

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

WP(C).No. 30186 of 2014 (W)

PETITIONERS:

1. SASIDHARA.A., AGED 50 YEARS,
S/O.KANNAN ACHARY, NELLIKATTA ADRAKAZHI HOUSE,
PADY VILLAGE, EDANEER P.O., KASARAGOD DISTRICT,
KERALA.
2. NITHYANANTHA @ ANANTHAN, AGED 42 YEARS,
S/O.KUNJURAMAN, NELLIKATTA ADRAKAZHI HOUSE,
PADY VILLAGE, EDANEER P.O., KASARAGOD DISTRICT,
KERALA.

BY ADVS.SRI.P.HARIDAS
SMT.S.SIKKY
SRI.P.C.SHIJIN

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY DEPARTMENT OF REVENUE,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, 695 001.
2. THE DISTRICT COLLECTOR,
KASARAGOD, 671 121.
3. SECRETARY,
CHENGALA PANCHAYATH, CHENGALA P.O.,
KASARAGOD - 670 631.
4. B.AHAMMAD @ AAMU,
MUTTATHODI VILLAGE, NEAR KVR CAR SHOP, ALAMPADY P.O.,
PANALAM, NAYANMAR MOOLA, KASARAGOD - 671 123.

ADDL.R5 & R6 IMPLEADED:

5. DISTRICT POLICE CHIEF,
KASARAGOD DISTRICT, PIN - 671 121.
6. SUB INSPECTOR OF POLICE,
VIDYANAGAR POLICE STATION, KASARAGOD DISTRICT - 671 121.

ADDL.R5 AND R6 ARE IMPLEADED AS PER ORDER DATED 23.06.2015 IN
IA 8432/15.)

R3 BY ADV. SRI.M.S.IMTHIYAZ AHAMMED
R3 BY ADV. SRI.SHIRAZ ABDULLA
R BY SRI. K.C. VINCENT, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
05-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS :

EXHIBIT-P1:TRUE COPY OF THE MASS PETITION DATED 07.10.2014.

EXHIBIT-P2:TRUE COPY OF THE REPRESENTATION DTED 07.11.2014.

EXHIBIT P3: TRUE COPY OF THE LETTER NO.A3.7226/14 CLAIMED TO BE SENT TO THE DISTRICT COLLECTOR BY THE 3RD RESPONDENT.

EXHIBIT P3(a): TRUE ENGLISH TRANSLATION OF EXHIBIT P3.

EXHIBIT P4: TRUE COPY OF THE NOTICE DATED 03.02.2015 CLAIMED TO BE SENT BY THE 3RD RESPONDENT TO THE 4TH RESPONDENT REQUIRING HIM TO STOP THE CONSTRUCTION.

EXHIBIT P4(a): TRUE ENGLISH TRANSLATION OF EXHIBIT P4.

EXHIBIT P5: TRUE COPY OF THE LETTER NO.A3.7226/14 DATED 04.04.2015 CLAIMED TO BE SENT TO THE 4TH RESPONDENT BY THE 3RD RESPONDENT.

EXHIBIT P5(a): TRUE ENGLISH TRANSLATION OF THE EXHIBIT P5.

EXHIBIT P6: TRUE COPY OF THE LETTER NO.A3.7226/14 DATED 04.04.2015 CLAIMED TO BE SENT BY THE 3RD RESPONDENT TO THE 6TH RESPONDENT.

EXHIBIT P6(a): TRUE ENGLISH TRANSLATION OF EXHIBIT P6.

EXHIBIT P7: TRUE COPY OF THE LETTER NO.A3.7226/14 DATED 11.05.2015.

EXHIBIT P7(a): TRUE ENGLISH TRANSLATION OF EXHIBIT P7.

RESPONDENTS' EXHIBITS:

ANNEXURE R3(a): COPY OF THE APPLICATION FOR PERMIT AND PLAN.

ANNEXURE R3(b): COPY OF THE LETTER DATED 18.11.2014 & PANCHAYATH COMMITTEE DECISION.

ANNEXURE R3(c): COPY OF THE NOTICE DATED 03.02.2015.

ANNEXURE R1(a): COPY OF THE LETTER DATED 18.11.2014 SENT TO THE 2ND RESPONDENT AND PANCHAYATH COMMITTEE DECISION.

ANNEXURE R1(b): COPY OF THE NOTICE DATED 03.02.2015.

ANNEXURE R1(c): COPY OF THE NOTICE DATED 04.04.2015.

ANNEXURE R1(e): NOTICE DATED 11.05.2015 ISSUED TO THE DISTRICT COLLECTOR, KASARAGOD.

/True Copy/

P.A to Judge.

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 30186 of 2014 (W)

Dated this the 5th day of August, 2015.

JUDGMENT

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

2. The petitioners, residents of Kasaragod, filed the writ petition complaining that the 4th respondent has been constructing a religious structure, without prior permission from the second respondent, as has been contemplated under Rules 4 and 7 of the Kerala Panchayath Building Rules. The specific grievance of the petitioners is that if the religious structure is allowed to be raised in the area, it will lead to disruption of communal harmony.

3. On 05.02.2015, this Court issued an interim direction to the third respondent Grama Panchayath to ensure that the 4th respondent does not indulge in any illegal activities of construction, without obtaining the necessary permits and licences. Soon thereafter, the petitioners filed Contempt Case (C) No. 608 of 2015 alleging that the respondent Grama Panchayath has not taken any

action to prevent the 4th respondent from proceeding with what is said to be the illegal construction.

4. The learned counsel for the respondent Grama Panchayath has submitted that it has taken every step to ensure that the 4th respondent does not proceed with the illegal construction. He has also submitted that the 4th respondent has already submitted an application before the second respondent for necessary permission for raising the religious structure. According to him, if the 4th respondent obtains favourable orders, the Grama Panchayath may not have any objection concerning the construction undertaken by the said person.

5. The learned counsel for the petitioners has, however, contended that obtaining permission or NOC from the second respondent is a pre-condition, and that the petitioner having raised substantial structures, the 4th respondent cannot seek permission post factum. At this juncture, the learned counsel for the second respondent has submitted that it is for the second respondent to decide the said aspect.

6. In the facts and circumstances, I am of the opinion that the respondent Grama Panchayath, going by the submission made by its

learned counsel, has already taken sufficient steps to ensure that the 4th respondent does not continue with the construction without prior permission of the second respondent.

7. It is, in my opinion, entirely open for the petitioners to raise all their objections before the second respondent before whom an application from the 4th respondent for NOC is said to be pending. At the request of the learned counsel for the petitioners, it is made clear that the petitioners are at liberty to raise an objection with regard to the very maintainability of the application submitted by the 4th respondent after the commencement of the construction activity, inasmuch as, as has been contended by the learned counsel for the petitioners, obtaining NOC from the second respondent is a pre-condition for raising any religious structure.

8. It is made clear that the second respondent, while taking up the application said to have been submitted by the 4th respondent for consideration, shall put the petitioners and other affected persons, if any, on notice, and pass appropriate orders thereon in accordance with law, after affording an opportunity of hearing to all concerned. It goes without saying that the respondent Grama Panchayath shall ensure that the 4th respondent does not resume his construction

activities until he obtains the necessary permission from the second respondent.

This writ petition is disposed of.

sd/- DAMA SESHADRI NAIDU, JUDGE.

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