

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

WP(C).No. 29071 of 2014 (H)

PETITIONER(S):

**N.S.ARUN KUMAR,
MANAGING PARTNER, M/S. ARADHANA GRANITES, CHITHALY,
ERUMAYOOR, KAVASSERY P.O. - 678 573, PALAKKAD DISTRICT.**

**BY SRI.N.N.SUGUNAPALAN, SENIOR ADVOCATE
ADV. SRI.S.SUJIN**

RESPONDENT(S):

- 1. SECRETARY, ERUMAYOOR GRAMA PANCHAYATH,
ERAMAYOOR P.O. - 678 546.**
- 2. ERIMAYOOR GRAMA PANCHAYATH,
ERIMAYOOR P.O. - 678 546,
REPRESENTED BY ITS SECRETARY.**
- 3. KUTTAPPAN,
S/O. RAMAKRISHNAN, TREASURER, ACTION COMMITTEE,
AMMOORPADAM HOUSE, VAYYAMKULAMBU,
ERAMAYOOR P.O. - 678 546, ERUMAYOOR GRAMA PANCHAYATH,
ALATHUR, PALAKKAD.**
- 4. A.K.VAISWANATHAN,
S/O. KANDACHAMI, SECRETARY, ACTION COMMITTEE,
AMMOORPADAM HOUSE, VAYYAMKULAMBU,
ERMAYOOR P.O - 678 546, ERUMAYOOR GRAMA PANCHAYATH,
ALATHUR, PALAKKAD.**

**R1 & R2 BY ADV. SRI.U.BALAGANGADHARAN
R3 & R4 BY ADVS. SRI.P.R.VENKETESH
SMT.ASHA P.KURIAKOSE**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
11-02-2015, ALONG WITH WPC. 11852/2014, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

EXT. P1 - TRUE COPY OF THE ORDER DT. 02.9.13 ISSUED BY THE CONVENOR AND
GENERAL MANAGER OF THE BOARD.

EXT. P2 - TRUE COPY OF THE COMMUNICATION ISSUED BY THE DISTRICT TOWN
PLANNER DT. 17.01.13.

EXT. P3 - TRUE COPY OF THE NOTICE PUBLISHED BY THE PANCHAYATH.

EXT. P4 - TRUE COPY OF THE PROCEEDINGS OF THE SINGLE WINDOW CLEARANCE
BOARD DT. 02.9.13.

EXT. P5 - TRUE COPY OF THE APPLICATION DATED NIL SUBMITTED BY THE
PETITIONER.

EXT. P6 - TRUE COPY OF THE LETTER DT. 29.10.2012 TO THE SECRETARY.

EXT. P7 - TRUE COPY OF THE INTERIM ORDER DT. 18.6.2014.

EXT. P8 - TRUE COPY OF THE ORDER DT. 20.6.14 ISSUED BY THE 1ST RESPONDENT
SECRETARY.

EXT. P9 - TRUE COPY OF THE APPEAL NO. 825/14 DT. 17.7.2014 PREFERRED BY THE
PETITIONER BEFORE THE TRIBUNAL.

EXT. P10 - TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE
1ST RESPONDENT.

EXT. P11 - TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE
2ND RESPONDENT.

EXT. P12 - TRUE COPY OF THE APPEAL FILED BY THE 1ST RESPONDENT DT. 16.6.14
BEFORE THE STATE BOARD.

EXT. P13 - TRUE COPY OF THE APPEAL FILED BY THE ACTION COMMITTEE
DTD. 10.7.14.

EXT. P14 - TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE CONVENER OF
THE SINGLE WINDOW CLEARANCE BOARD BEFORE THE HON'BLE HIGH
COURT IN WPC NO. 11852/2013.

EXT. P15 - TRUE COPY OF THE ORDER OF THE TRIBUNAL DT. 23.10.2014.

IA.NO. 15429/2014 IN WP(C) NO.29071/2014

EXT. P16 - TRUE COPY OF THE NOTICE DATED 31.10.2014 ISSUED BY
1ST RESPONDENT.

Msv/

WP(C).No. 29071 of 2014 (H)

IA.NO. 1790/2015 IN WP(C) NO.29071/2014

EXT. P16 - TRUE COPY OF THE PROCEEDING DATED 4.2.2015 ISSUED BY THE SUB
DIVISIONAL MAGISTRATE, PALAKKAD ALONG WITH ENGLISH
TRANSLATION.

