

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937

WP(C).No. 22062 of 2013 (G)

PETITIONER:

K.T.THOMAS
KAVUMKAL HOUSE, POOVATHODU.P.O.
KOTTAYAM DISTRICT. PIN-686 578.

BY ADV. SRI.GEORGEKUTTY MATHEW

RESPONDENT(S) :

1. JOY SCARIA
S/O.SCARIA, PULIKUNNEL, THONNIPPARA HOUSE
POOVATHODU.P.O., BHARANANGANAM, KOTTAYAM DISTRICT
PIN-686 578.

2. MEENACHIL GRAMA PANCHAYATH
MEENACHIL,
KOTTAYAM DISTRICT. PIN-686 589 REP.BY ITS SECRETARY.

3. THE TOWN PLANNER
DISTRICT TOWN PLANNING OFFICE, COLLECTORATE
KOTTAYAM. PIN-686 001.

R1 BY ADV. SRI. AYSHA YOUSEFF
R1 BY ADV. SRI. MOLLY JACOB
R1 BY ADV. SMT.RABIA BEEGAM T.K.
R1 BY ADV. SRI.JOBI.A.THAMPI
R1 BY ADV. SMT.SITHARA SHAMSUDEEN
R2 BY ADV. SRI.P.C.HARIDAS
R3 BY ADV. GOVERNMENT PLEADER SRI RAFEEQ V.K.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 20-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

P1- TRUE COPY OF THE ORDER DATED 19.12.2012 PASSED BY THE 2ND RESPONDENT.

P2- TRUE COPY OF THE MEMORANDUM OF APPEAL NO.188/2013 DATED 18.02.2013 IN THE FILE OF TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS WITHOUT ANNEXURES.

P3- TRUE COPY OF THE PROCEEDINGS OF THE CHIEF TOWN PLANNER DATED 27.02.2012.

P4- TRUE COPY OF THE WRITTEN STATEMENT DATED 03.04.2013 FILED BY THE 2ND RESPONDENT IN APPEAL NO.188/2013 IN THE FILE OF TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS.

P5- TRUE COPY OF THE IMPEADING PETITION DATED 02.04.2013 BY THE PETITIONER HEREIN IN APPEAL NO.188/2013 IN THE FILE OF TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS.

P6- TRUE COPY OF THE CIRCULAR ISSUED BY THE POLLUTION CONTROL BOARD DATED 20.04.1998.

P7- TRUE COPY OF THE LETTER DATED 12.01.2012 ISSUED BY THE 3RD RESPONDENT.

P8- TRUE COPY OF THE IA.NO.382/2013 IN APPEAL NO.188/2013 DATED 10.07.2013 PRAYING TO APPOINT AN ADVOCATE COMMISSION, FILED BY THE PETITIONER HEREIN.

P9- TRUE COPY OF THE OBJECTION DATED 15.07.2013 FILED BY THE 1ST RESPONDENT IN IA.NO.382/2013 IN APPEAL NO.188/2013.

P10- TRUE COPY OF THE ARGUMENT NOTE DATED 19.07.2013 FILED BY THE PETITIONER.

P11- TRUE COPY OF THE ORDER DATED 07.08.2013 PASSED BY THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS IN APPEAL NO.188/2013.

RESPONDENT(S) ' EXHIBITS

EXT.R1(a): TRUE COPY OF THE LETTER ADDRESSED BY THE ASST.ENGINEER, MEENACHIL GRAMA PANCHAYATH.

EXT.R1(b): TRUE COPY OF THE FORWARDING LETTER OF THE 2ND RESPONDENT OF THE APPLICATION TO THE DISTRICT TOWN PLANNER NO.A-5.2160/2011 DATED 20.04.2011.

EXT.R1(c): TRUE COPY OF THE SURVEY PLAN APPROVED BY THE POLLUTION CONTROL BOARD.

EXT.R1(d): TRUE COPY OF THE REPORT DT.24.5.2013 IN O.S.15/2003 OF THE COMMISSIONER BEFORE THE MUNSIF COURT, PALA.

EXT.R1(e): TRUE COPY OF THE NOTICE NO.A5-1325/13 DATED 15.4.2013 ISSUED BY THE SECRETARY OF THE MEENACHIL PANCHAYATH.

EXT.R1(f): TRUE COPY OF THE COMPLAINT FILED BEFORE THE RDO, PALA DT.11.7.2013 BEFORE THE SUB COLLECTOR.

EXT.R1(g): TRUE COPY OF THE LETTER DT.13.3.12 ADDRESSED TO THE SECRETARY TO THE CHIEF TOWN PLANNER.

EXT.R1(h): TRUE COPY OF THE LETTER NO.A5-2160/11 DATED 4.10.12 OF THE 2ND RESPONDENT ADDRESSED TO THE PETITIONER.

EXT.R1(i): TRUE COPY OF THE INFORMATION OBTAINED UNDER RIGHT TO INFORMATION ACT.

EXT.R1(j): TRUE COPY OF THE RELEVANT PORTION OF THE BOOK RELEASED BY THE CHURCH PERTAINING TO ITS HISTORY DURING 1887-1997.

EXT.R1(k): TRUE COPY OF THE DOCUMENT NO.15671 EXECUTED IN FAVOUR OF THE CHURCH.

EXT.R1(l): PHOTO COPY OF THE ORDER DT.7.4.2012 ISSUED BY THE 2ND RESPONDENT.

EXT.R1(m): TRUE COPY OF THE RELEVANT PAGES OF THE SETTLEMENT REGISTER PERTAINING TO MEENACHIL TALUK, MEENACHIL PAKUTHI OF THE TRAVANCORE STATE.

