

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 13TH DAY OF FEBRUARY 2015/24TH MAGHA, 1936

WP(C).No. 13070 of 2010 (G)

PETITIONER(S):

**T.VILASINI, W/O. CHANDRAN,
THADATHARIKATHU VEEDU, PALLITHARA, KIAZHAKKUMTHARA
VELLANNADU, TRIVANDRUM.**

**BY ADVS.SRI.THOMAS ABRAHAM
SRI.DIPU.R
SMT.MERCIAMMA MATHEW
SRI.K.S.HARIDAS
SRI.V.RENJITH KUMAR**

RESPONDENT(S):

- 1. VELLANADU GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY, VELLANADU, TRIVANDRAUM.**
- 2. SECRETARY,
VELLANADU GRAMAPANCHAYAT, VELLANADU, TRIVANDRUM.**

**BY ADV. SRI.V.A.MUHAMMED
BY ADV. SRI.V.K.GOPALAKRISHNAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

W.P.(C).No. 13070/2010

APPENDIX

PETITIONER(S)' EXHIBITS

- P1. COPY OF THE CONSENT ORDER FROM THE POLLUTION CONTROL BOARD.
- P2. COPY OF THE COMPETITION CERTIFICATE BY THE BIO GAS TURKEY AGENT.
- P3. COPY OF THE RECEIPT EVIDENCING PETITIONER'S APPLICATION FOR LICENCE.
- P4. COPY OF THE JUDGMENT OF THIS COURT IN W.P.(C).No. 35025/2005.
- P5. COPY OF THE ORDER DTD.6.9.2007 BY THE OMBUDSMAN FOR L.S.G. INSTITUTIONS IN O.P.NO.492.
- P6. COPY OF THE OBJECTION AGAINST THE COMPLAINT BEFORE THE OMBUDSMAN.
- P6A. COPY OF THE COMMUNICATION SIGNED BY 10 RESIDENTS IN THE NEIGHBOURHOOD.
- P7. COPY OF THE NOTICE DATED 20.1.2010 BY R2.
- P8. COPY OF THE APPEAL UNDER SEC.276(1) OF the PANCHAYAT RAJ ACT BEFORE R1.
- P9. COPY OF THE NOTICE DTD.24.3.2010 BY R2.
- P10. COPY OF THE NOTICE DTD.29.3.2010 BY R2.
- P11. COPY OF THE APPEAL DTD.6.4.2010 BEFORE R1.
- P12. COPY OF THE ORDER DTD.7.4.2010 ENDORSED BY THE TRIBUNAL ON THE DOCKET OF EXHIBIT P11 APPEAL.

RESPONDENT(S)' EXHIBITS:

NIL.

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P.S. to Judge

ALEXANDER THOMAS, J.

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W.P.(C).No. 13070 of 2010

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Dated this the 13th day of February, 2015

J U D G M E N T

The petitioner herein is aggrieved by the decision contained in the impugned Ext.P-7 proceedings dated 20.1.2010 of the Secretary of the 1st respondent-Vellanadu Grama Panchayat, Thiruvananthapuram District, whereby the petitioner has been directed to close down her piggery farm. It is the case of the petitioner that she had obtained Ext.P-1 consent letter dated 28.7.2009 issued by the Kerala State Pollution Control Board, District Office, Thiruvananthapuram and Ext.P-2 Bio Gas Plant Completion Certificate etc. Aggrieved by Ext.P-7 decision of the Secretary of the Grama Panchayat, the petitioner had filed Ext.P-8 appeal purportedly under Sec.276(1) of the Kerala Panchayat Raj Act before the 1st respondent-Grama Panchayat. Without entertaining Ext.P-8 appeal, the Secretary of the Grama Panchayat, as per Ext.P-9, directed the petitioner to prefer an appeal before the statutory Tribunal constituted for Local Self

Government Institutions as per the provisions of the Kerala Panchayat Raj Act. The petitioner thereupon had preferred Ext.P-11 appeal before the said statutory Tribunal and the Tribunal, as per the impugned proceedings in Ext.P-12, has returned Ext.P-11 appeal to the petitioner with the endorsement that as against the impugned order of the Secretary, directing stoppage of the pig farm, appeal lies only to the Panchayat as per the provisions of the Sec.276(1) of the Kerala Panchayat Raj Act. Accordingly, Ext.P-11 appeal was returned to the petitioner by the Tribunal for presentation before the Panchayat. It is in the background of these facts and circumstances that the petitioner had preferred this Writ Petition with the following prayers:

