

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

TUESDAY, THE 3RD DAY OF MARCH 2015/12TH PHALGUNA, 1936

WP(C) .No. 5725 of 2015 (M)

PETITIONER(S) :

PRATHEESH P. ,
S/O.AYYAPPAN P. , THADAYIL HOUSE,
CHELAMBRA P.O. ,
MALAPPURAM DISTRICT, PIN - 673 634.

BY ADVS.SRI.JIMMY GEORGE
SRI.M.JOSE ANTONY
SRI.M.R.SURESH.

RESPONDENT(S) :

-
1. DISTRICT COLLECTOR,
MALAPPURAM DISTRICT, PIN - 673 505.
 2. CHIEF MANAGER,
INDANE AREA OFFICE, INDIAN OIL CORPORATION LTD. ,
2ND FLOOR, PMK TOWER, WAYANAD ROAD,
CALICUT-673 020.
 3. STATE OF KERALA,
REP.BY ITS CHIEF SECRETARY, GOVERNMENT OF KERALA,
SECRETARIAT, TRIVANDRUM-695 001.

BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR &
BY SENIOR GOVERNMENT PLEADER SRI.JOSEPH GEORGE.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 03-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ivs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXHIBIT-P1: COPY OF THE ORDER OF THE 1ST RESPONDENT DATED 12.4.2013 GRANTING PERMISSION TO CONVERT THE LAND.
- EXHIBIT-P2: COPY OF ORDER FROM CHELEMBRA GRAMA PANCHAYAT GRANTING PERMISSION CONSTRUCTION OF GODOWN.
- EXHIBIT-P3: COPY OF NOC DATED 19.7.2013 FROM THE ASST. DIVISIONAL OFFICER, FIRE AND RESCUE SERVICE.
- EXHIBIT-P4: PHOTOCOPY OF THE SITE OF THE GODOWN.
- EXHIBIT-P5: COPY OF THE ORDER OF 1ST RESPONDENT DATED 6.1.2014.
- EXHIBIT-P6: COPY OF THE LETTER DATED 24.12.2013 ISSUED BY THE CONTROLLER OF EXPLOSIVES.
- EXHIBIT-P7: COPY OF THE REVISED PLAN.
- EXHIBIT-P8: COPY OF ORDER DATED 4.11.14 OF KERALA STATE COMMISSION FOR SCHEDULED CASTE & SCHEDULED TRIBE.
- EXHIBIT-P9: COPY OF PETITION DATED 11.12.2014 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXHIBIT-P10: COPY OF THE IMPUGNED ORDER DATED 18.1.2015 OF 1ST RESPONDENT.
- EXHIBIT-P11: COPY OF THE COMMUNICATION DATED 1.12.2014 ISSUED BY THE 2ND RESPONDENT.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

P.R. RAMACHANDRA MENON, J.

.....
W.P.(C)No.5725 OF 2015
.....

Dated this the 3rd day of March, 2015

J U D G M E N T

The correctness and sustainability of Ext.P10 order passed by the 1st respondent, whereby the NOC applied for to construct an LPG Godown in the concerned property stands rejected, is the subject matter of challenge in this writ petition.

2. The petitioner has been selected by the respondent Corporation to have an LPG Dealership under the 2nd respondent subject to the terms and conditions mentioned in the 'letter of allotment'. The petitioner identified the spot and NOC was sought to be issued by the 1st respondent. It is the case of the petitioner that the property herein was never a paddy land or wet land and was lying as a converted land for several years. There is no cultivation in the property or in the nearby properties and the land is not fit for cultivation at all.

3. Since the application for NOC was not positively considered, the petitioner was constrained to approach this Court by filing W.P.(C) No.5633/2013, which was disposed of

directing the 1st respondent to have the matter considered in the light of the relevant records. The matter was accordingly considered and Ext.P1 order was passed on 12.04.2013, whereby the petitioner was permitted to use the property for other purposes, that is for setting up the godown, subject to the conditions specified therein. As evident from Ext.P1, the 1st respondent observed that, as per the revenue records, the classification of the portion of the property was already changed and that there were several improvements situated in the property. It is also observed with reference to the report of the Village Officer that no cultivation is being done anywhere in the nearby properties and that the same is not situated in a densely populated area. Satisfaction is also recorded as the nature of the property which is not fit for cultivation as given in Ext.P1 order. It was pursuant to Ext.P1 order that the local authority granted Ext.P2 building permit on 30.04.2013.

4. The petitioner obtained all the requisite clearances including NOC from the Department of Fire and Rescue as borne by Ext.P3. But, subsequently, the 1st respondent without any regard to Ext.P1, simply rejected the application

for NOC as per Ext.P5 order dated 06.01.2014, mainly on the basis of some protests raised by somebody who was not in good terms with the petitioner, whose name is mentioned in page 2 of Ext.P5 (one 'Mr. Raveendra Kumar P. Kottam Parambath House'). As per Ext.P5, the earlier order passed by the 1st respondent vide Ext.P1 was cancelled. Thereafter, the petitioner approached this Court by filing a writ petition, which was subsequently withdrawn with liberty to proceed with the matter before the Commissioner for Scheduled Castes and Scheduled Tribes, as there was instance of harassment of scheduled caste, to which community the petitioner belongs. Ext.P8 order came to be passed by the said Commission on 04.11.2014, wherein some specific observations were made as to the course and proceedings. The said order was produced before the 1st respondent, who considered the same and passed Ext.P10 order dated 18.01.2015, reiterating the stand and declining to issue NOC. This in turn is under challenge in this writ petition, mainly for the reason that steps are being pursued by the 2nd respondent as well to oust the petitioner from the field for non-satisfaction of the requirements.

5. Heard the learned Government Pleader as well as the learned Standing Counsel appearing for the 2nd respondent.

6. It is seen from the materials produced before this Court and in particular the contents of Ext.P8 that the property concerned herein was lying as a converted land for the past several years and that there was no cultivation in the said land it is certified that the said land was not fit for cultivation and no cultivation exists in the nearby lands as well and further that there were lots of improvements. It is also mentioned in Ext.P10 that even as per the entries in the data bank register, reclamation was effected much prior to the commencement of Act 28 of 2008. This being the position, the provisions of Act 28 of 2008 are not attracted to the case in hand, in view of the law declared by this Court in the decision reported in '**Jafarkhan v. Kochumarakkar**' [2012 (1) KLT 491].

7. In such circumstances, the matter requires to be considered with reference to physical nature of the property as observed by the Full Bench decision in '**Praveen v. Land Revenue Commissioner**' [2010 (2) KLT 617]. It has also made clear by this Court that, if the provisions of Act 28 of 2008 are not attracted then the property can be made use of

even for industrial purposes as per the verdict passed in **'Sunil v. Killimangalam Panjal 5th Ward, Nellulpadaka Samootham** [2012 (4) KLT 511].

8. In the above circumstances, this Court finds that the course and proceedings finalized by the 1st respondent leading to Ext.P10 are not correct or sustainable and it is liable to be intercepted. Exts.P10 stands set aside. There will be a direction to the 1st respondent to issue 'NOC' applied for in respect of the property concerned herein, for setting up the LPG Godown within 'one month' from the date of receipt of a copy of this judgment. It is for the petitioner to proceed with further steps before the 2nd respondent on the strength of the NOC to be issued by the 1st respondent, subject to the satisfaction of the requirements as per the 'letter of allotment' given by the 2nd respondent. *'Status quo'* shall be maintained till such time.

The writ petition stands allowed. No costs.

Sd/-
P.R.RAMACHANDRA MENON
JUDGE

//true copy//

P.S. To Judge

St/-