the title deeds and extent of the property. *Inter alia*, by order dated 2.9.2009 the Chief Town Planner directed the respondent that the construction should be in accordance with KMBR 1999, the objection from the fire force and Pollution Control Board should be obtained and that the Secretary of the panchayat should ensure that the construction would not affect the river nearby. The permission of the Executive Engineer, PWD (Road Division) should also be obtained, it was directed in Ext.P2.

It was further stated that on the basis of Ext.P2, the District Collector issued NOC for the installation of petroleum retail outlet. On completion of all the formalities, the IOC who is the competent authority granted licence dated 31.3.2009. It is stated that the said licence is being renewed from time to time as per Rule 18 of the Petroleum Rules,2002. It is further stated that office of the petrol bunk is housed in one of the rooms in the building which was constructed in 2007. An application for licence to operate the petroleum outlet under the Panchayat Raj Act from the petitioner was also made in the year 2009 itself. The petitioner did not take any action for issue of licence. Therefore, the petrol bunk was operated by virtue of the deemed licence as per Section 236(3) of the Kerala Panchayat Raj Act. Similar applications were being submitted every year thereafter.

The respondent points out that the petitioner panchayat apparently due to some political issues between the president of the respondent society and the petitioner panchayat, schemes were hatched at the instance of the panchayat to shut down various activities of the respondent. At the instance of the president of the panchayat, the petitioner issued Ext.P4 order dated 18.1.2014 on the basis of its resolution dated 27.12.2013 asking the respondent to stop functioning of the petrol bunk on the ground that the said construction was illegal. Challenging Ext.P4, the respondent approached the learned Tribunal for LSGI under Section 276(4) of the Act in Appeal No.97/2014 and the learned Tribunal had stayed the operation of Ext.P4 vide order in I.A No.150 of 2014 in Appeal No.97/2014. Copy of the file of the Tribunal for LSGI dated 27.1.2014 is produced as Ext.R1(b).

In violation of Ext.R1(b) order, the petitioner purported to issue a letter dated 15.7.2014 to the KSEB to disconnect the electric connection to the bunk on the ground that it is unauthorised. Accordingly, the KSEB issued a letter to the respondent dated 19.7.2014 informing that the electric connection to the bunk and the petrol vending machine would be disconnected. Challenging the said decision, the respondent approached this Court with W.P(C) No.19368 of 2014 and this Court stayed the operation of the decision dated 19.7.2014. The said writ petition is pending; it is stated. In the meanwhile, the petitioner issued a demand notice dated 16.5.2014 under Section 235AA of the Kerala Panchayat Raj Act assessing the property tax payable for 2009-10 to 2013-14. It was stated that for the unauthorised construction made during the year 2009-10, door No.PP.IV/V.A/02/2009 has been alloted. The respondent had shown the existing building and the same was approved vide Ext.P2 for putting up the petrol bunk additionally. However, an amount of ₹3,02,850/- was demanded as tax for the period from 2009-10 to 2013-14, an amount of ₹15,145/- towards library cess, and ₹72,684/- towards fine; totaling to ₹3,90,681/-. This was challenged in appeal under Section 276(1) of the Kerala Panchayat Raj Act before the Finance Standing Committee. The committee disposed of the appeal by order dated 17.6.2014. A re-determination of the amount was found to be necessary under Section 235AA of the Act and the matter was sent back. Thereafter, the petitioner passed fresh order assessing ₹9,96,381/- as the amount due vide letter dated 4.7.2014.

It was stated that the figure ₹9,96,381/- arrived at in the place of ₹3,90,681/- was by imposing penalty, being double the property tax for the assessed five years. The yearly tax was found to be ₹60,570/-. This was multiplied by 5 to reach ₹3,02,850/- as the property tax for five years. The property tax component of ₹3,02,850/- was multiplied by three to reach the total amount of ₹9,08,550/-. This was again challenged in appeal under Section 276 (1) of the Act before the finance Standing Committee contending that the appeal is pending before the tribunal and that if that is allowed, no such tax or amount as demanded need be paid. The committee dismissed the appeal by order dated 7.8.2014 stating that the earlier order of the committee was not challenged and the same has become final, and that the present order is a consequential order.

Challenging the same, a revision was filed under Section 276(5) of the Act before the Tribunal. It was contended therein that the challenge as to whether the bunk is constructed illegally or nor is yet to be decided and is pending consideration in appeal before the Tribunal, and if the said appeal is allowed, no such tax except the one pointed out by the Local Fund Audit Department would be payable. The report of the Local Fund Auditor, dated 3.9.2013 was forwarded to the panchayat as per Section 13 of the Local Fund Audit Act, 1994. it was pointed out in the said report that an amount of ₹33,890/- be collected towards regularisation fees and an amount of ₹59,275/- be collected towards building tax, on the basis that the plinth area is 1129 sq. feet (i.e.1129 x 50 + 59,275). It was pointed out that the annual property tax to be collected is only @ ₹3,505/-. An application for exemption from depositing the amount demanded was filed, because under Section 2767) of the Act, the necessity to deposit the tax demanded would arise as a pre-condition for entertaining the revision.

