

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 11TH DAY OF NOVEMBER 2015/20TH KARTHIKA, 1937

WP(C).No. 23235 of 2015 (D)

PETITIONER(S) :

- 1. BABU, AGED 44 YEARS,
S/O.JOSE, PULAYOOR HOUSE, MUNDOOR P.O.,
THRISSUR DISTRICT.**
- 2. SHEENA,
W/O.BABU, PULAYOOR HOUSE,
MUNDOOR P.O., THRISSUR DISTRICT.**

**BY ADVS.SRI.SANTHOSH P.PODUVAL
SMT.R.RAJITHA
SMT.VINAYA V.NAIR**

RESPONDENT(S) :

**KAIPARAMBA GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY, KAIPARAMBA,
THRISSUR- 680 546.**

BY ADV. SRI.T.M.CHANDRAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 18-08-2015, THE COURT ON 11-11-2015 DELIVERED THE
FOLLOWING:**

Msd.

WP(C).No. 23235 of 2015 (D)

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXT.P1: TRUE COPY OF THE SALE DEED REGISTERED AS 2280/14 OF MUNDOOR SRO.**
- EXT.P2: TRUE COPY OF THE BUILDING PERMIT NO.A4-8753/14 DATED 09/01/2015 ISSUED BY THE RESPONDENT.**
- EXT.P3: TRUE COPY OF ORDER DATED 04/02/2015 ISSUED BY THE RESPONDENT PANCHAYAT.**
- EXT.P4: TRUE COPY OF JUDGMENT DATED 21/03/2013 IN W.P.(C) NO.4720 OF 2013 OF THIS HON'BLE COURT.**
- EXT.P5: TRUE COPY OF JUDGMENT DATED 20/10/2011 IN W.P.(C) NO.23281/11 OF THIS HON'BLE COURT.**
- EXT.P6: TRUE COPY OF JUDGMENT DATED 10/04/2013 IN W.P.(C) NO.20204/12 OF THIS HON'BLE COURT.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

PA.TO JUDGE.

Msd.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 23235 of 2015

Dated this the 11th day of November, 2015

J U D G M E N T

Aggrieved by the cancellation of building permit by the respondent panchayath for the reason that development permit was not produced along with the application for building permit, the petitioners have come up before this Court.

2. The petitioners purchased 1.94 Ares of property comprised in Re-Sy.No.225/2 of Anjoor Village as per Document No.2280/14 of Mundoor SRO. They filed an application for building permit for construction of a residential building in the said property, which was considered and a building permit was granted. The petitioners started construction of the house on the basis of the building permit. However, later, the respondent panchayath issued Ext.P3 order cancelling the permit already issued for the reason that the plot forms part of a larger extent of land, which was subdivided and that the

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said fact was suppressed at the time of filing the application and that no development permit was obtained for such subdivision. The petitioners point out that this Court, in various decisions, has held that an application for building permit by a purchaser of a small plot cannot be rejected for the reason that he has not produced a development permit even if the land was a developed one. According to the petitioners, there has been no suppression of any fact, which warrants revocation of permit. They further allege that no show cause notice was issued by the respondent panchayath as contemplated under Rule 18 of the Kerala Panchayath Building Rules. Hence, according to the petitioners, Ext.P3 order is per se illegal. It is with this background, the petitioners have come up before this Court.

3. In the counter affidavit filed by the respondent panchayath, it is contended as follows;

The property covered by Ext.P1 document is a portion of large extent of property, which has undergone plot subdivision as defined under Rule

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2 (ac) of the Kerala Panchayath Building Rules, 2011 and the plot subdivision/development was done without obtaining development permit from the respondent panchayath as provided in Rule 4 of the Building Rules, 2011. In the application for building permit, the petitioner did not mention the fact that the property has undergone plot subdivision; it is contended. According to them, the petitioner has not stated the correct facts and details in the application for building permit and the petitioners were fully aware of the facts that the property forms part of a larger extent of land, which was subdivided and undergone development as defined under Rule 2(ac) of the Rules, 2011. When the mistake came to the notice of the respondent, Ext.P3 order was issued. According to them, they are prepared to issue a show cause notice as provided under Rule 18 of the Building Rules, 2011.

It is further contended that since the

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property forms part of large extent of property, which had undergone subdivision/development without obtaining a development permit, the petitioners are not entitled to get building permit. The purchaser of the plot, which had undergone plot subdivision/development, has to insist on the development certificate from the owner of the property before purchasing the property. According to them, the owner, seeking permit for constructing a house in the developed property, is bound to produce the required necessary certificates and to comply with the provisions mentioned in Rules 4, 5, 6, 11, 22, 24, 25 and 26 etc. of the Kerala Panchayath Building Rules, 2011. Apart from this, the Local Self Government, Thiruvananthapuram has issued circulars intimating that the purchaser of flat/developed plot has to obtain the development certificate issued by the concerned authorities from the assignor. It is further contended that the

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petitioners have not raised any tenable grounds in the writ petition to interfere with Ext.P3 order issued by the respondent.

4. Arguments have been heard.

5. The petitioners started construction of the house on the basis of the building permit issued by the panchayath; and later, Ext.P3 order has been issued cancelling the permit for the reason that the plot forms part of a larger extent of land, which was subdivided, and that the said fact was suppressed at the time of submitting the application. According to the learned counsel for the petitioners, there was no necessity for production of development permit in the case of the petitioners since they have only purchased a small plot having an extent of 1.94 ares.

6. It is pointed out by the learned counsel for the petitioners that there was no development as envisaged under the Kerala Panchayath Building Rules at any point of time. It is further pointed out that the property purchased by the petitioners is a dry land and there are

houses adjacent to the said property.

7. This Court in umpteen decisions has held that an application for building permit by a purchaser of a small plot cannot be rejected for the reason that he has not produced a development permit even if the land was a developed one. Ext.P4 is the copy of such a judgment in WP(C) No.4720/2013. Ext.P6 is yet another judgment on the same line.

8. It is crucial to note that no notice was issued by the respondent panchayath as contemplated under Rule 18 of the Kerala Panchayath Building Rules. On a consideration of the entire materials now placed on board, this Court is of the view that the petitioners are entitled to succeed in the writ petition.

In the result, the writ petition is allowed. Ext.P3 is quashed.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-