

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 6TH DAY OF AUGUST 2015/15TH SRAVANA, 1937

WP(C).No. 11359 of 2015 (T)

PETITIONER(S):

**M/S.ZQUARE PETROLEUM (P) LIMITED
MECHANIGAL LANE, THRISSUR -680001,
REPRESENTED BY ITS MANAGING DIRECTOR MR.HARI R.**

**BY ADVS.SRI.ANIL S.RAJ
SMT.K.N.RAJANI
SRI.RADHIKA RAJASEKHARAN P.
SMT.ANILA PETER
SRI.J.VIVEK GEORGE**

RESPONDENT(S):

**1. THE SECRETARY, VELUR GRAMA PANCHAYAT,
VELUR P.O., THRISSUR-680601.**

**3. VELUR GRAMA PANCHAYAT,
VELUR PO, THRISSUR 680601
REPRESENTED BY ITS SECRETARY**

**BY ADVS. SRI.SANTHOSH P.PODUVAL
SMT.R.RAJITHA**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-08-2015,
ALONG WITH WPC.NO.5057/2015 THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: TRUE COPY OF THE LAY OUT APPROVAL DATED 26.06.2014**
- P1 A: TRUE TRANSLATION OF EXHIBIT P1**
- P2: TRUE COPY OF THE BUILDING PERMIT ISSUED BY THE 1ST RESPONDENT
DATED 17.09.2014**
- P2 A: TRUE TRANSLATION OF EXHIBIT P2**
- P3: TRUE COY OF THE JUDGMENT IN WPC.NO.856/2014 (F) OF THE
HONOURABLE COURT DATED 17.01.2014**
- P4: TRUE COPY OF THE ORDER ISSUED BY THE 1ST RESPONDENT DATED
11.02.2015**
- P4 A: TRUE TRANSLATION OF EXHIBIT P4**
- P5: TRUE COPY OF THE MEMORADUM OF WRIT PETITION WITHOUT EXHIBITS**
- P6: TRUE COPY OF THE INTERIM ORDER DATED 26.03.2015**
- P7: TRUE COPIES OF THE APPLICATION FOR NOC**
- P7 A: TRUE TRANSLATION OF EXHIBIT P7**
- P8: TRUE COPY OF THE APPLICATION FOR D & O LICENSE**
- P8A: TRUE TRANSLATION OF EXHIBIT P8**
- P9: TRUE COPY OF THE REJECTION ORDER DATED 01.04.2015**
- P9 A: TRUE TRANSLATION OF EXHIBIT P9**
- P10: TRUE COPY OF THE ORDER DATED 26/5/15 ISSUED BY THE R1**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

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A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) Nos.11349 & 5057 of 2015

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Dated this the 6th day of August, 2015

JUDGMENT

In these writ petitions, the petitioner company is aggrieved by the non-consideration of its application for numbering the go down constructed by the petitioner within the local limits of respondent panchayat, for storing LPG Cylinders, and to issue NOC for explosive licence.

2. The petitioner which is a company incorporated in the year 2012, engaged in the business of distribution of LPG Cylinders bottled by M/s.Meriya Petroleum Products (P) Ltd., Thalayolaparambu, under licence from the competent authorities. This, according to the petitioner, was in accordance with the layout approved by the Chief Town Planner and the permit issued by the respondent panchayat.

3. The petitioner alleges that when the application for numbering was made, the respondent panchayat convened a meeting of the neighbouring residents and thereafter, the respondent panchayat refused to number the building on the allegation that the adjacent plot owners have withdrawn their NOC

and that the functioning of the go down would effect the peaceful life of the neighbouring residents. Both the reasons cited for refusal to number the building are not valid under the Kerala Panchayat Raj Act or the Building Rules and the action of the first respondent is in violation of the judgment of this Court in W.P(C) No.856 of 2014; it is alleged.

4. The learned single Judge before whom the W.P(C) No.5057 of 2015 came up for hearing on 25.3.2013, directed the respondent panchayat to provisionally number the petitioner's building subject to the further orders of this Court. A time limit was also prescribed. Accordingly, the building was numbered and occupancy was issued to the petitioner.

