

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

WP(C).No. 10269 of 2015 (G)

PETITIONER:

THE VIMALAGIRI PUBLIC SCHOOL,
KOTHAMANGALAM REP. BY ITS MANAGER.

BY ADV. SRI.P.P.JACOB

RESPONDENTS:

1. NELLIKKUZHI GRAMA PANCHAYATH,
NELLIKUZHI, KOTHAMANGALA, ERNAKULAM
PIN-686 691, REP. BY ITS SECRETARY.
2. THE DIRECTOR OF PANCHAYATH,
OFFICE OF THE DIRECTOR OF PANCHAYATH,
THIRUVANANTHAPURAM 695 001.

R2 BY GOVT. PLEADER SMT.K.A.SANJEETHA
R1 BY SRI.P.M.HABEEB

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
09-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 10269 of 2015 (G)

PETITIONER'S EXHIBITS:

EXT.P1: TRUE PHOTOCOPY OF THE APPLICATION DATED 27.6.2014 FOR BUILDING PERMIT WITH THE SKETCH

EXT.P1(a): TRUE ENGLISH TRANSLATION OF EXT. P1

EXT.P2: TRUE PHOTOCOPY OF THE LETTER ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER DATED 09.7.2014

EXT.P2(a): TRUE ENGLISH TRANSLATION OF EXT. P2

EXT.P3: TRUE PHOTOCOPY OF THE REPORT FILED BY THE TALUK SURVEYOR WITH SKETCH DATED 18.11.2014

EXT.P4: TRUE PHOTOCOPY ODF THE JUDGMENT IN WPC 19321/2014 DATED 15.1.2015

EXT.P5: TRUE PHOTOCOPY OF THE LETTER ISSUED BY THE PETITIONER DATED 03.3.2015

EXT.P6: TRUE PHOTOCOPY OF THE A/D CARD DATED 07.3.2015

EXT.P7: TRUE PHOTOCOPY OF THE LETTER DATED 18.3.2015 ISSUED BY THE FIRST RESPONDENT

EXT.P8: TRUE ENGLISH TRANSLATION OF EXT.P7

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.10269 of 2015 G

Dated this the 9th day of April, 2015

JUDGMENT

The petitioner, a School, is desirous of constructing a compound wall around the play ground with a view to providing security to the pupils of the school. When it applied for building permit, ostensibly on the objections raised by the residents of the area, the respondent Grama Panchayat refused to grant the permit. The objection seems to be that the petitioner School has encroached upon public property.

2. Aggrieved, the petitioner filed W.P.(C)No. 19321/2014 and invited Exhibit P4 judgment. Before this Court rendered Exhibit P4 judgment, as an interim measure, it directed the Taluk Surveyor to survey the property in question and submit report. In compliance

thereof, the Taluk Surveyor submitted Exhibit P3 report and sketch. Thus, essentially, based on the report submitted by the Taluk Surveyor, this Court has come to a conclusion that the petitioner has not encroached upon any public property. Consequently, it has directed the respondent Grama Panchayat to consider the petitioner's application for building permit.

3. Having obtained Exhibit P4 judgment, the petitioner is said to have submitted Exhibit P5 letter reminding the respondent Grama Panchayat to expedite the process of issuing the building permit. Later, in course of time, the respondent Grama Panchayat issued Exhibit P7 communication contending that there is difficulty in identifying the boundary stones and that the petitioner should have the property measured out again and submit a report to the respondent Grama Panchayat. Under those circumstances, the petitioner has once again approached

this court by filing the present writ petition.

4. The learned counsel for the petitioner has strenuously contended that the action -- rather the inaction -- of the respondent Grama Panchayat borders on sheer harassment. According to him, this Court has conclusively determined in Exhibit P4 judgment, based on Exhibit P3 report submitted by the Taluk Surveyor, that there is no encroachment. Under these circumstances, Exhibit P7 communication is nothing but resurrection of the previous objection which, in fact, stood answered through a judicial directive. Accordingly, he has urged this Court to issue a positive mandamus compelling the respondent Grama Panchayat to issue the building permit.

5. The learned counsel for the respondent Grama Panchayat, on the other hand, has submitted that the Grama Panchayat all through acted bona fide, based on the objections raised by the residents of the area. According to

him, there is no gainsaying the fact that the petitioner has not encroached upon any public property, more particularly in the light of Exhibit P3 report submitted by the Taluk Surveyor on the direction of this Court. He has, however, contended that when the issue was placed before the Assistant Engineer of the Panchayat, the competent authority in this regard, he has on verification raised an objection that before the building permit could be granted, the boundaries of the property are to be identified with reference to the demarcating stones. Accordingly, only in that context, the respondent Grama Panchayat has issued Exhibit P7 communication.

6. The learned counsel has also submitted that despite the best efforts of the Grama Panchayat, the petitioner refused to accept the communication, thereby compelling the Grama Panchayat to send it through registered post. The learned counsel has further submitted

that if the petitioner co-operates, the Grama Panchayat will undertake the exercise of demarcating the boundaries with the help of Assistant Engineer and Taluk Surveyor. Once the process of identification of th boundaries is completed, the respondent Grama Panchayat will be issuing the necessary building permit.

7. Heard the learned counsel for the petitioner and the learned Standing Counsel for respondent Grama Panchayat, apart from perusing the record.

8. Though the learned counsel for the respondent Grama Panchayat has valiantly argued that the Grama Panchayat has acted only in public interest and that based on the objections raised by the residents of the locality, it could not issue the necessary building permit, the fact, however, remains, that the issue stood concluded through Exhibit P4 judgment, essentially based on Exhibit P3 report submitted by the Taluk Surveyor.

9. Concerning Exhibit P7, I am afraid, it is a clear case of lack of bona fides on the part of the respondent Grama Panchayat. Had it entertained any genuine doubt, especially based on the observations of the Assistant Engineer of the Panchayat, it could have certainly addressed a letter for clarification to the Taluk Surveyor, who, in fact, surveyed the property and submitted Exhibit P3 report before this Court. Once there is a judicial imprimatur to the claim of the petitioner that he is entitled to have the building permit for constructing a compound wall, more particularly for the safety of the children, the respondent Grama Panchayat ought not have made a heavy weather of mere technicalities.

10. Even going by the cryptic Exhibit P7 communication, in my view, the respondent Grama Panchayat ought not to have directed the petitioner to measure out the property and report the matter once again

to the respondent Grama Panchayat in the absence of any finding that there is an encroachment. I do not see any substantial objection that could weigh with the respondent Grama Panchayat in issuing the building permit.

11. In the facts and circumstances, I leave it open for the respondent Grama Panchayat to send necessary communication, if it requires, to the Taluk Surveyor concerning any doubt it has with regard to the demarcation of the boundaries, based on Exhibit P3 report submitted by the Taluk Surveyor. He shall consider it expeditiously and supply the necessary reply to the respondent Grama Panchayat.

12. At any rate, once the communication is received from the Taluk Surveyor concerning any doubts entertained by the respondent Grama Panchayat, it shall issue necessary building permit, after satisfying itself based on the clarification provided by the Taluk Surveyor, to enable

the petitioner School to construct a compound wall. It is observed that the entire exercise shall be completed as expeditiously as possible, at any rate, within a period of one month from the date of receipt of a copy of this judgment, excluding the time to be taken by the Taluk Surveyor, if the Grama Panchayat chooses to seek any clarification from him.

With the above observations, the writ petition stands disposed of. No order as to costs.

Dama Seshadri Naidu, Judge

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