

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

MONDAY, THE 14TH DAY OF SEPTEMBER 2015/23RD BHADRA, 1937

WP(C).No. 19016 of 2014 (B)

PETITIONER :

RIYAS N.B, AGED 39 YEARS,
S/O.ASHIM, THAYYIL PADINJATTETHIL, AYIRAMTHENGU CHERRY,
KOOTTIKKADA P.O., KOLLAM.

BY ADV. SRI.S.S.RAJESH

RESPONDENTS:

1. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
DEPARTMENT OF LOCAL SELF GOVERNMENT INSTITUTIONS,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.
2. MAYYANAD GRAMA PANCHAYAT,
MAYYANAD P.O., KOLLAM, REPRESENTED BY ITS SECRETARY,
691303.
3. THE SECRETARY,
MAYYANAD GRAMA PANCHAYAT, MAYYANAD P.O., KOLLAM,
691303.
4. MADHU,
S/O.SAROJINIAMMA, MADATHIL THEKKETHIL HOUSE,
KOOTTIKKADA P.O., KOLLAM- 691020.

R4 BY ADV. SRI.T.C.SURESH MENON

R4 BY ADV. SRI.P.S.APPU

R2 & R3 BY ADV. SRI.M.R.SASITH

BY GOVERNMENT PLEADER SRI.RAFEEL.V.K.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :-

EXHIBIT-P1: TRUE PHOTOGRAPHS SHOWING THE ILLEGAL CONSTRUCTION MADE BY THE 4TH RESPONDENT.

EXHIBIT-P2: TRUE COPY OF THE COMPLAINT DATED 27.6.2014 FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

EXHIBIT-P3: TRUE COPY OF THE RECEIPT DATED 27/6/2014 ISSUED BY THE 3RD RESPONDENT.

EXHIBIT-P4: TRUE COPY OF THE ORDER DATED 4/7/2014 ISSUED BY THE 3RD RESPONDENT.

EXHIBIT-P5: TRUE COPY OF THE COMPLAINT DATED 10/7/2014 FILED BY THE PETITIONER BEFORE THE DEPUTY DIRECTOR OF PANCHAYATS, KOLLAM ALONG WITH ITS RECEIPT.

EXHIBIT-P6: TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER BEFORE THE OMBUDSMAN FOR LOCAL SELF GOVERNMENT INSTITUTIONS.

EXHIBIT-P7: TRUE COPY OF THE COMPLAINT DATED 16.7.2014 FILED BY THE PETITIONER BEFORE THE DIRECTOR OF PANCHAYATS, TRIVANDRUM ALONG WITH ITS POSTAL RECEIPTS.

RESPONDENTS' EXHIBITS :- NIL.

True copy

P.A to Judge

ANIL K.NARENDRA, J.

W.P.(C)No.19016 of 2014

Dated this the 14th day of September, 2015

JUDGMENT

The petitioner has filed this writ petition seeking a writ of mandamus commanding respondents 2 and 3 to implement Ext.P4 order within a time frame fixed by this Court.

2. The grievance of the petitioner is that the 4th respondent, who is his neighbour made certain constructions, as evident from Ext.P1 photograph, without obtaining any building permit from the 2nd respondent Grama Panchayat and in violation of the Panchayat Building Rules, 2011. The petitioner would contend that, the construction made by the 4th respondent is in violation of Rule 84(4) of the Kerala Panchayat Building Rules, 2011. On coming to know about those illegal constructions, the petitioner submitted representation dated 15.1.2014, which was followed by Ext.P2 representation dated 27.6.2014 before the 3rd respondent, who is the Secretary of the 2nd respondent Grama Panchayat. Based on the representation so made the 3rd respondent conducted a site inspection and satisfied that the construction made by the 4th

respondent is without obtaining a building permit and also in violation of Sub-rule (4) of Rule 84 of the Kerala Panchayat Building Rules. Based on the inspection so made, the 4th respondent was issued with Ext.P4 order dated 4.7.2014 directing to demolish the illegal construction made by him within seven days from the date of receipt of the order.

3. The main grievance of the petitioner is that Ext.P4 order of the 3rd respondent is yet to be implemented. Due to the inaction on the part of the 3rd respondent the petitioner submitted Ext.P5 representation dated 10.7.2014 before the Deputy Director of Panchayat, Kollam followed by Ext.P6 representation before the Ombudsman for Local Self Government Institutions. It is thereafter the petitioner has filed this writ petition seeking various reliefs.

4. A counter affidavit has been filed on behalf of the 4th respondent contending, inter alia, that, he had erected only a temporary construction in order to prevent the nuisance alleged to have been caused by the petitioner. According to the 4th respondent, it is only a temporary shed with tin sheet and that sufficient space has been provided within the boundary.

5. Going by the pleadings and the documents on record it is aggrieved by the construction made by the 4th respondent, evidenced by Ext.P1 photograph, the petitioner is before this Court in this writ petition. It is not in dispute that, the provisions under the Kerala Panchayat Raj Act, read with Kerala Panchayat Building Rules, mandate the 4th respondent to obtain building permit for making any construction in his property. Any construction so made should also meet the statutory requirements under the Building Rules, which provides for open space, set back, etc. Based on a complaint made by the petitioner, the 3rd respondent conducted an inspection and found that the constructions made by the 4th respondent is in violation of Rule 84(4) of the Kerala Panchayat Building Rules and it was in such circumstances the 3rd respondent has issued Ext.P4 notice demanding demolition of that construction.

6. The learned counsel for respondents 2 and 3 would contend that, though the Panchayat has issued a provisional order dated 4.8.2014 under Section 235W(1) of the Kerala Panchayat Raj Act, the same could not be proceeded further in view of the pendency of this Writ Petition.

In such circumstances, without going into the merits of the rival contentions, this writ petition is disposed of with the following directions:-

1. The 4th respondent shall submit objections, if any, to the provisional order passed by the 3rd respondent dated 4.8.2014 within a period of three weeks from the date of receipt of a certified copy of this judgment.
2. On receipt of that objection, the 3rd respondent shall hear the petitioner and also the 4th respondent and pass final orders in terms of Sub-section (3) of Section 235(w) of the Kerala Panchayat Raj Act within a period of three months from the date of receipt of a certified copy of this judgment.

The contentions raised by both sides are left open.

Sd/-

ANIL K.NARENDRA, JUDGE

skj