5. The grievance of the petitioner projected in W.P(C) No.11359 of 2015 is that though the petitioner has submitted application for NOC before the respondent panchayat to obtain explosive licence from the PESO, the same was rejected and the challenge to the same was incorporated by an amendment in W.P (C) No.5057 of 2015.

6. The third respondent in W.P(C) No.5057 of 2015 has filed a counter affidavit wherein it was stated that the Chief Town Planner while granting approval for usage of the plot as per the provisions of

the Kerala Panchayat Building Rules, 2011 insisted certain conditions to ensure that the proposed construction do not adversely affect the area and or threaten the life of inhabitants in the area. According to them, the conditions are insisted in the order granting layout approval over and above the Rules prescribed in the building rules. The conditions are insisted on case by case basis; it is alleged.

7. In W.P(C) No.11359 of 2015, the respondent panchayat has filed a statement contending as follows:

The petitioner has stated construction on the basis of Exts.P1 and P2 which contained a condition that no objection certificate should be obtained from the adjoining land owners and that the building and the activity to be undertaken should not affect the peaceful of the nearby residents. The petitioner has not chosen to challenge the said condition in Exts.P1 and P2. However, the said conditions were accepted and the construction was effected on the basis of Exts.P1 and P2. Now, the petitioner cannot turn round and say that the conditions in Exts.P1 and P2 are illegal. Ext.P4 happened to be issued since all residents within 100 metres radius of the building had raised serious objections. Even the persons who had granted no objection certificate have withdrawn the same.

Ext.P10 has been passed considering all the attending circumstances and also taking note of the decision of the panchayat on 10.2.2015. At no point of time, the said decision was challenged by the petitioner. As per the rules, the panchayat has to take a decision upon the grant of D&O licence. Therefore, the decision of the panchayat committee cannot be ignored.

It is further contended that the panchayat is bound to consider the safety of the public while considering the application for licence. The proposed go down is in the middle of a thickly populated area. Therefore, the rejection of the application for licence cannot be said to be illegal and is based on sound reasoning and is in consonance with the power and duties of the licence issuing authority.

8. Arguments have been heard.

9. It is an admitted fact that the petitioner was given permit to construct the go down on the basis of Ext.P1 layout approval produced in W.P(C) No.5057 of 2015. Ext.P2 in the said writ petition is the permit granted by the respondent panchayat. It was only when the petitioner submitted application for numbering the building, the respondent panchayat was carried away by the so-called objections of the local residents.

10. The learned counsel for the petitioner would submit that when the petitioner sought for building permit and the building was constructed, there was no objection from the local inhabitants. If the local authority is carried away by the opinion of the public after constructions are completed on the basis of permit, the persons who are making the constructions would be put to irreparable loss and damage. The principal of promissory estoppel would come to the rescue of the petitioner in the present case.

11. Once it is admitted that the construction is on the basis of a valid layout approval and a valid permit, the authority now cannot turn round and say that they have withdrawn the licence on the ground of objection from the local public. This Court by Ext.P3 judgment in W.P(C) No.5057 of 2015 has set aside condition no.9 in Ext.P11 approval produced in that writ petition granted by the Town Planner for establishing go down. The said condition was that the petitioner should obtain NOC from the neighbouring property owners. The petitioner in that case contended that there is no statutory provision in the rules which mandates NOC from the neighboring residents. Therefore, the aforesaid condition in the permit granted by the Town Planner was set aside. By canceling the licence already granted on the ground that neighboring inhabitants

are opposing the functioning of the petitioner's go down, the respondent panchayat is verbally re-writing Ext.P3 judgment, which cannot be countenanced at all.

12. Therefore, this Court is of the view that the petitioner is entitled to get the relief sought for.

In the result, the writ petitions are disposed of;-

(a)making the conditional order passed by this Court dated 26.3.2015 in W.P(C) No.5057 of 2015 directing the respondent panchayat to number the petitioner's building absolute and,

(b)quashing Exts.P9 and P10 in W.P(C) No.11359 of 2015 and directing the first respondent to allow Exts.P7 and P8 applications submitted by the petitioner so that the petitioner can obtain explosive licence from the concerned authorities. This shall be done within three weeks from the date of receipt of a copy of this judgment.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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