EXT.R1(n): COPY OF THE RELEVANT PAGES OF NOTE FILE CONTAINING THE ENDORSEMENT RECEIVED UNDER RIGHT TO INFORMATION ACT.

EXT.R1(o): COPY OF THE CONSENT TO ESTABLISH CRUSHER UNIT ISSUED BY KERALA STATE POLLUTION CONTROL BOARD.

EXT.R1(p): COPY OF THE CIRCULAR DT.8.2.12 ISSUED BY THE KERALA STATE POLLUTION CONTROL BOARD.

2ND RESPONDENT'S EXHIBITS

EXT.R2A: TRUE COPY OF THE REPORT AND THE SKETCH PREPARED BY THE 2ND RESPONDENT DURING INSPECTION.

/TRUE COPY/

P.S TO JUDGE

P.V.ASHA, J.

W.P(c) No.22062 of 2013-G

Dated this the 20th day of August, 2015

JUDGMENT

The petitioner has approached this Court challenging Ext.P11 order dated 07.08.2011 passed by the Tribunal for Local Self Government Institutions in Appeal No.188 of 2013. The appeal was filed as against Ext.P1 order, by which the application for building permit submitted by the 1st respondent for establishing a metal crusher unit in his property in Poovarany Village was rejected on the ground that the road leading to the site of the unit was not having the requisite width of 7 metres.

2. The Tribunal found that the Secretary had already made an inspection, as seen from Ext.R1(a) report dated 08.08.2011 and on the basis of that report, the Town Planner had issued Exts.P7 and P3 letters dated 12.01.2012 and 27.02.2012 according sanction for granting permit. After perusal of the files, the Tribunal, referring to Rule 61(4) of the Kerala Panchayat Building Rules, held in paragraph 13 as follows:

“13. If the lack of access width as mandated in Rule 61(4) was the real cause for rejecting the permit such a reason should

have found in the earlier order itself. Since earlier order does not state such a reason I can only say that the Secretary is inventing new reasons one after another just to put the appellant to harassment and to see that he does not set up a building. I may initially express my displeasure on the conduct of the Secretary who is not prepared to obey the laws and to follow the legal guidelines.”

After perusing the files of the Panchayat with respect to the application submitted by the petitioner and the correspondences between the Secretary and the Chief Town Planner, the Tribunal found that the Secretary was convinced of the width of the internal road and access road leading to the site as having 7 metres and only thereafter the application was forwarded to the Chief Town Planner. It was noticed that the Chief Town Planner had not passed any orders revoking the grant of approval. Further the Tribunal found that from the files it was not clear as to the circumstances under which the Secretary conducted a further inspection and thereafter took a decision otherwise.

3. The petitioner is also aggrieved by the finding of the Tribunal regarding permit required under Section 233 of the Kerala Panchayat Raj Act. Regarding the requirement of installation permit, I do not think it necessary to go into that question, in view of the directions that are going to be issued while disposing of this Writ Petition.

4. In this case the petitioner has impleaded the Town Planner, District Town Planning Office, Kottayam, as additional 3rd respondent. A counter affidavit has been filed by the 3rd respondent, stating that a detailed verification regarding the width of access to the plot as well as the buildings has been made in the light of the writ petition. In paragraph 4 of the counter affidavit, the details of the access road, are given as follows:

“4. xxxx xxxxx xxxxx

(i) The width of access to the plot from Paika road is varying from 5.40m to 8.00m (the width of the road is measured with reference to the physical boundaries available at the site).

(ii) The width of the access to the plot from the other end ie. Thidanad Road is varying from 4.85m to 7.10m. But at certain stretch of this road there is confusion regarding the width of the road as both fencing and compound wall are there for the Church's Semithery compound on the Southern side of the road. Also the boards displaying “PRIVATE ROAD, LORRY TRAFFIC PROHIBITED” (by Church authorities) is seen erected, one at Post Office Junction in Thidanad road and the second one at about 280m away from that point adjacent to church.

So the minimum width of the access available to the plot is less than the stipulated width of 7.00m as per Rule 64(4) of KPBR-2011.”

The Panchayat has also filed a counter affidavit stating that the initial report forwarded was by a mistake, without taking the

measurement properly.

5. It is found that the inspection by the Town Planner was not conducted in the presence of the petitioner. Serious objections are raised by the petitioner regarding the findings and contentions as to width of the road to the proposed unit as well as against the action of the Panchayat as well as the Town Planner. It is pointed out by the learned counsel for the 1st respondent that every time the attempt of the 1st respondent was being defeated by the illegal action and interference made by the petitioner who is in inimical terms with the 1st respondent and it is under his influence that the Panchayat as well as the Town Planning Officer has filed reports deviating from their earlier stand. It is the definite stand of the 1st respondent that the initial report of the Secretary was made after inspection and on the basis of the measurement taken at the relevant time.

6. In view of the disputed question of facts regarding the width of the road towards the site and in view of the fact that Rule 61(4) provides for the requisite width of the access roads to the crusher unit, it is necessary that proper measurement is taken by the Town Planner in presence of all parties concerned, ie. the petitioner, 1st respondent as well as the Panchayat. Since

the Town Planner was not a party to the proceedings before the Tribunal, the Tribunal before the impugned orders was passed.

In these circumstances, the 3rd respondent is directed to conduct an inspection in presence of the petitioner, the 1st respondent and Panchayat with respect to the application covered by letters of the Town Planner - Exts.P3, P7, and Letter No.A-5.2160/2011 dated 20.04.2011 [Ext.R1(b) in the Writ Petition], which was the subject matter of Ext.P11. On the basis of such inspection report, the Panchayat shall take necessary action on the application of the petitioner. Ext.P11 order is accordingly modified to the above extent.

The Writ Petition is disposed of accordingly.

rtr/

Sd/-
(P.V.ASHA, JUDGE)