In the application for exemption, it was pointed out that the pendency of the appeal before the Tribunal challenging if allowed, no such amount as demanded now would be payable except the one pointed out by the Local Fund Audit Department. Since the Tribunal did not pass orders on the exemption application, the respondent approached this Court with W.P(C) No.24922 of 2014 wherein a detailed interim order was passed. Copy of the interim order dated 25.9.2014 is produced as Ext.R1(c). This Court in Ext.R1(c) held that payment of amounts as a pre-condition for preferring the revision under Section 276(7) of the Act shall be treated as a payment under protest and in the event of the said revision being allowed, the amounts shall be refunded by the petitioner panchayat without the requirement of any further proceeding or decision.

5. I have heard the learned counsel for the petitioner and the learned Senior Counsel for the respondent.

6. The learned counsel for the petitioner would submit that though applications were given to the petitioner by the respondent seeking licence to run the petrol bunk, those were rejected for the following reasons:

(a)The respondent has not obtained building permit for the construction of the petrol bunk as contemplated under Rule 4 of KMBR.

(b)The respondent failed to give written notice to the Secretary of the Panchayat regarding the completion of work in form in Appendix E as contemplated under Rule 20(2)(f) of KMBR.

(c)The respondent defaulted payment of property tax with respect to the construction in question as contemplated under Explanation 13 of Section 236 of the Kerala Panchayat Raj Act, 1994

(d)The Chief Town Planner has approved the layout for the construction of only two distributing machines. However, in the application dated 4.1.2014 the respondent sought for licence for running the petrol bunk which consists of 3 vending machines. The Chief Town Planner approved the layout only for two fuel outlets.

(e)The respondent has started the petrol bunk without obtaining the licence from the panchayat as contemplated under Sections 232 and 233 of the Kerala Panchayat Raj Act, 1994.

(f)the documents produced along with the application seeking licence dated 4.1.2014 cannot be treated as the documents which ought to have been produced for obtaining building permit. The respondent ought to have produced all the relevant documents to obtain building permit before starting constriction of petrol bunk. The documents produced along with the application for licence dated 4.1.2014 cannot be treated as the documents which ought to have been produced for obtaining building permit in consonance with Ext.P1 application dated 13.4.2009. This being the fact no building permit can be issued with retrospective effect to the respondent for his illegal construction. Law does not permit the petitioner to grant building permit after completing the construction. The provisions of the building rules allow only regularisation after completing the construction. There is no provision either in the Kerala Municipality Building Rules or in the Kerala

Panchayat Building Rules enabling the petitioner to grant building permit after completing the construction.

7. The gist of the argument is that the conditions stipulated by the Chief Town Planner have not been complied with by the respondent and, therefore, the permit cannot be issued. Regarding the regularisation of the installation of third machine, it was submitted by the learned counsel for the petitioner that it requires approval from the Chief Town Planner.

8. The learned Senior Counsel for the respondent, per contra, would submit that the conditions said to have been imposed by the Chief Town Planner remained in a communication between the petitioner panchayat and the Town Planner and that has never been communicated to the respondent. Though a copy of the consent issued by the Town Planner was made available for my perusal by the learned counsel for the petitioner, it appears from the face of it that the copy of the same has not been marked to respondent.

9. The definite stand taken by the respondent is that the petitioner did not do anything for years on the application submitted by the respondent and, therefore, the respondent has the benefit of deemed licence under Section 236(3) of the Kerala Panchayat Raj Act. It was submitted by the learned Senior Counsel

for the respondent that the construction was perfectly legal and as directed by the Chief Town Planner in Ext.P2. The learned Tribunal also found that the construction was legal and that the respondent should seek regularisation of the third fuel distributor alone.

10. The arguments with regard to Rules 20(2)(f) and 22(2) of the KMBR are questions now raised in the writ petition and the petitioner never had such a case before the Tribunal in the written statement filed therein. If the petitioner has a case that the respondent willfully disobeyed the directions given by them, they could have rejected the applications. According to the learned Senior Counsel the alleged rejection has never been communicated to the respondent, except for the rejection in 2014, out of which this writ petition arises.

11. It is crucial to note that the application for licence to operate the petroleum outlet under the Panchayat Raj Act from the petitioner panchayat was also made in the year 2009 itself. However, the panchayat did not take any decision for issue of licence/permit. Therefore, the petrol bunk was operated by virtue of deemed licence as per Section 236(3) of the Panchayat Raj Act. The learned Senior Counsel for the respondent would submit that similar applications were being submitted every year thereafter.

12. Regarding the third unit, the learned Senior Counsel for the respondent would submit that as directed by the learned Tribunal, the respondent society has submitted an application for regularisation. If such an application for regularisation has been submitted by the respondent society, it is open to the petitioner panchayat to forward the same to the Chief Town Planner if the same has not already been forwarded, and the respondent shall be guided by the directions passed by the Town Planner.

13. It is relevant to note that the installation of third machine cannot be reckoned as an additional construction. It only provides another outlet to supply fuel with the existing state of affairs. The capacity of the fuel tank has not been increased, no other structural modification has been effected.

14. On a consideration of the entire materials now placed on record, this Court is of the view that there is nothing to interfere with the impugned order passed by the learned Tribunal. The learned Tribunal has considered the entire aspects in the correct perspective and have arrived at the correct conclusion.

Therefore, the writ petition fails and accordingly, it is dismissed.

It is open to the petitioner to forward the application for regulariation regarding the installation of third machine to the Chief town Planner, if the same has not already been forwarded and in the event of getting approval from the Town Planner, installation of the third unit shall be regularised by the petitioner as directed by the Tribunal.

Sd/-
A.V.RAMAKRISHNA PILLAI
JUDGE

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