

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 3RD DAY OF AUGUST 2015/12TH SRAVANA, 1937

WP(C).No. 20698 of 2015 (J)

PETITIONER(S):

**T.RENUKUMARI, W/O. SHRI LALI,
CHAPRAYIL HOUSE, EZHUKONE P.O.,
KOLLAM - 691 505.**

**BY ADVS.SRI.M.K.CHANDRA MOHANDAS,
SMT.K.K.RAZIA,
SRI.K.SATHIYANANDAN PILLAY,
SRI.SHAKTHI PRAKASH,
SRI.PRATHEEK VISWANATHAN,
SRI.M.L.JISHNU.**

RESPONDENT(S):

- 1. DIRECTOR OF PANCHAYAT,
LOCAL SELF GOVERNMENT DEPARTMENT,
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM,
KERALA - 695 001.**
- 2. THE WEST KALLADA GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY,
WEST KALLADA, KOLLAM - 673 591.**
- 3. SECRETARY,
WEST KALLADA GRAMA PANCHAYATH,
WEST KALLADA, KOLLAM - 673 591.**
- 4. THE CHIEF TOWN PLANNER,
TOWN PLANNING DEPARTMENT, 2ND FLOOR,
SWARAJ BHAVAN, NANTHANCOD,
THIRUVANANTHAPURAM - 689 503.**

**R1 & R4 BY GOVT. PLEADER SMT.ANITHA RAVINDRAN.
R2 & R3 BY ADV. SRI.SAJU J PANICKER.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 03-08-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- P1 - A COPY OF THE CONSENT VARIATION ORDER DATED 09.11.2012.
- P2 - A COPY OF THE CONSENT TO OPERATE/RENEWAL DATED 01/08/2012.
- P3 - A COPY OF THE LICENSE ISSUED BY THE DEPT. OF FACTORIES AND BOILERS DATED 04/02/2015.
- P4 - A COPY OF THE DEALERS LICENSE DATED 19.11.2013.
- P5 - A COPY OF THE PANCHAYAT LICENSE DATED 22.07.2014.
- P6 - A COPY OF THE LETTER DATED 19/06/2015 ISSUED BY POLLUTION CONTROL BOARD.
- P7 - A COPY OF THE INTEGRATED CONSENT TO ESTABLISH VIDE FILE NO.PCB/KO/A/CR/58/99 DATED 04/07/2014.
- P8 - A COPY OF THE LETTER DATED 15.06.2015 ISSUED BY THE 4TH RESPONDENT.
- P9 - A COPY OF THE JUDGMENT IN WP(C).NO.969/2014 FILED BY THOMSON GILBERT.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

PA. TO JUDGE

rs.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 20698 of 2015

Dated this the 3rd day of August, 2015.

JUDGMENT

Ext.P8, by which the fourth respondent had declined sanction to construct storage tank, is under challenge in this writ petition.

2. The petitioner purchased a Crusher Unit from one K.J. Raju, on 5.9.2012 vide document number 3042/2012 of Sasthamkotta Sub Registry. The crusher unit is situated in Re-Sy.Nos.123/1 and 115/4 in Padinjare Kallada Village. The petitioner alleges that total area is 48 Ares, 98 sq.mtr (1.5 acres). The crusher is functioning in the name and style M/s. Chaprayil Crusher Industries, Vilanthara, Valiyapadom, West Kallada. Originally the crusher unit was run by one Manzooruddin. By a consent variation order No. PCB/KO/A/CR/58/99 dated 9.11.2012 issued by the Kerala State Pollution Control Board, the ownership was changed to the name of the petitioner. The consent to operate is valid

upto 30.6.2015. The original consent to operate was issued on 1.8.2012 to the above said Manzooruddin vide Integrated Consent File No. PCB/KO/CTO/CR/58/1999 dated 1.8.2012. The petitioner further alleges that unit obtained licence from the Department of Factories and Boilers, Licence from the Director of Mining and Geology. The petitioner also obtained licence from the respondent panchayath vide licence No.A6-64/2014-15 dated 22.7.2014. When the petitioner applied for renewal of consent to operate, the Pollution Control Board notified certain defects including lack of storing tank of adequate capacity. The petitioner rectified the defects and obtained consent to establish from the Pollution Control Board. The petitioner applied for renewal of licence to the respondent/panchayath secretary, who eventually forwarded the same to the fourth respondent, Chief Town Planner. The fourth respondent refused to consider the application for construction of a storage tank on the ground that the prescribed width of 7 mts. for the access to the building is not

available and therefore, rejected her request. The application for permission has been refused without considering the fact that the crusher unit has been functioning for the last more than 16 years after obtaining all statutory permissions and licences from the authorities concerned. The access alleged to be less than 7 meters is public road through which all sort of vehicles are passing by. The permission sought was only for constructing a storage tank which does not affect the capacity or the potential to cause any sort of environmental pollution. Therefore, the refusal to consider the petitioner's application for permission to construct storage tank is arbitrary and illegal. It is with this background, the petitioner has come up before this Court.

3. I have heard the learned counsel for the petitioner and the learned Government Pleader in the matter.

4. The learned counsel for the petitioner points out that the fourth respondent refused to consider the application for construction of a storage tank on the ground that the

prescribed width of 7 mts. for the access to the building is not available and therefore, rejected her request. The petitioner further points out that the application for permission has been refused without considering the fact that the crusher unit has been functioning for the last more than 16 years after obtaining all statutory permissions and licences from the authorities concerned. The access alleged to be less than 7 meters is public road through which all sort of vehicles are passing by. The permission sought was only for constructing a storage tank which does not affect the capacity or the potential to cause any sort of environmental pollution. In this context, clause (4) of Rule 59 of KMBR, which reads as follows, assumes relevance.

“(4), The minimum clear width of access to a building and plot as well as the width of the street giving access to the plot from the main street shall be 7 metres and shall be motorable.”

5. The learned counsel for the petitioner submits that though the width of the road at certain points are less than 7

metres, the road was an average width of 7 metres. Therefore, this Court is of the definite view that the petitioner is entitled to get the reliefs as prayed for in the writ petition.

Therefore, the writ petition is allowed. Ext.P8 is quashed. The respondents are directed to grant permission for construction of storage tank in the property comprised in Re-Sy.Nos.123/1 and 115/4 in Padinjare Kallada Village belonging to the petitioner. This shall be done within two weeks from the date of receipt of a copy of this judgment.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.