IA.NO. 2026/2015 IN WP(C) NO.29071/2014

EXT. P17 - TRUE COPY OF THE DOCUMENT SHOWING THE REQUIREMENT OF
METERS WIDTH FOR THE DISTRICT PANCHAYAT ALONG WITH ITS
TRANSLATION.

EXT.P18 - TRUE COPY OF THE FIR (WITH ITS TRANSLATION) REGISTERED BY
ALATHUR POLICE STATION.

EXT.P19 - TRUE COPY OF THE DOCUMENT EVIDENCING WORK UNDERTAKEN BY
THE DISTRICT PANCHAYAT WITH ITS TRANSLATION.

RESPONDENT(S)' EXHIBITS:

EXT. R3(a) - TRUE COPY OF THE LETTER DTD.22.7.2014 FROM DFO TO THE DISTRICT
COLLECTOR.

//TRUE COPY//

P.A.TO JUDGE.

MsV/

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 29071 of 2014

&

W.P. (C) No. 11852 of 2014

Dated this the 11th day of February, 2015

COMMON JUDGMENT

The petitioner, the managing partner of a partnership firm, which intended to establish an industrial unit for manufacturing M-Sand, filed the writ petition assailing Ext. P15 order of the Tribunal For Local Self-Government Institutions, Trivandrum ('the Tribunal' for brevity). The finding of the learned Tribunal is that the Single Window Clearance Board ('the Board' for brevity) has no authority to issue necessary clearances to the petitioner to establish an industrial unit, for the land the unit is proposed to be established on is not situated within the notified area as provided under the Single Window Clearance Board Act ('the Act' for brevity), but within the limits of the 2nd respondent Grama Panchayat.

2. The 3rd and 4th respondents in the above writ petition, claiming themselves to be the residents of Erimayoor Grama Panchyat, filed WP (C) No. 11852 of 2014, seeking to lay challenge against the proceedings issued by the Board to the petitioner to set up the M-Sand Manufacturing Unit.

3. Since both the writ petitions have issues in common, arising under the same factual matrix, involving the same set of parties, this court proposes to dispose of both the writ petitions through a common judgment. For ease of reference and felicity of expression I take the facts as set out in WP (C) No. 29071 of 2014 as the basis, apart from referring to the parties as arrayed in the said writ petition.

4. Initially, the petitioner submitted Ext. P5 application to the 1st respondent for building permit to established industry, but when it was not responded to within the statutory period of 30 days, the petitioner submitted an application before the Board. Having processed the petitioner's application, the Board through Ext. P6 required the respondent Grama Panchayat to intimate to the Board its

objections, if any, in that regard.

5. While the issue of granting the necessary clearance was pending with the Board, the 3rd and 4th respondents, allegedly rival businessmen, are said to have tried to obstruct the petitioner from executing his plans. After unsuccessfully approaching this court for police protection, the petitioner filed OS No. 96 of 2014 on the file of the Munsiff Court, Alathur, and obtained an injunction against those respondents. Despite the injunction when the respondents 3 and 4 allegedly persisted with their obstructive activities, the petitioner once again approached this Court and obtained police protection, on the strength of which he continued his construction activities.

6. In the meanwhile, on 02/09/2013, the Board met and granted what could be termed as a deemed licence, because the respondent Grama Panchayat did not choose to respond to the Board's Ext. P6 communication. Under those circumstances, the respondents 3 and 4 filed WP (C) No. 11852 of 2014 contending that the Board had no power to grant the clearance to the petitioner. On *prima facie* appreciation of the matter, this Court issued Ext. P7 interim

direction on 18/06/2014 to the 1st respondent to verify whether the petitioner had all the requisite permits and licenses for establishing the industrial unit. The 1st respondent, in turn, as contended by the petitioner, misconstrued the interim direction of this Court and issued Ext. P8 stop-memo prohibiting the petitioner from constructing the building.

7. Aggrieved by Ext.P8 stop memo issued by the 1st respondent, the petitioner filed Ext.P9 statutory appeal No. 825 of 2014 before the Tribunal. The 1st respondent on one hand and the 3rd and 4th respondents on the other seem to have filed Exts. P12 and P13 appeals before the Convener of the Board invoking Section 11 of the Act. Those appeals were filed calling in question the decision of the Board in granting the clearance to the petitioner.

8. Eventually, the learned Tribunal dismissed appeal No. 825 of 2014 through Ext.P15 order holding that the Board has no authority to issue the clearance in petitioner's favour because the property on which the petitioner intended to have the industry established is not within the notified area, but within the territorial limits of the 2nd respondent

Grama Panchayat. Impugning both Ext.P8, the stop memo issued by the 1st respondent, and Ext.P15, the order in appeal passed by the learned Tribunal, the petitioner filed WP (C) No. 29071 of 2014.

