

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRA

FRIDAY, THE 7TH DAY OF AUGUST 2015/16TH SRAVANA, 1937

WP(C).No. 12860 of 2009 (B)

PETITIONER:

1. TARANJEET NAGPAL @ KAPIL,
AGED 44 YEARS, S/O. TRILOK NAGPAL, 9-F
LINK HEIGHTS, PANAMPILLY NAGAR, ERNAKULAM
COCHIN-682036.
2. ANJU NAGPAL, AGED 40 YEARS,
W/O. TARANJEET NAGPAL, 9-F, LINK HEIGHTS
PANAMPILLY NAGAR, ERNAKULAM, COCHIN-686036.

BY ADV. SRI. PEEYUS A. KOTTAM

RESPONDENT(S):

1. STATE OF KERALA,
REP. BY THE PRINCIPAL SECRETARY TO GOVT.
LOCAL SELF GOVT. (RB) DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM-695001.
 - *[2. THE MARADU (SPECIAL GRADE) GRAMA
PANCHAYATH, MARADU P.O., KOCHI-682304
REP. BY ITS SECRETARY.
 3. THE SECRETARY,
MARADU (SPECIAL GRADE) GRAMA PANCHAYATH, MARADU P.O.
KOCHI-682304.]
 - *2. THE MARADU MUNICIPALITY,
MARADU P.O., KOCHI – 682 304,
REPRESENTED BY ITS SECRETARY.
 3. THE SECRETARY,
MARADU MUNICIPALITY,
MARADU PO, KOCHI – 682 034.
- (R2 & R3 ARE CORRECTED AS ABOVE AS PER ORDER DT.10.7.2015 IN I.A.9356/15)

R1 BY GOVT. PLEADER SRI P.V. ELIAS
R2 BY ADV. SRI. S. CHANDRASENAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC.12860/2009

PETITIONER'S EXTS:

- EXT.P1: COPY OF GAZETTE NOTIFICATION DT.20.7.1998 PUBLISHED IN GAZETTE DT.31.7.98 ISSUED BY THE LOCAL ADMINISTRATION (D) DEPARTMENT.
- EXT.P2: COPY OF BUILDING PERMIT DT.23.9.2006 ISSUED TO THE PETITIONERS BY THE 3RD RESPONDENT.
- EXT.P3: COPY OF ORDER DT.18.5.07 ISSUED BY PRINCIPAL SECRETARY TO 3RD RESPONDENT.
- EXT.P4: COPY OF NOTICE DT.4.6.07 ISSUED TO PETITIONERS BY 3RD RESPONDENT.
- EXT.P5: COPY OF REPLY DT.29.6.07 FILED BY PETITIONERS BEFORE THE 3RD RESPONDENT.
- EXT.P6: COPY OF PROCEEDING DT.24.7.07 ISSUED BY SECRETARY, MARADU GRAMA PANCHAYAT.
- EXT.P7: COPY OF LETTER DT.16.3.09 ISSUED BY SECRETARY, MARADU GRAMA PANCHAYAT.
- EXT.P8: COPY OF CIRCULAR NO.24136/RA1/07/LSG (RA) DT.20.6.07 ISSUED BY LOCAL SELF GOVERNMENT (RA) DEPARTMENT.
- EXT.P9: COPY OF ORDER DT.28.07 OF THIS COURT IN W.P.(C)No. 23637/07-L
- EXT.P9(A): COPY OF ORDER DT.10.9.07 OF THIS COURT IN WPC.23637/07.
- EXT.P10: COPY OF ORDR DT.27.7.07 OF THIS COURT IN WPC.23046/07.
- EXT.P11: COPY OF COUNTER AFFIDAVIT DT.10.10.07 IN WPC.23276/07 ALONG WITH GOMS.NO.143/LSGD DT.31.5.07 ISSUED BY LSG DEPARTMENT.

