

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 16TH DAY OF NOVEMBER 2015/25TH KARTHIKA, 1937

WP(C) .No. 16535 of 2012 (N)

PETITIONER(S) :

MADHU.V.G

M/S.SABARI GAS SERVICE (LPG)

VADASSERIKARA, PATHANAMTHITTA DISTRICT.

BY ADVS.SRI.N.N.SUGUNAPALAN (SR.)

SRI.S.SUJIN

RESPONDENT(S) :

1. ANCY VARGHESE,
KODINJIYIL HOUSE, VADASSERIKARA
RANNI TALUK, PATHANAMTHITTA DISTRICT. 689672

2. SECRETARY,
VADASSERIKARA GRAMA PANCHAYAT
VADASSERIKARA, PATHANAMTHITTA.689662

3. DEPUTY DIDRECTOR OF PANCHAYAT,
PATHANAMTHITTA-689001

4. SECRETARY TO GOVERNMENT
LOCAL SELF DEPARTMENT (RA) , THIRUVANANTHAPURAM-695001

5. STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY TO GOVERNMENT,
SECRETARIAT, THIRUVANANTHAPURAM- 695001

R2 BY ADV. SRI.SIBY MATHEW

R2 BY ADV. SRI.PHILIP J.VETTICKATTU

R4-R5 BY GOVERNMENT PLEADER SRI.T.J.MICHAEL

R1 BY ADV. SRI.C.A.MAJEED

R1 BY ADV. SRI.K.H.ASIF

R1 BY ADV. THOMAS T.MATHEW

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 16-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER(S) EXHIBITS

EXHIBIT-P1 - TRUE COPY OF THE BUILDING PERMIT DATED 14.9.2010
ISSUED BY THE SECRETARY, VADASSERIKARA GRAMA PANCHAYAT.

EXHIBIT-P2 - TRUE COPY OF THE OWNERSHIP CERTIFICATE DATED
19.4.2011 ISSUED BY THE SECRETARY, VADASSERIKARA GRAMA
PANCHAYAT.

EXHIBIT-P3 - TRUE COPY OF THE LICENCE DATED 2.5.2011 ISSUED
BY DEPUTY CHIEF CONTROLLER OF EXPLOSIVES, ERNAKULAM, SUB
CIRCLE OFFICE, KOCHI.

EXHIBIT-P4 - TRUE COPY OF THE JUDGMENT IN W.P(C)
NO.33984/2010 DATED 11.11.2010 BEFORE THE HON'BLE COURT.

EXHIBIT-P5 - TRUE COPY OF THE COMMUNICATION DATED 4.6.2012
ISSUED BY THE GOVT. SECRETARY TO THE SECRETARY, VADASSERIKARA
GRAMA PANCHAYAT.

EXHIBIT-P6 - TRUE COPY OF THE COMMUNICATION ISSUED TO THE
PETITIONER FROM THE SECRETARY, VADASSERIKARA GRAMA PANCHAYAT
DATED 26.6.2012.

RESPONDENTS' EXHIBITS

EXT.R2(A) - TRUE COPY OF ORDER NO.C3/6567/10/D.DIS DTD.13.7.2010
ISSUED BY THE GOVERNMENT.

EXT.R3(A) - TRUE COPY OF THE ORDER NO.C3/6567/10/D.DIS
DTD.13.7.2010 ISSUED BY THE GOVERNMENT.

OKB

True copy

P.A. to Judge

K.HARILAL, J.

W.P.(C) No.16535 of 2012

Dated this the 16th day of November, 2015.

JUDGMENT

The petitioner is a dealer of Liquid Petroleum Gas of Bharat Petroleum Corporation. He had obtained dealership and had opened dealership in Plot Nos.196/10/1 and 196/10/2 in Pathanamthitta, after obtaining permission and licences from all the statutory authorities. The 1st respondent and two others objected to the building permit and also the permission granted to the petitioner to open the LPG godown in the present site, by making various complaints and representations before all the authorities and ultimately, they approached this Court by filing W.P.(C) No.33984/2010 complaining that the authorities have failed to consider their complaints. Thereafter, this Court considered the grievance of the 1st respondent and dismissed the writ

petition by Ext.P4 judgment on a finding that there is no statutory provision specifying any distance for LPG godown from a residence and there is no necessity to obtain No Objection Certificate from the residents to locate the godown in any residential premises. While so, to the surprise of the petitioner, the petitioner got Ext.P6 communication from the 2nd respondent informing that the building permit issued to him is cancelled.

2. It is learnt that Ext.P6 has been issued in compliance with Ext.P5 order passed by the 5th respondent informing the 3rd respondent that the 5th respondent decided to cancel the building permit issued to the petitioner. So also, the 3rd respondent was directed to inform the name of the Secretary of the Panchayat who has issued the building permit. According to the petitioner, Ext.P5 order cancelling the building permit is arbitrary, illegal and issued in violation of the principles of natural justice. Thus, the legality and propriety of Exts.P5 & P6 orders are

subjected to judicial review under Article 226 of the Constitution of India before this Court, in this writ petition.

3. The 3rd respondent filed a counter affidavit contending that the 1st respondent filed a petition before the Kerala Legislative Council for Welfare of Women and Children, praying for cancellation of building permit issued by the 2nd respondent for construction of the gas godown and the said petition was handed over to the 3rd respondent for enquiry by the Local Self Government Department through letter No.74749/RA1/2010/LSGD dated 21.12.2010. The 3rd respondent entrusted the Junior Superintendent to inspect the site and he measured the distance between the godown and the houses, bearing Nos.VPII/61A belonged to the 1st respondent and one Mr.Varughese, with the help of the Panchayat Overseer. The distances were 47.4m and 43.25m respectively and reported this matter to the Government through letter No.G4.162/11 dated 26.9.2011. After considering the report filed by

the 3rd respondent, the Local Self Government Department through the letter dated 4.6.2012 has informed the 2nd and the 3rd respondents that the building did not maintain sufficient distance. Consequently, the 2nd respondent cancelled the door number and issued Ext.P6 to the petitioner.

4. The 2nd respondent Panchayat also filed a counter statement stating that the Panchayat was constrained to cancel the building permit, which was issued earlier, in compliance with the direction in Ext.P5 order passed by the Government.

5. Heard the learned counsel for the petitioner and the learned Government Pleader.

6. Going by the proceedings, it is seen that the building permit has been cancelled on the basis of an inspection said to have been done by the Office Superintendent of the office of the 3rd respondent. Either the 3rd respondent or the 4th respondent has no case that such an inspection was conducted after informing the petitioner, who is the aggrieved party

before this Court in this respect. When the statutory licence under the Panchayat Raj Act has been issued in favour of a person, a vested right is conferred to him to do an act, whatever it may be. If any superior authority or the Government feels that the granting of building permit is irregular and illegal, the aggrieved person should have been given an opportunity of being heard, before cancelling the permit, in exercise of supervisory or superior jurisdiction. So also, no inspection could have been done in the premises of the petitioner, without informing him. Therefore, such an inspection report prepared in his absence is not binding on him. Consequently, the decision taken on the basis of such a report, which was prepared on the basis of a secret inspection is not binding on him also. It follows that Exts.P5 & P6 orders are passed in violation of the principles of natural justice.

7. In the above view of the matter, Exts.P5 & P6 orders passed by the 4th and 5th respondents will stand quashed. The 4th respondent is further directed to pass

order afresh, after affording sufficient opportunity of being heard to the petitioner, within a period of three months from the date of production of a copy of this judgment.

This writ petition is disposed of as above.

Sd/—
K. HARILAL, JUDGE

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