9. Indeed, various pleas have been advanced by the petitioner to sustain the clearance granted by the Board; equally varied are the submissions made by the 3rd and 4th respondents to sustain Ext. P15 order of the Tribunal.

10. Mr.P. R. Venkatesh, the learned counsel for the 3rd and 4th respondents, and the learned counsel for the Grama Panchayat, have mainly focused on the jurisdiction of the Board in issuing the necessary clearance to the petitioner in the face of express objections raised by the District Town Planner, as well as the initial, implied, rejection by the Grama Panchayat to permit the petitioner to establish the industry in question.

11. On the other hand, Mr. N. N. Sugunapalan, the learned Senior Counsel for the petitioner, has strenuously defended the decision of the Board, apart from assailing the correctness of Ext.P15 order of the Tribunal.

12. Numerous as the submissions have been on either side, the learned counsel for the 3rd and 4th respondents and also the learned counsel for the Grama Panchayat have eventually confined their submissions to a singular aspect — the proposed industrial unit not having access road of sufficient width, 8 meters.

13. Thus, the issue narrows down to a singular aspect: that notwithstanding the fulfillment of other criteria, still the petitioner could not establish in terms of statutory provisions that there is an 8-meter approach road to the industrial unit proposed to be constructed by the petitioner.

14. The learned Senior Counsel for the petitioner has submitted that the Single Window Board has relied on Exhibit P17 issued by the Assistant Engineer, LSGD Section, to arrive at a conclusion that the access road has sufficient width of 8 meters. Countering the submission of the learned Senior Counsel, the learned counsel for the Grama Panchayat has contended that Grama Panchayat is the custodian of the records concerning the properties, including the pathway under reference. According to him, in Panchayat records it is shown as 6 meters. The learned

counsel has further submitted that the Assistant Engineer, LSGD Section has only stated, in his words, vaguely that the approach road is 'about' eight meters.

15. Expatiating on his submissions, the learned Senior Counsel has, however, submitted that, though the pathway is more than eight meters, the neighbours have encroached upon it. According to him, appropriate proceedings have been initiated in that regard. Exhibit P18 is the F.I.R. said to have been registered against certain encroachers, including the 4th respondent herein. He has drawn my attention to Exhibit P16, the order of the Sub-Divisional Magistrate directing the encroachers to remove the encroachments.

16. When the District Panchayat has, the learned Senior Counsel stressed, undertaken the maintenance of the Panchayat roads, the minimum width required for that purpose being eight meters, the very respondent Grama Panchayat has certified that the approach road in question is eight-meter width, as could be seen from Exhibit P19.

17. In reply, the learned counsel for the 3rd and 4th respondents has drawn my attention to Ext.P30 in WP (C) No.11852 of 2014 to contend that just a few days prior to

the Board taking a decision to issue the necessary clearance in petitioner's favour, it issued the said communication to the petitioner that the road is only seven meters width.

18. Heard the learned Senior Counsel for the petitioner, the learned counsel for the respondent Grama Panchayat and the learned counsel for the 3rd and 4th respondents, apart from perusing record.

19. At any rate, without fear of contradiction it can be stated that there is any amount of controversy with regard to the actual width of the road. On one hand, the learned Senior Counsel for the petitioner has contended that though it is eight meters, it has been subjected to encroachment, regarding which steps have already been initiated by the authorities concerned. On the other hand, the learned Counsel for the 3rd and 4th respondents, as well the learned counsel for the Grama Panchayat, has contended that the width of the road is less than the prescribed one.

20. Without cogitating much on the issue of the width of the road, I deem it appropriate to direct the Convener and General Manager of the Board, i.e., the first respondent in W.P. (C) No.11852 of 2014, to subject the approach road to

physical inspection, duly taking into account the aspects of encroachment and also the rival contentions in that regard and take an appropriate decision before permitting the petitioner to proceed further in terms of the permit granted earlier through Exhibit P1. Needless to observe that, given the acrimony and heat the issue has generated, the first respondent may take expeditious steps in this regard to put a quietus to the litigation. It is further observed that at the time of determining the width of the road, the first respondent shall provide an opportunity of hearing to all the parties concerned.

With the above direction, both the writ petitions stand disposed of.

**DAMA SESHADRI NAIDU
JUDGE**

DMR/-