RESPONDENTS' EXTS: NIL

TRUE COPY

P.S.TO JUDGE

dsn

ANIL K.NARENDRA, J

W.P.(C)No.12860 Of 2009

DATED THIS THE 7th DAY OF AUGUST, 2015

JUDGMENT

The petitioners, who have been issued with Ext.P2 building Permit(No.A1 (2) 236/06-07) for constructing four residential buildings in Survey Nos.390/2, 390/3, 395/2 of Maradu Village in Kanayannur Takluk in terms of the approved building plan attached to the said building permit, have approached this Court in this Writ Petition seeking a writ of certiorari to quash Exts.P3, P6 and P7.

2. Ext.P3 is a Government letter dated 18.5.2007 by which the Principal Secretary to Government has forwarded a list containing 31 building permits granted by the erstwhile Maradu Grama Panchayat in respect of which violation/anomalies were detected during the inspection of the Senior Town planner (Vigilance). The Government have directed the Secretary of the Grama Panchayat to revoke all the building permits by invoking the powers under Rule 16 of the Kerala Municipality Building Rules, 1999 and report to the Government. Based on Ext.P3, the 1st petitioner was issued with Ext.P4 notice dated 4.6.2007 of the

Secretary of Maradu Grama Panchayat by which he was directed to show cause why Ext.P2 building permit shall not be cancelled in view of Ext.P3 Government letter. Going Ext.P4 notice, the violation detected in Ext.P2 building permit issued to the petitioners is zonal violation.

3. On receipt of Ext.P4 notice, the petitioners submitted Ext.P5 reply dated 29.6.2007. Thereafter the Secretary of the Grama Panchayat issued Ext.P6 order dated 24.7.2007 revoking Ext.P2 building permit. This was followed by Ext.P7 notice dated 16.3.2009 by which the 1st petitioner was directed to stop all further constructions based on Ext.P2 building permit. It was in such circumstances, the petitioners have approached this Court in this Writ Petition seeking a writ of certiorari to quash Exts.P3, P6 and P7.

4. By order dated 5.5.2009, this Court granted an interim stay of Exts.P3, P6 and P7 and all further proceedings pursuant thereto for a period of one month, which order of stay was extended until further orders by order dated 8.7.2009.

5. During the pendency of this Writ Petition, the Maradu Grama Panchayat became a Municipality. By order dated

10.7.2015 in I.A.No.9356/15, the Maradu Municipality and its Secretary were substituted as respondents 2 and 3 in this Writ petition.

6. In spite of service of notice, neither the 1st respondent, nor respondents 2 and 3 have chosen to file any counter affidavit.

7. Today when the case was taken up for final hearing, the learned counsel for the petitioners submitted that the issue raised in this Writ Petition is squarely covered in favour of the petitioners by the judgment of a Division Bench of this Court in W.A.No.132/13 and connected cases.

8. Writ Appeal No.132/2013 arises out of the judgment of the learned Single Judge of this Court in W.P.(C) No.22590/2007. A reading of the judgment of the Division Bench referred to above makes it explicitly clear that, Ext.P3 Government letter dated 18.5.2007 produced in this Writ writ petition was Ext.P8 in W.P.(C)No.22590/07. Similarly, a notice similar to Ext.P4 notice dated 4.6.2007 issued by the Maradu Grama Panchayat was produced as Ext.P9 notice dated 4.6.2007 in that writ petition. After considering the legal provisions especially the provisions under Rule 16 of the Kerala Municipality

Building Rules, 1999, the Division Bench came to the conclusion that power under Rule 16 can be invoked by the Secretary only if he is satisfied that the permit was issued by mistake or that a patent error has crept in it or that the permit was happened to be issued on misrepresentation of fact or law or that the construction if carried on will be a threat to life or property. The Division Bench in the aforesaid judgment held that the stand taken to cancel the permit pursuant to Ext.P8 Government letter dated 18.5.2007 and Ext.P9 notice dated 4.6.2007 cannot be sustained. Paras.11 to 15 of the judgment reads thus:

