

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

WP(C).No. 24873 of 2015 (H)

PETITIONER(S):

**RAJENDRANATH V., S/O.SADASIVAN, AGED 56 YEARS,
RESIDING AT "NATH", THONDAYADU,
P.O.CHEVARAMBALAM, KOZHIKODE DISTRICT - 673 014.**

**BY ADVS.SRI.K.A.SALIL NARAYANAN
SRI.K.PRAVEEN KUMAR**

RESPONDENT(S):

- 1. THE STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT
OF REVENUE, STATE SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 2. THE DISTRICT DISASTER MANAGEMENT AUTHORITY, WYANAD,
REPRESENTED BY ITS EX-OFFICIO CHAIRPERSON,
THE DISTRICT COLLECTOR, WAYANAD - 673 576.**
- 3. THE DISTRICT COLLECTOR, WAYANAD - 673 576.**
- 4. THE VYTHIRI GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY,
VYTHIRI, WAYANAD - 673 576.**
- 5. THE KERALA STATE DISASTER MANAGEMENT AUTHORITY,
REPRESENTED BY THE SECRETARY,
DEPARTMENT OF REVENUE,
STATE SECRETARIAT, PIN - 695 001.**

R1-R3 & R5 BY SPECIAL GOVERNMENT PLEADER SRI.ABDUL SALAM

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
03-11-2015, ALONG WITH WPC. 29516/2015, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: TRUE COPY OF THE SALE DEED EXECUTED IN FAVOUR OF THE PETITIONER DATED 23/02/2013.

EXT.P2: TRUE COPY OF THE BUILDING PERMIT HELD BY THE PETITIONER AND ISSUED BY THE SECRETARY, VYTHIRI GRAMA PANCHAYATH DATED 04/12/2012.

EXT.P3: TRUE COPY OF THE OBJECTION CERTIFICATE ISSUED BY THE FIRE AND RESCUE SERVICES DATED 14/02/2012.

EXT.P4: TRUE COPY OF THE ORDER ISSUED TO THE PETITIONER BY THE DISTRICT MAGISTRATE, WAYANAD DATED 30/01/2015.

EXT.P5: TRUE COPY OF THE ORDER DATED 31/01/2015.

EXT.P6: TRUE COPY OF THE ORDER DATED 16/02/2015 OF THE DISTRICT MAGISTRATE, WAYANAD.

EXT.P7: TRUE COPY OF THE CERTIFICATE AND REPORT ISSUED BY ZIGMA TESTING SOLUTIONS.

EXT.P8: TRUE COPY OF THE CONSENT ISSUED BY THE KERALA STATE POLLUTION CONTROL BOARD TO THE PETITIONER.

EXT.P9: TRUE COPY OF THE REPORT SUBMITTED BY THE EXECUTIVE ENGINEER, PWD BUILDINGS DIVISION.

EXT.P10: TRUE COPY OF THE REPORT SUBMITTED BY THE DIVISIONAL FOREST OFFICER, SOUTH WAYANAD DIVISION BEFORE THE DISTRICT COLLECTOR, WAYANAD.

EXT.P11: TRUE COPY OF THE REPORT FILED BY DISTRICT SOIL CONSERVATION OFFICER THE BEFORE THE DISTRICT COLLECTOR.

EXT.P12: TRUE COPY OF THE REPORT SUBMITTED THE GEOLOGIST BEFORE THE DISTRICT COLLECTOR, WAYANAD TO THE DISTRICT COLLECTOR, WAYANAD DATED 04/03/2015.

EXT.P13: TRUE COPY OF THE REPORT OF THE ENVIRONMENTAL ENGINEER, WAYANAD DATED 17/03/2015.

EXT.P14: TRUE COPY OF THE INSPECTION REPORT SUBMITTED BEFORE THE DISTRICT COLLECTOR, WAYANAD.

EXT.P15: TRUE COPY OF THE ORDERS OF THE 3RD RESPONDENT DATED 30/06/2015.

msv/

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EXT.P6: TRUE PHOTOGRAPHS.

EXT.P17: TRUE COPY OF THE DISASTER MANAGEMENT POLICY OF THE
GOVERNMENT OF KEALA

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.MUHAMED MUSTAQUE, J.

W.P(C) Nos. 24873 & 29516 of 2015

Dated this the 3rd day of November, 2015

J U D G M E N T

These writ petitions are filed by the permit holders from the local authority to construct residential apartment buildings in Wayanad District, aggrieved by the operation of Ext.P4 proceedings of the Chairman, District Disaster Management Authority and the District Magistrate, Wayanad, produced in WP(C) No.29516 of 2015 (which is Ext.P15 in WP(C) No.24873 of 2015).

2. There is no dispute to the effect that petitioners were issued with permit by the local authority before the date of issuance of Ext.P4. Ext.P4 (in WP(C) No.29516 of 2015) was issued on 30.6.2015 under the Disaster Management Act, 2005 (hereinafter referred to for short as 'the D.M.Act').

3. Petitioners approached this Court alleging that their right to construct apartment buildings in tune with building permit issued by

the local authority cannot be affected on account of operation of Ext.P4. By Ext.P4, restriction on maximum height for construction of the building has been prescribed, which is also stated in para 9 of the counter affidavit filed on behalf of second and third respondents, is as follows:

<i>Sl.No.</i>	<i>Geographic Area</i>	<i>Maximum Height of the building including underground constructions, if any</i>
1	Lakkidi area of the Vythiri Grama Panchayat comprising the whole of Kunnathidavaka Village	8 meters (Limited to Maximum Two Floor levels)
2	Municipality Areas	15 meters (Limited to Maximum Five Floor levels)
3	All other areas in the district which are not specified in serial numbers 1,2 above.	10 meters (Limited to Maximum Three Floor levels)

4. Learned Senior Counsel appearing for the writ petitioner in W.P(C) No.29516 of 2015 refers to Section 31 of the D.M.Act and submits that no District Plan as contemplated under Sec.31 has been prepared in Wayanad District and unless any such restriction on construction form part of the District Plan, such prohibition as contemplated under Ext.P4 cannot be issued. Learned counsel for the

writ petitioner in WP(C)No.24873 of 2015 also submits that the proceedings of the District Collector cannot have retrospective application and it is only prospective in nature.

