

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 2ND DAY OF JULY 2015/11TH ASHADHA, 1937

WP(C).No. 11122 of 2015 (M)

PETITIONER(S):

**XAVIER J. PONNEZHATH, AGED 43 YEARS,
S/O. P.V.JOSEPH, VAYALAR JUNCTION, PATTANAKAD P.O.,
CHERTHALA - 688 531.**

**BY ADVS.SRI.BABU KARUKAPADATH
SMT.M.A.VAHEEDA BABU
SRI.K.A.NOUSHAD
SRI.P.U.VINOD KUMAR
SRI.KANDAMPULLY RAHUL
SRI.MITHUN BABY JOHN
SRI.J.RAMKUMAR**

RESPONDENT(S):

- 1. THE CHIEF TOWN PLANNER,
OFFICE OF THE CHIEF TOWN PLANNER,
THIRUVANANTHAPURAM PIN-695 001.**
- 2. VAYALAR GRAMA PANCHAYATH, VAYALAR P.O.,
PIN-688 536, REPRESENTED BY ITS SECRETARY.**
- 3. SECRETARY,
VAYALAR GRAMA PANCHAYATH, VAYALAR PO , PIN-688 536**
- 4. THE BHARAT PETROLEUM CORPORATION LTD.,
KAZHAKKOOTAM, THIRUVANANTAPURAM-695 582,
REPRESENTED BY ITS TERRITORY MANAGER (LPG)**

**R1 BY GOVERNMENT PLEADER SRI.G.GOPAKUMAR
R2& R3 BY ADVS. SRI.P.SANTHOSH KUMAR (TR)
SRI.C.H.CHANDRABHANU
SRI.T.P.SAJAN
R4 BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
02-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: A TRUE COPY OF THE LETTER OF INTENT DATED 25.3.2014 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER.

EXHIBIT P2: A TRUE COPY OF THE SALE DEED NO.1101/2014 OF SRO, CHERTHALA.

EXHIBIT P2(A): A TRUE COPY OF THE ENGLISH TRANSLATION EXHIBIT P-2 SALE DEED PREPARED BY ADVOCATE M.F. VARKEY, CHERTRHALA.

EXHIBIT P3: A TRUE COPY OF THE APPLICATION FOR BUILDING PERMIT DATED 20.4.2014 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT PANCHAYATH.

EXHIBIT P4: A TRUE COPY OF THE LETTER OF PERMISSION DATED 23.5.2014 ISSUED BY THE JOINT CONTROLLER OF EXPLOSIVES, SOUTH CIRCLE, CHENNAI.

EXHIBIT P5: A TRUE COPY OF THE LETTER DATED 23.7.2014 ISSUED BY THE 1ST RESPONDENT CHIEF TOWN PLANNER TO THE 3RD RESPONDENT SECRETARY.

EXHIBIT P5(A): A TRUE ENGLISH TRANSLATION OF EXHIBIT P5.

EXHIBIT P6: A TRUE COPY OF THE REPLY DATED 26.9.2014 ISSUED BY THE 2ND RESPONDENT TO THE 1ST RESPONDENT.

EXHIBIT P6(A): A TRUE ENGLISH TRANSLATION OF EXHIBIT P6.

EXHIBIT P7: A TRUE COPY OF THE ORDER DATED 25.2.2015 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P7(A): A TRUE ENGLISH TRANSLATION OF EXHIBIT P7.

EXHIBIT P8: A TRUE COPY OF THE LETTER DATED 28.3.2015 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT P8(A): A TRUE ENGLISH TRANSLATION OF EXHIBIT P8.

EXHIBIT P9: A TRUE COPY OF THE JUDGMENT DATED 11.11.2014 IN WPC NO. 25364/2014.

EXHIBIT P10: A TRUE COPY OF THE NOC DATED 11.3.2014 ISSUED BY THE DIVISIONAL OFFICER, FIRE AND RESCUE SERVICES, KOTTAYAM TO THE PETITIONER.

EXHIBIT P11: A TRUE COPY OF THE JUDGMENT DATED 17.1.2014 IN WPC NO. 856/2014.

msv/

WP(C).No. 11122 of 2015 (M)

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 11122 of 2015

Dated this the 2nd day of July, 2015

J U D G M E N T

Aggrieved by the imposition of clauses 7, 8 and 9 in Ext.P7, the petitioner has come up before this Court.

2. The petitioner was given distributorship of LPG in Cherthala area as per Ext.P1 letter of intent by the 4th respondent Petroleum Company. The petitioner submitted Ext.P3 application dated 20.04.2014 for building permit for constructing a godown in his property covered by Ext.P2 sale deed. He obtained Ext.P4 permission from the Explosives Department and Ext.P11 from Fire and Rescue Department to put up LPG godown there. As evident from Ext.P6, which is the reply to a question put by the 1st respondent in Ext.P5, the 3rd respondent has clearly recommended that the property is ideal for construction gas godown. However, the 1st respondent, though issued Ext.P7 approving the layout and the usage, has imposed clauses/conditions 7, 8 and 9 in Ext.P7 inter alia to the

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effect that the consent of adjacent building owners shall be obtained, all complaints must be solved and that the Secretary shall ensure that no problem exists due to establishment of the godown. According to the petitioner, the conditions imposed therein are beyond the jurisdiction of the 1st respondent and the 1st respondent cannot impose such conditions under the Kerala Panchayath Building Rules, 2011. The petitioner relies on Ext.P11 judgment, wherein this Court has found that such conditions cannot be imposed by the 1st respondent. The petitioner points out that the Gas Cylinder Rules, 2004 clearly specified that the minimum distance to be kept in between the human habitation and the godown is only 9 meters and the residential buildings are away from the proposed site. According to the petitioner, the proposed construction of the godown is strictly in terms of the Kerala Panchayath Building Rules, 2011. He further points out that Rule 13 of the said Rules provides that the building permit can be rejected only in the event of contravention of any of the provisions of law. However, since the 1st respondent has

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imposed/laid down clauses 7, 8 and 9 in Ext.P7, the 3rd respondent informed vide Ext.P8 that only after his satisfaction regarding the conditions imposed by Ext.P7, he would issue the building permits. According to the petitioner, clauses 7, 8 and 9 in Ext.P7 and the stand taken by the 2nd respondent in Ext.P8 are totally illegal. Hence, this writ petition.

3. A detailed counter affidavit has been filed by the 1st respondent, who justified their stand in imposing conditions in order No.C3-5827/14/D.Dis dated 25.02.2015, granting layout approval. It is contended that Condition Nos.7 and 9 were insisted in the order as there are residential buildings already existed in the immediate vicinity of the plot. They further contended that Condition No.8 was insisted as there was a complaint against the proposed LPG godown by the adjacent land owners. Therefore, they prayed for a dismissal of the writ petition.

4. Arguments have been heard.

5. According to the learned Government Pleader, condition No.9 in the order has been insisted upon, only

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considering the safety of the persons residing in the locality. The learned counsel for the petitioner, per contra, submitted that Rule 13 of the Kerala Panchayath Building Rules provides the grounds, under which building permit could be refused. Admittedly, the reasons now pointed out are outside the scope of Rule 13. Ext.P11 is a judgment rendered by this Court under a similar argument.

Therefore, the writ petition is disposed of quashing Condition Nos.7, 8 & 9 in Ext.P7 and directing respondents 1 to 3 to consider the application of the petitioner for building permit and to pass positive orders within a period of two weeks from the date of receipt of a copy of this judgment. However, it is hereby made clear that the commencement of the petitioner's unit shall be after obtaining statutory clearance certificate, if any, from the authorities concerned.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-