“11. We have considered the submissions made. In so far as this case is concerned, the challenge in the writ petition was against Exts.P8 and P9. Ext.P8 is the communication issued by the first respondent requiring the second appellant to cancel the 31 building permits listed in the enclosure. It was based on Ext.P8 the second appellant issued Ext.P9 where it is stated that by Ext.P8 communication, it is informed that the violations indicated therein are committed in the grant of building permit. Evidently therefore, it was in compliance of the directions in Ext.P8 to revoke the listed building permits that Ext.P9 notice was issued. This factual position is all the more clear from the averments in the counter affidavit filed by the Municipality wherein paragraph 11 it is stated thus:

"The anomaly/violation noted in this particular case are CRZ I Zonal violation, FAR is more than 1.25, Violations of open space, copy of final plan not available in the file, access width not shown etc. Under these circumstance this respondent had the only option to issue a notice under rule 16 of KMBR and thereafter revoke permit issued in compliance of the Govt. direction. This fact of compliance was reported to the 1st respondent also." (emphasis supplied)

12. Evidently therefore, without any application of mind W.A. Nos.132, 148, 150, 151 & 199 of 2013 7 and acting under the dictates of the first respondent, Ext.P8 was issued by the 2nd appellant and that finding of the learned Single Judge, in the facts and circumstances pointed out, is a perfectly justified one.

13. Apart from that in so far as this case is concerned, even according to the appellant the proceedings initiated are under Rule 16 of the KMBR, 1999. Rule 16 reads thus:

"16. Suspension and Revocation of permit - The Secretary shall suspend or revoke any permit issued under these rules if it is satisfied that the permit was issued by mistake or that a patent error has crept in it or that the permit was happened to be issued on misrepresentation of fact or law or that the construction if carried on will be a threat to life or property."

14. The reading of the above provision shows that this rule can be invoked only if the Secretary is satisfied that

(1) the permit was issued by mistake or (2) that in issuing the permit a patent error has crept in or (3) where the permit was happened to be issued on misrepresentation of fact or law or (4) that the construction, if carried on, will be a threat to life or property. Thus, unless one of the aforesaid four circumstances is shown to exist the provisions of the Rule 16 cannot be invoked.

15. Having seen the circumstances on the basis of which Rule 16 can be invoked, we shall now turn to Ext.P9, the show W.A. Nos.132, 148, 150, 151 & 199 of 2013 8 cause notice issued by the second appellant. Reading of the show cause notice shows that the premise on which this notice has been issued is that, the Senior Town Planner (Vigilance) has informed that on inspection found that in the issue of permit to the third respondent, the irregularities mentioned in the notice were noticed. This statement in Ext.P9, does not make out any one of the four grounds specified in Rule 16 of the KMBR. In our view, since the reasons stated in Ext.P9 do not come within any one of the four grounds mentioned in Rule 16 of the KMBR, the whole proceedings are fundamentally erroneous and for that reason itself, Ext.P9 could not have been sustained."

9. In view of the judgment of the Division Bench of this Court in W.A.No.132/13 and connected cases, the challenge made in this Writ Petition against Ext.P3 Government letter dated 18.5.2007 can only be sustained. It was based on Ext.P3

Government letter dated 18.5.2007, the 3rd respondent has issued Ext.P4 notice to the 1st petitioner pointing out zonal violation, which culminated in Ext.P6 order passed by the 3rd respondent followed by Ext.P7 notice. Since Ext.P4 notice issued by the 3rd respondent is solely based on Ext.P3 Government letter dated 18.5.2007, which has already been interfered with by a Division Bench of this Court in the judgment in W.A.No.132/2013 and connected cases, the challenge against Ext.P6 order and P7 notice issued by the 3rd respondent can only be sustained. But it is made clear that this Court has not expressed anything about the zonal violation pointed out in Ext.P4 notice.

In the result, this Writ petition will stand allowed, setting aside Ext.P3 order passed by the 1st respondent and Ext.P6 order and P7 notice issued passed by respondents 2 and 3.

Sd/-
ANIL K.NARENDRA,
JUDGE

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