

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 20TH DAY OF FEBRUARY 2015/1ST PHALGUNA, 1936

WP(C).No. 23696 of 2013 (J)

PETITIONER :

**WILSON JACOB
S/O. CHACKO THOMAS, PEZHATHUMOOTIL KANNIMALA.P.O.
ERUMELY, KOTTAYAM DIST. PIN-686509.**

BY ADV. SMT.S.JASMINE

RESPONDENTS :

**1. KATTAPPANA GRAMA PANCHAYAT
REPRESENTED BY ITS SECRETARY, KATTAPPANA.P.O.,
IDUKKI DIST. PIN-685508.**

**2. GEORGEKUTTY, MUTHEDATH,
VALLAKADAVU, IDUKKI DIST-685508.**

R1 BY ADV. SRI.P.C.HARIDAS

BY SRI.JOICE GEORGE,SC, KATTAPPANA GRAMA PANCHAYAT

R2 BY ADV. SRI.D.KISHORE

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 20-02-2015, ALONG WITH WPC. 19775/2014, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: TRUE COPY OF THE SITE PLAN SUBMITTED BY 2ND RESPONDENT BEFORE THE 1ST RESPONDENT.
- P2: TRUE COPY OF THE REPRESENTATION DATED 9-8-2011 SUBMITTED BY THE PETITIONER.
- P3: TRUE COPY OF THE REPRESENTATION DATED 8-5-2012 SUBMITTED BY THE PETITIONER.
- P4: TRUE COP OF THE MEMO DATED 13-6-2012 ISSUED BY THE 1ST RESPONDENT.
- P5: TRUE COPY OF THE SHOW CAUSE NOTICE DATED 13-6-2012 ISSUED BY THE 1ST RESPONDENT.
- P6: TRUE COPY OF THE ORDER DATED 14-11-2012 ISSUED BY THE 1ST RESPONDENT.
- P7: TRUE COPY OF THE SHOW CAUSE NOTICE DATED 14-11-2012 ISSUED BY THE 1ST RESPONDENT.
- P8: TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER UNDER R.T.I. ACT.
- P9: TRUE COPY OF THE REPLY RECEIVED FROM THE 1ST RESPONDENT.
- P10: TRUE COPY OF THE SHOW CAUSE NOTICE DATED 17-11-2012 ISSUED BY 1ST RESPONDENT.
- P11: TRUE COPY OF THE PROVISIONAL ORDER DATED 17-11-12 ISSUED BY 1ST RESPONDENT.
- P12: TRUE COPY OF THE JUDGMENT OF WPC NO. 3370/2013 DATED 15-2-2013.
- P13: TRUE COPY OF THE FINAL ORDER OF THE 1ST RESPONDENT DATED 7-1-2013.
- P14: COPY OF THE COMMUNICATION DT 12/11/2013.
- P15: COPY OF THE REPORT OF ADVOCATE COMMISSIONER IN O.S. NO.122/08.
- P16: COPY OF COMMISSION REPORT AND SECTH IN IA NO. 13/2014 IN OS NO.45/2014 DT 10/3/2014.
- P17: COPY OF THE SITE PLAN MARKING PORTION TO BE DEMOLISHED.

RESPONDENT(S)' EXHIBITS

- EXT.R2(A): COPY OF THE SALE DEED NO. 3177/2005 OF THE SUB REGISTRAR OFFICE, KATTAPANA.**
- EXT.R2(B): COPY OF THE RECEIPT DT 24/7/2010 SHOWING THE PAYMENT OF BUILDING TAX BY TIS RESPONDENT.**
- EXT.R2(C): COPY F THE PERMIT NO. 27/37668 DT 19/12/2006 ISSUED BY THE KATTAPANA GRAMA PANCHAYAT WHICH IS RENEWED.**
- EXT.R2(D): COPYT OF THE RECEIPT DT 2/7/2011 SHOWING THE REMITTANCE F FEES FOR BUILDING PERMIT.**
- EXT.R2(E): COPY OF THE PLAINT IN O.S.NO. 122/2008 BEFORE THE MUNSIFF COURT, KATTAPANA.**
- EXT.R2(F): COPY F THE COMPROMISE ENTERED IN BETWEEN THE PETITIONER HEREIN AND THE PLAINTIFFS IN OS NO. 134/2008 ALONG WITH THE DECREE PASSED THEREIN BEFORE THE MUNSIFF COURT, KATTAPANA.**
- EXT.R2(G): COPY OF THE APPLICATION FOR REGULARISATION DT 4/1/2014 ALONG WITH THE PLAN.**

//TRUE COPY//

P.A. TO JUDGE

bp

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 23696 of 2013

&

W.P. (C) No. 19775 of 2014

Dated this the 20th day of February, 2015

COMMON JUDGMENT

The petitioner in W.P. (C) No. 19775/2014, who is the second respondent in W.P. (C) No. 23696/2013, complains of non-consideration of his application by the respondent Grama Panchayat for regularization of a building. He has also assailed Exhibits P8 and P9 orders on the ground of vagueness.