5. This Court need not call upon the question of validity of Ext.P4 proceedings dated 30.6.2015 (in WP(C) No.29516 of 2015) of the District Collector. The issue is only its application in relation to the petitioner's construction. It is to be noted, these measures are taken as preventive measures to avert any impending disaster. Disaster is defined under the D.M.Act as follows:-

“2(d)”disaster” means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man made causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area;”

The District Authority under the D.M.Act is armed with a power to prepare a District Plan. Section 30 of the D.M.Act refers to power and

functions of the District Authority. This includes preparation of disaster management plan for the District and also co-ordination and monitoring of implementation of the State and National Policies. It is appropriate to refer to Sections 30(2)(iii) and (v) of the above Act.

“30. Powers and functions of District Authority.-- (1) *The District Authority shall act as the district planning, co-ordinating and implementing body of disaster management and take all measures for the purposes of disaster management in the district in accordance with the guidelines laid down by the National Authority and State Authority.*

(2) Without prejudice to the generality of the provisions of sub-section (1), the District Authority may---

(i) xxxxx xxxxx xxxxx

(ii) xxxxx xxxxx xxxxx

(iii) ensure that the areas in the district vulnerable to disasters are identified and measures for the prevention of disasters and the mitigation of its effects are undertaken by the departments of the Government at the district level as well as by the local authorities.

(iv) xxxxx xxxxx xxxxxx

(v) give directions to different authorities at the district level and local authorities to take such other measures for the prevention or mitigation of disasters as may be necessary;”

6. Therefore, the above power clearly indicates that apart from preparing the District Plan, the District Authority also have to ensure prevention of disasters and mitigation of its effects in the manner in which it is satisfied, by such measures as are required.

7. The District Authority has the power to act within the domain of the D.M. Act. But, in certain areas, as seen from Section 30 and other provisions of the Act would show that the District Authority can direct other statutory authority to take measures in the light of the directions to be issued. The District Authority may either initiate action for prevention of disaster or may give necessary direction to another authority to prevent disaster. In areas where the District Authorities can involve directly to take measures, they are competent to take actions. But, where the areas where the District Authority is incompetent to intervene, may issue guidelines or directions to enforce it, it is then become the duty of that authority to enforce those guidelines and to implement the directions. Once a

direction is issued by the District Authority, any other Government agency is bound to enforce and implement it.

8. This Court need not doubt about the power of District Authority to give any directions or guidelines to initiate the measures to prevent the disaster. Therefore, the question in this case has to be answered with reference to the above discussions. The sanctioning of a building permit or construction of a building in terms of Building Rules is a matter, which squarely falls within the power of Local Self Government Institution under the Municipality Act and Panchayath Raj Act. Law confers such powers in terms of legislative competence of the State. While enacting the D.M.Act, the lawmakers were aware of the functions given or duties entrusted to the Local Self Government Institutions. The law makers never intended to deprive those rights and powers of Local Self Government institutions to issue permit and to take action in terms of legislation, which empowers them to grant permit. It is to be noted, competency to enact law in

relation to Local Government falls under Entry 5 in the State List. The D.M.Act is a central legislation. Therefore, power of the District Authority, in such circumstances, has to be understood as supplemental to those powers given to Local Self Government institutions. That means the District Authority can only direct Local Self Government to implement the directions for the permit to be issued taking note of the disaster management. Thus, keeping the paramount power of the District Authority under the D.M.Act, Ext.P4 proceedings of the Chairman, District Disaster Management Authority and the District Magistrate, Wayanad, produced in WP(C) No.29516 of 2015 (which is Ext.P15 in WP(C) No.24873 of 2015) can be understood only as a guideline/directive given by the District Authority to the Local Self Government Institutions and other agencies to implement as part of larger disaster management. This direction would form part of building permit to be issued in Wayanad District after 30.6.2015. Thus, the Local Self Government Institutions

are bound to implement the above directives. Therefore, the proceedings can have only a prospective application from the day on which it was issued and should be read along with the power given to the Local Self Government Institutions to grant permit in terms of the Kerala Panchayat and Municipal Building Rules. All the local authorities in Wayanad District are also bound to implement the same after 30.6.2015. As has been noted, the District Authorities cannot implement it their own, but it can be taken as a directive or guideline to be enforced by the local authority. Therefore, treating Ext.P4 as a directive to be implemented by the local authority, it cannot affect the right of a person, who has already obtained permit to construct a building prior to 30.6.2015.

In that view of the matter, this Court is of the view that the petitioners are free to undertake the construction in accordance with the building permit already issued. The District Authority is directed to communicate Ext.P4 to all the Local Self Government Institutions

in the District and ensure that Ext.P4 is implemented as a part of the building permit issued after 30.6.2015. It is also open for the District Authority to implement the directions now issued as forming part of the District Plan under Section 31 of the D.M.Act, after consultation with the local authority.

These writ petitions are disposed of as above.

A.MUHAMED MUSTAQUE,
Judge

MBS/

WP(C).NO.24873 & 29516 of 2015

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