

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. 24517 of 2014 (L)

PETITIONER:

LIJI.P.R. AGED 37 YEARS
W/O. JOBY, THEYKANATH PANDARAVALLAPPIL VEEDU, ANTHIKKAD
KANDASSAM KADAVU P.O., THRISSUR DISTRICT.

BY ADVS.SRI.P.SANTHOSH (PODUVAL)
SMT.R.RAJITHA
SRI.K.D.SREEVISAKH

RESPONDENTS:

1. ANTHIKKAD GRAMA PANCHAYATH
REPRESENTED BY ITS SECRETARY
OFFICE OF ANTHIKKAD GRAMA PANCHAYATH, ANTHIKKAD P.O.
THRISSUR DISTRICT-680064.

2. THE SECRETARY
ANTHIKKAD GRAMA PANCHAYATH, ANTHIKKAD P.O.
THRISSUR DISTRICT-680064.

3. MANALLOOR GRAMA PANCHAYATH
REPRESENTED BY ITS SECRETARY
OFFICE OF THE MANALLOOR GRAMA PANCHAYATH
KANDASSAMKADAVU P.O., THRISSUR DISTRICT-680613.

R1,R2 BY ADV. SRI.C.A.ANOOP

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

RKC

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APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT P1- TRUE COPY OF THE SALE DEED NO. 476/1/2014 OF ANTHIKKAD SRO DATED 01-02-14.

EXHIBIT P2- TRUE COPY OF THE BUILDING PLAN SUBMITTED BEFORE THE PANCHAYATH.

EXHIBIT P3- TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT DATED 07.05.2014.

EXHIBIT P4- TRUE COPY OF THE RTI APPLICATION FILED BY THE PETITIONER DATED 12-06-2014.

EXHIBIT P5- TRUE COPY OF THE REPLY OF 2ND RESPONDENT DATED 01-07-2014.

EXHIBIT P6- TRUE COPY OF THE RTI APPLICATION OF MR.SIJO P.JOSE DATED 12-06-2014.

EXHIBIT P7- TRUE COPY OF THE REPLY GIVEN BY SECRETARY OF 3RD RESPONDENT PANCHAYATH DATED 05-07-2014.

RESPONDENTS' EXHIBITS: NIL

RKC

TRUE COPY

PA TO JUDGE

P.V.ASHA, J.

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Dated this the 20th day of August, 2015

JUDGMENT

Grievance of petitioner is over the refusal to grant him building permit, by 1st respondent. The petitioner, who wanted to construct a building in his property in survey no.122/5 of Padiyam village submitted Ext.P2 application for building permit. By Ext.P3 order, the Secretary of Anthikkad Grama Panchayat- the first respondent, rejected his application, based on the report of the overseer to the effect that there is no set back as prescribed in the Kerala Panchayat Building Rules, 2011 (hereinafter referred to as 'the Rules' for short), and informed him that the application can be considered only on resubmission after rectifying the defects.

2. Thereafter by Ext.P5, on application under the Right to Information Act, the first respondent informed the petitioner that on the basis of inspection conducted by overseer, it was found that distance between the proposed building as well as the well in his property towards the road on the front of the building does

not come to 3 meters and hence it was contrary to the rules.

3. On an application under the Right to Information Act, submitted to the Manaloor Grama Panchayat - 3rd respondent Panchayat, it was informed as per Ext.P7 letter that eventhough a resolution was passed for notification of the roads, the roads coming within the 3rd respondent Manaloor Grama Panchayat are not notified roads, as provided under section 220(b) of Kerala Panchayath Raj Act. At the same time, it was also informed the said notification was only published in the Panchayat notice board and not by way of publication in gazette.

4. The first respondent has filed a counter affidavit pointing out that the petitioner's property lies in the boundary of the Anthikad and Manaloor Panchayaths- ie. first and third respondents and the road along its front side falls within the limits of third respondent Panchayat. It is pointed out that as per rule 28 of the Rules, in case the road is notified, the minimum distance between the central line of street and any building shall be 3 meters in case of buildings having less than 7 meters height. It was further found that the proposed construction of the

building of the petitioner was in violation of the rules as the distance from the well as well as from the proposed building towards road on its front side, is less than 3 meters.

5. The petitioner submits that the said road going along the front of his property and proposed building is not a notified road and therefore the provisions contained in section 220(b) of the Kerala Panchayat Raj Act will not apply and the refusal to grant him permit is illegal, as held by this Court in the judgment in ***Soman Pillai G V Mavelikkara-Thamarakulam Grama Panchayat & others: 2008(4)) KHC 160***. Petitioner points out that when the road is not notified, the distance prescribed under Rule 28 is only 2 kms and therefore permit is to be granted to him.

6. Even though notice was served on the 3rd respondent Panchayat, there is no appearance for them. Under the above circumstances, there will be a direction to the 3rd respondent to inform the first respondent Panchayat whether the road lying in front of the petitioner's proposed building is one notified by publication in Kerala Gazette, along with the particulars of such

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publication, within a period of two weeks from the date of receipt of a copy of this judgment.

The petitioner shall submit a copy of the application submitted before the first respondent, to the third respondent for the purpose of furnishing the aforesaid information. On receipt of such information from 3rd respondent, the first respondent shall pass fresh orders on the application submitted by the petitioner, in the light of the judgment (supra). This shall be done within a further period of three weeks.

Sd/-

**P.V.ASHA,
JUDGE.**

rkc