

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

WP(C) .No. 18215 of 2015 (B)

PETITIONER(S) :

JOSEPH,
AGED 54 YEARS, S/O. ROCKY,
CHITTETHU HOUSE, VADAKKEKARA VILLAGE,
NORTH PARAVUR, ERNAKULAM.

BY ADVS.SRI.S.SHANAVAS KHAN
SMT.S.INDU.

RESPONDENT(S) :

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1. THE KERALA COASTAL ZONE MANAGEMENT AUTHORITY,
SCIENCE AND TECHNOLOGY DEPARTMENT,
SASTHRA BHAVAN, PATTOM,
THIRUVANANTHAPURAM -4,
REPRESENTED BY ITS MEMBER SECRETARY.
 2. THE CHITTATTUKARA GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY,
VADAKKEKARA (PO), NORTH PARAVUR, ERNAKULAM - 683 522.
 3. THE SECRETARY,
CHITTATTUKARA GRAMA PANCHAYATH, VADAKKEKARA (PO),
NORTH PARAVUR, ERNAKULAM - 683 522.

R1 BY ADV. SRI.K.R.SUNIL, KERALA COASTAL ZONE MANAGEMENT AUTHORITY
R2-R3 BY ADV. SRI.T.K.AJITHKUMAR (VALATH)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
29/07/2015, THE COURT ON 05-08-2015 DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXHIBIT P1: TRUE COPY OF THE TAX RECEIPT EVIDENCING THE REMITTANCE OF TAX FOR THE YEAR 2015-16.
- EXHIBIT P2: TRUE COPY OF THE COMMUNICATION DATED 7.8.2013 OF THE THIRD RESPONDENT.
- EXHIBIT P3: TRUE COPY OF THE LETTER ISSUED BY 3RD RESPONDENT TO THE PETITIONER DATED 11.9.2013.
- EXHIBIT P4: TRUE COPY OF THE APPLICATION DATED 28.10.2013 SUBMITTED BY PETITIONER BEFORE 3RD RESPONDENT.
- EXHIBIT P5: TRUE COPY OF THE LOCATION SKETCH.
- EXHIBIT P6: TRUE COPY OF THE PLAN OF THE BUILDING.
- EXHIBIT P7: TRUE COPY OF THE ORDER OF THE 1ST RESPONDENT DATED 14.5.2014.
- EXHIBIT P8: TRUE COPY OF THE COMMUNICATION DATED 9.10.2014 ISSUED BY THE THIRD RESPONDENT.
- EXHIBIT P9: TRUE COPY OF THE ORDER DATED 11.3.2015 OF THE FIRST RESPONDENT.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 18215 of 2015

Dated this the 5th day of August, 2015.

JUDGMENT

Aggrieved by the inaction on the part of the first respondent in numbering the petitioner's building constructed in Sy.Nos.132/12 A, 132/10 and 132/4 B of Vadakkekara Village in Paravur Taluk, the petitioner has come up before this Court.

2. The petitioner is the absolute owner in possession of 4.30 Ares of landed property situated in Vadakkekara Village. The petitioner alleges that he approached the third respondent for building permit who in turn informed that as the construction comes under exempted category as per sub rule XIII of Rule 10 of the Kerala Panchayath Building Rules, permit is not required. Thereafter, the petitioner constructed a residential building in the said property. When he approached the third respondent for getting the building numbered, he informed that the building cannot be numbered as the construction was done in violation of Coastal Regulation Zone

and the petitioner did not maintain prescribed distance from the river situated on the western side. The petitioner alleges that as per the direction of the third respondent, he submitted Exts.P4 to P6 documents before him and it was forwarded to the first respondent for consideration. The authority decided to grant CRZ clearance to the petitioner, however, restricted the total plinth area of the building to 60 sq.mts. However, petitioner's application for numbering the building was also rejected since the plinth area was 70.10 sq.mts. As the petitioner had already completed the construction, he approached the first respondent again for reconsidering the issue. However, the first respondent by order dated 11.3.2015 informed that there are no circumstances warranting the reconsideration of issue; it is alleged.

3. The first respondent who is the Kerala State Coastal Zone Management Authority would contend that as per the provisions of CRZ Notification of 1991 & 2011, every activity in CRZ area requires prior clearance from KCZMA or Ministry of Environment and Forest, otherwise such constructions are illegal. They would point out that the petitioner started

construction of the building before obtaining CRZ clearance. However, as the proposal was for the construction of a residential unit, a lenient view was taken and allowed construction of the residential unit with a plinth area of 60 m². The said construction was granted by the KCZMA taking into account the density of population in the coastal area.

4. The respondent panchayath has filed a separate counter affidavit, contending that the petitioner's building is having a total plinth area of 70.10 sq.metres and its construction is in violation of the direction of Ext.P7. Therefore, the third respondent by Ext.P8 refused to number the building. They would point out that as per the report of the Overseer LGSD, the nearby river is having a width of 90 metres and the petitioner's building was constructed within 60 metres away from the river. According to them, the petitioner's building is constructed without leaving the prescribed distance from the river situated on the west of the property.

5. I have heard the learned counsel for the petitioner and the learned standing counsel for the respondent panchayath and the learned counsel for the Kerala State

Coastal Zone Management Authority in the matter.

6. Admittedly, the construction which is made within a distance of 60 metres from the river which is prohibited area as per the Coastal Zone Regulations. However, it is crucial to note that taking into account the density of the population, the first respondent has granted permission to the petitioner to construct a residential building, however, the area was restricted to 60 metres from the river. After having granted permission to construct a building within the prohibited area, now the respondent cannot bank upon the provisions of the Coastal Zone Regulations to contend that the construction is in violation of the Coastal Zone Regulations.

7. As the first respondent has already made up its mind to grant exemption taking into account the density of population in the coastal area and the petitioner has made constructions on the basis of the said exemption, this Court is of the view that the additional extension raising the height of the building maintaining the original distance from the river can be regularised on a proper application submitted by the petitioner.

In the result, the writ petition is disposed of permitting the petitioner to submit an application for regularisation of the additional area within a period of two weeks from the date of receipt of a copy of this judgment. In the event of receipt of the same, the same shall be considered by the respondent panchayath and the construction shall be regularised, if it is otherwise in order on such terms as the respondent panchayath deem fit. This shall be done within a period of two weeks from the date of submission of the application. Once the construction is regularised, the building shall be numbered and occupancy certificate shall be issued without any further delay.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.