

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

WP(C).No. 5665 of 2014 (G)

PETITIONER(S):

1. **SABY CHACKO, S/O.M.S.CHACKO,AGED 52 YEARS,
MALIYEKKAL, EAST KALOOR (P.O),
THODUPUZHA, IDUKKI DISTRICT.**
2. **SRI. NAZIR K.M., S/O.MUHAMMED,AGED 51 YEARS,
KALLIKUNNEL HOUSE, MADAKKATHANAM P.O.,
VAZHAKULAM - 686 670, ERNAKULAM DISTRICT.**

BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENT(S):

1. **THE MANJALLOOR GRAMA PANCHAYATH,
P.O.VAZHAKULAM, ERNAKULAM DISTRICT - 686 670,
REP. BY ITS SECRETARY.**
2. **THE KERALA STATE POLLUTION CONTROLL BOARD,
DISTRICT OFFICE, IDUKKI,
REP.BY ITS ENVIRONMENTAL ENGINEER.**
3. **THE DISTRICT MEDICAL OFFICER OF HEALTH,
O/O. THE D.M.O., ERNAKULAM - 682 011.**
4. **THE CHIEF CONSERVATOR OF FOREST,
(SPECIAL AFFORESTATION & NODAL OFFICER AND
CONVENER FOR STATE LEVEL - COMMITTEE FOR WOOD
BASED INDUSTRIAL UNITS, KERALA,
THIRUVANANTHAPURAM - 695 001.**
5. **SHIRLY JOSEPH, W/O.JOSEPH, MANAYANICKAL HOUSE,
THODUPUHA EAST (P.O)., IDUKKI DISTRICT.**

R1 BY ADV. SRI.B.HARISH KUMAR

R2 BY ADV. SRI. M.AJAY, SC

R3 & R4 BY SRI.M.P.MADHAVANKUTTY, SPL. GOVT. PLEADER(FOREST)

R5 BY DR.K.P.SATHEESAN (SENIOR ADVOCATE)

ADVS. SRI.M.R.JAYAPRASAD

SRI.P.MOHANDAS (ERNAKULAM)

SRI.ANOOP.V.NAIR

SRI.S.VIBHEESHANAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 27-01-2015 ALONG WITH WPC. 7275/2014, THE COURT
ON 20-05-2015 DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS:

- EXHIBIT P1 : TRUE COPY OF THE LOCATION SKETCH SUBMITTED BY THE 5TH RESPONDENT BEFORE THE 1ST RESPONDENT.
- EXHIBIT P2 : ANSWER GIVEN TO THE QUERY SUBMITTED BY THE 2ND PETITIONER.
- EXHIBIT P3 : NO OBJECTION CERTIFICATE GRANTED BY THE 4TH RESPONDENT.
- EXHIBIT P4 : APPLICATION MADE BY THE 5TH RESPONDENT BEFORE THE 4TH RESPONDENT ON 06.11.2008.
- EXHIBIT P5 : COMMUNICATION FROM THE 1ST RESPONDENT PANCHAYATH TO THE DISTRICT MEDICAL OFFICER, ERNAKULAM.
- EXHIBIT P6 : REPORT GIVEN BY THE DISTRICT MEDICAL OFFICER TO THE 1ST RESPONDENT.
- EXHIBIT P7 : INITIAL REPORT FROM THE TOWN PLANNER, ERNAKULAM TO THE 1ST RESPONDENT.
- EXHIBIT P8 : ORDER NO.C/1591/13/K.DIS DATED 21.08.2013 OF THE SENIOR TOWN PLANNER, ERNAKULAM.
- EXHIBIT P9 : APPLICATION MADE BY THE 5TH RESPONDENT FOR CONSTRUCTION/ESTABLISHMENT OF FACTORY/WORKSHOP DATED 21.10.2013.
- EXHIBIT P10 : DECISION NO.1 TAKEN BY 1ST RESPONDENT ON 30.10.2013.
- EXHIBIT P11 : ORDER IN APPEAL NO.1061/13 BY THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM.

RESPONDENT(S)' EXHIBITS:

- EXT.R5(A) : TRUE COPY OF THE COMPLAINT FILED BY THE 5TH RESPONDENT TO THE SECRETARY, MANJOOR GRAMA PANCHAYATH DATED 17.2.2014.
- EXT.R5(B) : PHOTOGRAPH SHOWING THE POSITION OF THE UNIT AND THE LAND OWNED BY THE PETITIONERS.
- EXT.R5(C) : TRUE COPY OF THE RELEVANT PAGES OF THE MINUTES OF THE PANCHAYATH COMMITTEE MEETING HELD ON 10.12.2013 & 30.12.2013.
- EXT.R5(D) : TRUE COPY OF THE OWNERSHIP CERTIFICATE ISSUED BY THE SECRETARY, MANJALLOOR GRAMA PANCHAYATH DATED 31.12.2013.
- EXT.R5(E) : TRUE COPY OF THE CIRCULAR ISSUED BY THE KERALA STATE POLLUTION CONTROL BOARD DATED 20.7.2011.