"i. call for the records leading to Exhibits P7, P9 and P10 notices/orders and quash the same by issuing a writ of certiorari or any other appropriate writ order or direction.

ii) issue a writ of mandamus or any other appropriate writ, order or direction commanding the respondents not to take any coercive steps against the petitioner's piggery farm.

iii) issue a writ of mandamus or any other appropriate writ, order or direction commanding the respondents to grant licence to the petitioner's piggery farm on the basis of the letter of consent from the Pollution Control Board.

iv) issue a writ of mandamus or any other appropriate writ, order or direction commanding the 1st respondent to adjudicate Exhibit P8 appeal filed by the petitioner.

And

v) grant such other and further reliefs as deemed by this Hon'ble Court fit and proper to grant in the facts circumstances circumstances of this case."

2. Though the Writ Petition was admitted on 9.4.2010 and the respondents have entered appearance through counsel, the respondent Panchayat authorities have not till date cared to file any counter affidavit in the matter.

3. From the materials on record, it is seen that Ext.P-1 consent order dated 28.7.2009 was valid only upto 1.7.2012. Therefore, the validity of the said consent letter has expired by efflux of time. One of the main prayers in the Writ Petition is for a mandamus to the 1st respondent Grama Panchayat to adjudicate and decide on Ext.P-8 statutory appeal on merits.

5. As per the provisions of Sec.276(1) of the Panchayat Raj Act, an appeal shall lie to the Panchayat against the notice issued or order passed or action taken by the President or Secretary of the Panchayat in exercise of the powers conferred as per the provisions of this Act, Rules, Bye-laws or regulations made thereunder, except under Secs. 235I, 235J, 235N, 235W and 235X. The learned counsel for the petitioner would submit that, as the impugned order has been passed by the Secretary of

the Grama Panchayat, the appeal would only lie to the Grama Panchayat as per Sec.276(1) of the Act and not before the Tribunal. The Tribunal had already held that it has no jurisdiction to entertain Ext.P-8 appeal on merits and that it is for the petitioner to present the appeal before the Grama Panchayat for adjudication.

6. Heard Sri.Thomas Abraham, learned counsel for the petitioner and Sri.V.A.Muhammed, learned counsel appearing for the respondent Panchayat authorities.

7. In view of the efflux of time, the validity period of Ext.P-1 consent order issued by the Pollution Control Board has already expired on 1.7.2012. Therefore, there is no point in directing consideration of Ext.P-8 appeal of the petitioner by the appellate authority concerned. In a similar case, this Court, as per Ext.P-4 judgment rendered on 15.12.2005 in W.P.(C). No.35025/2005, had directed that notwithstanding the fact that the piggery farm run by the petitioner therein was directed to be closed down by the Panchayat authorities and other authorities concerned, the petitioner therein will be at liberty to move the

Panchayat and the Pollution Control Board for licence, clearance, etc. and run the piggery farm in accordance with law after obtaining statutory clearances. Accordingly, it is ordered that it is for the petitioner to apply for fresh issuance of consent order by the Pollution Control Board and get all other necessary clearances, if any, required as per the rules. On making an application before the Pollution Control Board, the Pollution Control Board will conduct an inspection of the site of the petitioner and take into account the fact that it has already issued Ext.P-1 consent order earlier on 28.7.2009 and take a decision in the matter of application of the petitioner for grant of consent order by the Pollution Control Board without any further delay. On getting the consent order and other clearances, if any required, the petitioner will be at liberty to make an application before the respondent Panchayat authorities concerned and if the petitioner has obtained all the necessary clearances as required by law, the competent authority among the respondent Panchayat shall consider the said application and take a decision thereon in accordance with law. Such a decision shall be taken by

the competent authority of the respondent Panchayat within six weeks from the date of presentation of the said application along with the requisite clearances from the authorities concerned, untrammelled by the impugned rejection orders.

With these directions and observations, the Writ Petition (Civil) stands disposed of.

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Sd/-
ALEXANDER THOMAS, JUDGE

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P.S. to Judge