2. The third respondent in W.P. (C) No.19775/2014, who uses the pathway along with the petitioner, filed W.P. (C) No. 23696/2013, complaining of in-action on the part of the first respondent Grama Panchayat in proceeding against the petitioner for what are said to be illegal constructions made by him in violation of the regnant building regulations.

3. Since both the writ petitions, involving the same set of parties, concern themselves with the same issue, this Court feels it appropriate to dispose them of through a common judgment.

4. Notwithstanding elaborate submissions made by the learned counsel on either side, this Court intends to dispose of the writ petition holding that the compromise decree in Exhibit P6 in W.P. (C) No. 19775/2014 binds both the parties.

5. It is the case of the petitioner that there arose a dispute between the petitioner and his brother-in-law on one hand and the third respondent on the other, concerning the use of a common private road situated to the south of the petitioner's building. The dispute resulted in O.S. No. 122/2008 filed by the third respondent and O.S. No. 134/2008 filed by the petitioner's brother-in-law and another person. Eventually, it was compromised through Exhibit P6 decree.

6. In terms of Exhibit P6 decree, leaving the set back as has been mandated under the extant Panchayat Building Rules, the petitioner is said to have raised additional

structures, without building permit though. It appears that the petitioner has applied for regularization. At that juncture, the third respondent complained to the respondent Grama Panchayat that the construction was made not only without building permit, but also without leaving the necessary set backs, as has been mandated under Rule 28 of the Kerala Panchayat Building Rules, 2011.

7. Initially the Grama Panchayat issued Exhibit P8 provisional order and later Exhibit P9 final order seeking demolition of the newly added structures by the petitioner. Under those circumstances, the petitioner filed W.P. (C) No. 19775/2014.

8. On the other hand, seeking enforcement of Exhibits P8 and P9 orders issued by the respondent Grama Panchayat, the third respondent filed W.P. (C) No. 23696/2013, which is prior in point of time.

9. As has been indicated above, notwithstanding elaborate submissions made by the respective counsel for the petitioner and the third respondent, the issue required to be determined is whether the petitioner has raised the additional structures without adhering to the statutory

mandate under Rule 28 of the Rules.

10. It is profitable to extract Rule 28 of the Kerala Panchayat Building Rules, 2011, which reads as follows:

"28. Minimum distance between central line of a street and building : - (1) The minimum distance between the central line of a street and any building (other than a compound wall or fence or outdoor display structure) shall be 4.50 metres and the minimum distance between the street boundary and building shall be 2 metres for buildings up to 7 metres in height, in roads other than National Highway, State Highway, District Roads and roads notified by Panchayat; and it shall be 3 metres for National Highway, State Highway, District Roads and notified roads; and for buildings more than 7 metres in height the set back shall be minimum 3 metres from the boundary of any street/road.

Provided that in the case of cul-de-sac not exceeding 150 metres length or pedestrian lanes or streets below 3 metres width it shall be sufficient if the distance between the plot boundary abutting the street and building is 1.50 metres for buildings up to 7 metres height irrespective of the distance from the central line of the road to the buildings.

(2) Any restriction under street alignment or

building line or both, if any, fixed for the area and restriction under any Town Planning Scheme or any other rules or byelaws shall also apply simultaneously to all buildings in addition to the provisions contained in sub rule (1).

(3) The provisions contained in sub-rules (1) and (2) shall apply invariably to all buildings where the front, rear or side yards abut a street or gain access through a street."

11. A perusal of the above provision clearly reveals that the minimum distance between the street boundary and building shall be 2 meters for buildings up to 7 metres in height in roads other than the National Highway, State Highway, District roads and roads notified by the Panchayat. It is not in dispute that the road to the south of the petitioner's property, used commonly by both the parties, is a private road. In such an event, to reckon the distance of the set-back from the edge of the road, it is essential to determine the width of the road.

12. There is any amount of controversy with regard to the actual width of the road. The learned counsel for the third respondent has strenuously contended that the road is sixteen feet in width. From its margin, according to her, if

the distance is measured in terms of Rule 28 of the Rules, there is no clear gap of two metres.

13. At this juncture, the learned counsel for the third respondent has also made an additional plea that though it is a private road, it is vested in Grama Panchayat. Before undertaking further adjudication, I deem it appropriate to address this particular issue.

14. The learned counsel for the petitioner has contended that it is a private road, not vested in the Grama Panchayat. In the alternative, he has submitted that if it were to be a road vested in Grama Panchayat, the petitioner does not have any objection if the respondent Grama Panchayat considers the petitioner's application for regularization treating the southern road as the road of the Grama Panchayat.