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- EXT.R5(F) : TRUE COPY OF THE PERMIT GIVEN BY THE MANAGER, DISTRICT INDUSTRIES CENTRE, ERNAKULAM DATED 14.3.2013.
- EXT.R5(G) : TRUE COPY OF THE NO OBJECTION CERTIFICATE ISSUED BY THE ASSISTANT DIVISIONAL OFFICER, FIRE AND RESCUE SERVICES ERNAKULAM DATED 20.5.2013.
- EXT.R5(H) : TRUE COPY OF THE RELEVANT PAGES OF THE MINUTES OF THE MANJALLOOR PANCHAYATH COMMITTEE MEETING HELD ON 22.2.2014.
- EXT.R5(I) : TRUE COPY OF THE RELEVANT PAGES OF THE HAND BOOK PUBLISHED BY KERALA INSTITUTE OF LOCAL ADMINISTRATION.
- EXT.R5(J) : TRUE COPY OF THE CONSENT TO ESTABLISH ISSUED BY THE KERALA STATE POLLUTION CONTROL BOARD DATED 18.12.2012.
- EXT.R5(K) : TRUE COPY OF THE RELEVANT PAGES OF THE NOTE FILE BY THE FIRST RESPONDENT DATED 4.6.2014.

/TRUE COPY/

P.S. TO JUDGE

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A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) Nos. 5665 & 7275 of 2014

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Dated this the 20th day of May, 2015

JUDGMENT

The order of the Tribunal for Local Self Government Institutions, Thiruvananthapuram dated 30.1.2014 in Appeal No.1061 of 2013 is under challenge in these writ petitions.

2. The petitioners in W.P(C) No.5665 of 2014, who are not parties to the appeal, are challenging the order of the Tribunal which directs the respondent panchayat to grant installation permit relating to an industrial unit to the 5th respondent (the applicant) in the said writ petition. The petitioners allege that they are the local inhabitants and if installation permit is granted to the 5th respondent, the proposed industrial unit would pollute the area thereby causing irreparable harm and nuisance to the petitioners. They would further allege that all the documents produced by the 5th respondent for obtaining consent are not genuine.

3. W.P.(C) No.7275 of 2014 is filed by the panchayat concerned. The panchayat is also aggrieved by the order of the Tribunal which directs them to grant installation permit to the 1st

respondent in that writ petition. They would contend that the installation of the industrial unit would cause health hazards as well as nuisance to the adjacent property owners, who are not arrayed as party respondents before the Tribunal. They point out that the Tribunal, without hearing the affected parties and without considering the health hazards caused to the neighbouring property owners, directed the panchayat to grant installation permit for conducting the saw mill. According to them, the 1st respondent has procured NOC from the Government authorities after producing false documents and consent certificates.

4. Detailed counter affidavits have been filed by the applicant in both the writ petitions stating that he has obtained all required permits from the statutory authorities and it was after considering the same that the Tribunal for Local Self Government Institutions has passed the impugned order.

5. I have heard Mr. K. A. Salil Narayanan, the learned counsel for the petitioners in W.P(C) No.5665 of 2014, Mr. B. Harish Kumar, the learned counsel for the petitioner in W.P(C) No.7275 of 2014, Dr. K. P. Satheesan, the learned senior counsel for the applicant and Mr. M. P. Madhavankutty, the learned Special

Government Pleader in the matter.

6. While the petitioners would argue that the impugned order of the Tribunal was passed without hearing the affected parties, the learned senior counsel for the applicant would submit that the petitioner panchayat is bound to comply with the impugned order as the Tribunal found that the previous order passed by the petitioner panchayat was legally unsustainable. According to the learned senior counsel, there is nothing illegal or arbitrary in the said which can create any grievance to the petitioner panchayat.

7. For convenience of discussion, the parties and the documents can be referred to as they are arrayed in W.P(C) No.7275 of 2014.

8. Ext.P1 application for construction of a saw mill in the property having an extent of 37.5 cents comprised in Sy. Nos.556/4-2 and 556/4-3 of Manjalloor village was submitted by the applicant. As provided under the statute, Ext.P2 NOC from the 4th respondent who is the Chief Conservator of Forest was also produced before the petitioner panchayat along with Ext.P1 application. The definite case of the 1st respondent is that she was owning a saw mill at Mattoor in Kalady Grama Panchayat and the

said unit was proposed to be shifted to the property proposed in the aforesaid survey numbers. On the basis of the said request, the 4th respondent gave Ext.P2 NOC wherein the survey number is clearly specified and the name of the panchayat is shown as Manjalloor Grama Panchayat. It could be seen from Ext.P2 that it was given by the 4th respondent after specifying that the 1st respondent was going to shift the unit from Mattoor to Manjalloor. Since the petitioner panchayat was under the belief that Ext.P2 was obtained suppressing material facts from the 4th respondent, the petitioner panchayat approached the 4th respondent for clarification. Accordingly, the 4th respondent clarified that the work 'existing' used in Ext.P2 is only for the purpose of shifting the unit to Manjalloor Grama Panchayat. True copy of the clarification letter issued to the petitioner panchayat by the 4th respondent on 7.5.2014 is produced as Ext.R1(a). It could be seen that the work 'existing' represents not the location, but the 'existing unit'.

