

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. 29962 of 2014 (U)

PETITIONER(S) :

**GEORGE VARGHESE, AGED 62 YEARS,
S/O. LATE C.V.GEORGE, ETTICHUVATTIL HOUSE,
ETTICHUVAD P.O., RANNI TALUK, PATHANAMTHITTA DISTRICT.**

**BY ADVS.SRI.V.SETHUNATH
SRI.V.R.MANORANJAN (MUVATTUPUZHA)**

RESPONDENT(S) :

- 1. THE STATE OF KERALA,
REPRESENTED BY SECRETARY TO HEALTH DEPARTMENT,
THIRUVANANTHAPURAM, PIN-695 001.**
- 2. THE PRINCIPAL SECRETARY,
LOCAL SELF GOVERNMENT DEPARTMENT,
THIRUVANANTHAPURAM, PIN-695 001.**
- 3. THE DIRECTOR OF PANCHAYATH,
LSGD DEPARTMENT, THIRUVANANTHAPURAM, PIN-695 001.**
- 4. THE DEPUTY DIRECTOR OF PANCHAYATH,
PATHANAMTHITTA, PIN-689 645.**
- 5. RANNI - ANGADI GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY, RANNI P.O, PIN-689 672.**
- 6. THE DISTRICT MEDICAL OFFICER (HEALTH),
PATHANAMTHITTA, PIN-689 645.**
- 7. THE MEDICAL OFFICER,
PRIMARY HEALTH CENTRE, RANNI, ANGADI P.O, PIN-689 672.**

**R1 TO R4, R6 & R7 BY GOVERNMENT PLEADER SMT.C.K.SHERIN
R5 BY ADVS. SRI.ASOK M.CHERIAN
SRI.R.ROHITH
SRI.K.JANARDHANA SHENOY
SMT.S.RAKHEE**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 11-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 : THE TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 7TH RESPONDENT MEDICAL OFFICER TO THE 5TH RESPONDENT PANCHAYATH DATED 30.05.2012.
- P2 : THE TRUE COPY OF THE LETTER NO.206/14 ISSUED BY THE 7TH RESPONDENT.
- P3 : THE TRUE COPY OF THE DECISION TAKEN BY THE PANCHAYATH COMMITTEE DATED 28.08.2014.
- P4 : THE TRUE COPY OF THE AGREEMENT ENTERED BETWEEN THE PETITIONER AND THE 5TH RESPONDENT.
- P5 : THE TRUE COPY OF THE LETTER ISSUED BY THE 6TH RESPONDENT TO THE 7TH RESPONDENT PERMITTING THE TRANSFER OF THE PRIMARY HEALTH CENTRE TO THE PETITIONER'S BUILDING.
- P6 : THE TRUE COPY OF THE REPRESENTATION GIVEN BY THE PETITIONER TO THE RESPONDENTS 3,4 & 6.

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 29962 of 2014 (U)

Dated this the 11th day of February, 2015.

JUDGMENT

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

2. Briefly stated, the petitioner, a former President of the respondent Grama Panchayath, owns a building, which is said to have been required by the Grama Panchayath for the purpose of establishing a Primary Health Centre. According to the averments made by the petitioner, having found the facilities in the building where the Primary Health Centre is presently located to be inadequate, the 7th respondent Medical Officer is said to have written to the 5th respondent Panchayath to provide an alternative building for the PHC. Based on the request made by the 7th respondent, the 5th respondent approached the petitioner after passing Ext.P3 resolution.

Acting on it, the petitioner and the 5th respondent are said to have entered into an agreement through Ext.P4 agreeing in principle that the petitioner's building would be taken on lease, provided the petitioner effects the necessary structural changes to make it suitable for accommodating the PHC. Ventilating his grievance that after the petitioner's spending a lot of money, the 5th respondent Grama Panchayath has reneged on its contractual commitment, the petitioner has filed the present writ petition.

3. The learned counsel for the petitioner has strenuously contended that the respondent Grama Panchayath is estopped from going back on its contractual obligations as have been undertaken through Exts.P3 and P4. In elaboration of his submissions, the learned counsel would contend that, based on the express promise made by the 5th respondent Grama Panchayath, the petitioner has expended more than ₹ 4,00,000/- making the necessary structural changes to his building, now with the change of mind on the part of the respondent Grama Panchayath, the entire building is lying idle

causing immense loss to the petitioner. Under those circumstances, he has urged this Court to give a suitable direction to the respondent Grama Panchayath either to take the petitioner's building on lease for establishing the PHC or in the alternative, compensate the petitioner suitably because he had already spent more than ₹ 4,00,000.

4. Per contra, the learned counsel for the respondent Grama Panchayath has submitted that Ext.P3 only speaks of a tentative decision taken by the respondent Grama Panchayath to discuss the possibility of taking the petitioner's building on lease and it cannot be called any irrecoverable commitment. He has further submitted that, as could be seen from Ext.P4, it is only a unilateral undertaking on the part of the petitioner to renovate the building. According to the learned counsel, it has simply been acknowledged by the 5th respondent and as such, it cannot be called a mutual contract binding the respondent Grama Panchayath. He has further contended that the contention of the learned counsel for the petitioner that on the

express directions of respondents 5 and 6, the petitioner carried out extensive structural changes to his building expending about more than ₹ 4,00,000/- cannot be sustained in the absence of any proof thereof. At any rate, in the end, the learned counsel, summing up his submissions, has contended that if at all there were to be any negation of contractual obligations on the part of the respondent Grama Panchayath, it is open for the petitioner to take appropriate steps before a competent Civil Court, seeking appropriate remedy thereof.

5. Indeed, the singular issue to be decided in this writ petition is whether there is any contractual violation on the part of the respondent Grama Panchayath; if there is, does it entail the petitioner to seek either compensation or a mandatory direction to the respondent Grama Panchayath to take the building in question on lease. I do not propose to adjudicate the issue on merits, for any observation on merits of the matter will seriously prejudice the cause of either of the parties in the proceedings that may be instituted in course of time by the

petitioner in a competent forum. Accordingly, without advertng to the merits of the matter whether either Exts.P3 or Ext.P4 amounts to any binding contract or whether there is any negation of contractual obligation on the part of the respondent Grama Panchayath, this Court disposes of the writ petition leaving it open for the petitioner to seek his remedies before an appropriate forum concerning what is said to be the alleged contractual violation on the part of the respondent Grama Panchayath. It is abundantly made clear that in such an event, any inadvertent or collateral observation to the merits of the matter in the present disposition shall not be taken into account by the forum which may be called upon to decide the issue.

Before parting with the matter, I may have to refer to a specific submission made by the learned counsel for the petitioner. He wants this Court to observe that if at all the respondent Grama Panchayath decides to shift the PHC in future, they may consider the option of taking the petitioner's

building on lease, especially because the petitioner has expended considerable money on it. I see no harm in recording the request of the learned counsel for the petitioner and making an observation in that regard. Accordingly, it is left open for the respondent Grama Panchayath to consider the petitioner's building, if at all it decides to shift the PHC at any point of time in future, subject to its suitability and other factors.

sd/- DAMA SESHADRI NAIDU, JUDGE.