15. At any rate, I am afraid the contention of the learned counsel for the third respondent cannot be countenanced. If it were a road vested in Grama Panchayat, the question of private parties entering into a compromise concerning the said road does not arise. Nor can I see any specific pleading on the part of the third respondent to the

effect that the road in question, though private, vests in the Grama Panchayat. I am, therefore, constrained to reject the contention of the third respondent that the road, though private, vests with the Grama Panchayat.

16. Proceeding further, as have already indicated, I may observe that to examine the issue of petitioner's compliance with Rule 28 of the Rules, it is essential to find out what exactly is the width of the road in question: is it 10 feet width as has been contended by the petitioner, or 16 feet, as has been contended by the third respondent?

17. If the road is sixteen feet width, the construction of the petitioner is clearly without leaving sufficient set back; on the other hand, if it is ten feet, it can be concluded that there is sufficient compliance with Rule 28 of the Rules.

18. A perusal of Exhibit P6 compromise decree reveals that the suit is decreed in terms of the compromise dated 29.09.2009. The Schedule describes the road as having 300 meters in length and 10 feet width within the boundaries specified therein. Further perusal of the record reveals that the self-same Exhibit P6 contains the terms of the compromise in the vernacular. The learned counsel for the

petitioner has read over and translated the contents thereof for my benefit in the absence of any translated version being available. The accuracy of the oral translation has not been objected to by any other counsel.

19. The purpose of the compromise seems to be that both parties in both suits have agreed to use the road mentioned in the plaint B Schedule of O.S. No. 122/2008 and to keep the key of the iron lock and chain fixed to the gate on the western end of the road. Putting the issue in perspective, if we examine the Schedule annexed to the compromise decree in Exhibit P6, it is not in dispute that the road measures only 10 feet in width.

20. Indeed, the learned counsel for the third respondent has strenuously contended that there is no iota of doubt that actually the road in question is sixteen feet in width and that what has been stated in Exhibit P6 is only typographical error noticed *now* for the first time. I am afraid, this contention, too, cannot be countenanced. A decree, more particularly a compromise decree, is inviolable, because the legislature, with a salutary objective, has ensured that there shall be no appeal against a compromise

decree, subject to certain exceptions.

21. Even otherwise, the third respondent has so far not taken any steps, assuming there were to be a typographical error, to have it rectified by taking recourse to any necessary remedial measure under the Code of Civil Procedure. So long as Exhibit P6 decree stands, it goes without saying, the same bounds all the parties, who claimed under the said decree.

22. In the light of the compromise decree, I have no other option than concluding that the road is 10 feet width and that the set-backs have to be reckoned in terms of Rule 28 of the Rules only from the margin of the said 10 feet road.

23. Exhibit R2A is the rejection, pending the present writ petitions, of the petitioner's application for regularization. It pays to examine the said communication, which reads thus:

"On perusal of your application it is seen that the application is for regularization of the extension to the existing building. It is informed that on verification it is realised that the construction is by wrongly stating that it has 3M distance from the

road and intended for getting regularization on misrepresentation and that case is pending before the Hon'ble High Court in respect of the same and so the application for construction is temporarily rejected and the application would be considered subject to the decision of the Hon'ble High Court."

24. The respondent Grama Panchayat has proceeded on the presumption that the distance to be maintained for the purpose of set-back is three meters; this conclusion seems to have been on the premise that the road in question is 16 feet width. Further, there is no final rejection, since the respondent Grama Panchayat has observed that the issue could be reconsidered subject to the decision of this Court in the present writ proceedings. As such, it does not lie in the mouth of either the respondent Grama Panchayat or the third respondent to contend that the petitioner has an efficacious alternative remedy *vis-a-vis* Exhibit R2A.

25. In the facts and circumstances, going by the binding compromise in Exhibit P6 between both the parties to the present proceedings, the W.P. (C) No.23696/2013 filed by the third respondent cannot be sustained, and is accordingly dismissed.

26. On the other hand, W.P. (C) No. 19775/2014 filed by the petitioner is allowed, setting aside Exhibits P8, P9 and Exhibit R2A proceedings issued by the respondent Grama Panchayat. Consequently, this Court directs the respondent Grama Panchayat to reconsider petitioner's application for regularization afresh, taking into account the width of the road as 10 feet, as has been established in Exhibit P6 and take all further necessary consequential steps in that regard.

While finalizing the proceedings concerning the regularization of the construction made by the petitioner in accordance with the Kerala Panchayat Building Rules, the respondent Grama Panchayat shall also provide an opportunity to the third respondent to raise his objections, if any. The same shall be done within a period of two months from the date of receipt of a copy of this judgment.

No orders as to costs.

**DAMA SESHADRI NAIDU
JUDGE**

DMR/-