9. It is crucial to note that the 1st respondent never sought for renewal of installation permit. As the unit was functioning at Mattoor and as the 1st respondent wanted to shift the unit to Manjalloor, only installation permit was sought for. The application

was not for renewal of installation permit.

10. Ext.P3 is the location sketch and Ext.P4 is the consent letter issued by the Kerala State Pollution Control Board. On the basis of the aforesaid documents, the committee of the petitioner panchayat by resolution dated 5.3.2010 directed the Secretary to take necessary steps for issuing building permit and also installation permit for the saw mill after obtaining necessary certificates from the competent authorities. Ext.R1(b) is the copy of the said resolution. Pursuant to Ext.R1(b), the petitioner panchayat requested for concurrence from the 3rd respondent viz., the District Medical Officer (DMO), to the effect that no health hazards would occur to the neighbouring residents. This was as per Ext.P5. The 3rd respondent replied to Ext.P5 and informed the petitioner panchayat as per Ext.R1(c) dated 14.6.2013 that there is no possibility of health hazards due to the installation of 39HP electric motor in the site proposed for running the saw mill.

11. The argument advanced by the learned counsel for the petitioner panchayat that Ext.P5 was not correctly answered by the 3rd respondent does not appear to be true in the light of Ext.R1(c). The Senior Town Planner, Ernakulam by Ext.P7 order granted green

signal to the permit after clarification. However, certain conditions were stipulated in Ext.P7 order. The learned senior counsel for the 1st respondent points out that it was after satisfying all the conditions, the building permit was given to the 1st respondent by the Secretary of the petitioner panchayat. Ext.R1(d) is the building permit so issued. It was on the basis of Ext.R1(d) that the 1st respondent constructed the building. Thereafter the building was numbered by the Secretary of the petitioner and Ext.R1(e) ownership certificate dated 31.12.2013 was also issued allotting building numbers. In the meanwhile, the petitioner panchayat received a complaint from the adjacent property owners on 7.10.2013. One of the local residents sought information under the Right to Information Act as to whether the installation permit given to the 1st respondent at the premises in Manjalloor Grama Panchayat was for functioning the saw mill. The panchayat as per Ext.R1(f) dated 28.10.2013 replied that the building and installation permit given was for running a saw mill.

12. On the basis of the alleged complaint, the panchayat committee as per Ext.P9 decided not to give installation permit to the 1st respondent. The 1st respondent has produced Ext.R1(g)

dated 14.3.2013 which is the true copy of the permit given by the Manager, District Industries Centre, Ernakulam, Ext.R1(h) dated 20.5.2013 which is the true copy of the NOC issued by the Assistant Divisional Officer, Fire and Rescue Services, Ernakulam. The Kerala State Pollution Control Board (the 2nd respondent) had issued Ext.R1(i) certificate dated 20.7.2011 which specifies that the minimum set back for saw mill is 10 metres and the minimum distance from the saw mill to residences and other establishments is 25 metres. The 1st respondent contends that there are no residents within the radius of 25 metres from his unit.

13. It is crucial to note that one of the signatories to Ext.P2 complaint had approached the Munsiff's Court, Muvattupuzha with O.S No.22 of 2014 (Ext.R1(j) is the copy of the plaint) with a prayer for restraining the 1st respondent by a permanent prohibitory injunction from starting saw mill in the property without obtaining a valid licenses, permission and NOC. As Ext.P9 decision was taken by the petitioner panchayat without affording the 1st respondent an opportunity of being heard, he challenged the said decision before the Tribunal for Local Self Government Institutions. During the pendency of the appeal, the 1st respondent requested the

panchayat committee to conduct a site inspection and to ascertain whether there is violation of distance rules, Accordingly, the panchayat as per Ext.R1(k) resolution dated 10.12.2013 constituted a sub committee for site inspection which conducted the site inspection and submitted Ext.R1(l) report dated 23.12.2003. The sub committee measured the distance of each and every building and found that there was no violation of the distance rules and the construction was made strictly in accordance with law and the same is legally valid. Therefore, it can be seen that the 1st respondent is entitled to installation permit as she has satisfied all the statutory requirements. The learned senior counsel for the 1st respondent would argue that, that is the reason why the Tribunal had allowed the appeal and passed the impugned order.

14. As it is evident from the materials now placed on board that the 1st respondent has obtained clearance from all the statutory authorities under the statute a reconsideration of the same by the Tribunal after affording the petitioners in W.P(C) No.5665 of 2014 would be an exercise in futility. After granting licence to construct the building and to start the unit, the petitioner panchayat cannot cancel the licence on a complaint not based on

actual facts. If there is any chance for pollution, it is open to the petitioner panchayat to require clearance from the Kerala State Pollution Control Board.

15. On a consideration of the entire materials now placed on board, the petitioners are not entitled to get the reliefs prayed for.

Therefore, the writ petitions fail and accordingly, they are dismissed.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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