

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

WP(C).No. 29155 of 2014 (T)

PETITIONER:

SREEDAS, AGED 55 YEARS
S/O.SHANKUNNI MENON, "SREE NIVAS"
MELMURI P.O. PALAKKAD, PIN-679 307.

BY ADV. SRI.M.C.JOHN

RESPONDENT:

KAPPUR GRAMA PANCHAYAT,
REPRESENTED BY SECRETARY,
KAPPUR GRAMA PANCHAYAT KUMARANELLUR P.O.,
PALAKKAD DISTRICT - 670 552

R. BY ADV. SRI.A.KRISHNAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
04-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 - TRUE COPY OF THE ACKNOWLEDGMENT DATED 13-08-2014 ISSUED BY THE RESPONDENT.

EXT.P2 - TRUE COPY OF THE BUILDING PLAN PREPARED BY GOVERNMENT APPROVED REGISTERED BUILDING SUPERVISION.

EXT.P3 - TRUE COPY OF THE LETTER NO.A4-3855/14 DATED 20-10-2014 ISSUED BY THE RESPONDENT.

EXT.P4 - TRUE COPY OF THE RELEVANT PORTION OF THE LICENCE NO.512/14-15 DATED 31-03-2014.

EXT.P5 - TRUE COPY OF THE UNDATED MEMO ISSUED BY THE RESPONDENT TO THE LICENSEE.

EXT.P6 - TRUE COPY OF THE ORDER DATED 25-01-2014 IN WPC.NO.19340/14 OF THIS HON'BLE COURT.

EXT.P7 - TRUE COPY OF THE ORDER DATED 30-10-2014 IN WPC.NO.19340/14 OF THIS HON'BLE COURT

RESPONDENTS' EXHIBITS:

EXHIBIT R(1) : TRUE COPY OF THE ORDER VIDE NO. A4-3023/14 DATED 22.07.2014.

EXHIBIT R(2): TRUE COPY OF THE SAID APPLICATION FOR BUILDING PERMIT.

EXHIBIT R(3): TRUE COPY OF THE STOP MEMO DATED 23.07.2014.

/True Copy/

P.A to Judge.

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 29155 of 2014 (T)

Dated this the 4th day of March, 2015.

JUDGMENT

The petitioner, being the co-owner of 5 cents of property, comprised in Survey No.213/2 of Ward No. VII of the respondent Grama Panchayath, submitted an application for building permit to construct a commercial building. The respondent Grama Panchayath has, however, rejected the petitioner's application through Ext.P3 proceedings on the ground that there is a complaint from one Kozhikkara Prohibition Activists and that W.P.(C) No. 19340 of 2014 filed by the licensee, who has a toddy shop in a part of the petitioner's property, is pending. Assailing Ext.P3, the petitioner has filed the present writ petition.

2. The learned counsel for the petitioner has contended that the petitioner has nothing to do with W.P.(C) No. 19340 of 2014, which was filed by the licensee, who, as a tenant, has been carrying on his business in toddy in a building belonging to the petitioner. According to the learned counsel, out of 5 cents of land owned by the petitioner, he wanted to construct another building in the

remaining part of his land, inasmuch as the building built on one part of the property has become old.

3. The learned counsel for the respondent Grama Panchayath, apart from reiterating the reasons stated in Ext.P3, has also submitted that even before the petitioner's application could be processed, the petitioner illegally laid foundation or raised basement for the purpose of construction. According to him, in the face of the said illegality, the petitioner cannot be granted any permission.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondent Grama Panchayath, apart from perusing the record.

5. A perusal of Ext.P3 clearly indicates that the objection on the part of the respondent Grama Panchayath is two fold: that there is a complaint from certain prohibition activists, and that there is a writ petition pending at the behest of the licensee of the toddy shop situated on the property of the petitioner.

6. Firstly, I make it clear that W.P.(C) No. 19340 of 2014 has nothing to do with the petitioner, nor has it any impact on the respondent Grama Panchayath taking any decision. At any rate, today

W.P.(C) No. 19340 of 2014 has also been disposed of by this Court. The said writ petition therefore, may not be a hurdle to the respondent Grama Panchayath to take a decision.

7. Concerning the objections said to have been raised by any person on the issue of building permit to be granted to the petitioner, the respondent Grama Panchayath is always at liberty to take the said objections into consideration strictly in accordance with the statutory terms and process the application further.

The additional objection raised through the counter affidavit by the respondent Grama Panchayath that the petitioner has already illegally raised the basement, has not found place in Ext.P3, which has been assailed. The legal principle is well settled through a catenate of precedents beginning from *Mohinder Sing Gill v. Chief Election Commissioner*¹ that once an order is assailed, the order can be sustained only on the grounds that have been mentioned therein, but not based on the grounds, which could be supplemented later through the defence of the respondent authorities, such as counter affidavit or statement.

At any rate, I do not, however, propose to hold that the action of

¹ 1978 (1) SCC 405

the petitioner in raising constructions without prior permit to whatever extent, though it is said to be at the basement level, needs to be condoned. In fact, the respondent Grama Panchayat can as well examine the structures so far raised and find whether it is being in conformity with the building plan, which has already been submitted. If there is any deviation, the respondent Grama Panchayath is at liberty to take appropriate steps in that regard. On the other hand, if the construction, thus, so far raised is in conformity with the building plan submitted, it may further process the petitioner's application and pass appropriate order thereon, as expeditiously as possible, at any rate within two months from the date of receipt of a copy of this judgment.

With the above observation, this writ petition is disposed of.

sd/- DAMA SESHADRI NAIDU, JUDGE.

