

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

WP(C).No. 34656 of 2010 (F)

PETITIONER(S):

ASHOK KUMAR AGED 53 YEARS,
S/O. K.C. MADHAVAN, RESIDING AT HOUSE NO.23, VIPIN NIVAS
AYODHYA NAGAR, PALLIPPURAM PO, PALAKKAD DISTRICT.

BY ADV. SMT.DAISY A.PHILIPOSE

RESPONDENT(S):

1. PALAKKAD MUNICIPALITY
REPRESENTED BY ITS SECRETARY,
MUNICIPAL OFFICE, PALAKKAD 686 575.
2. VALSA JOSE,W/O. JOSE MENACHERY, NO.1,
AYODHYA NAGAR, PALLIPURAM PO,
PALAKKAD DISTRICT - 678 006.

R1 BY ADV. SRI.T.C.SURESH MENON, SC, PALAKKAD MUNICIPALITY
R1 BY ADV. SRI.JIBU P THOMAS
R1 BY ADV. SRI.P.S.APPU
R1 BY ADV. SRI.A.R.NIMOD
R1 BY ADV. SRI.C.A.ANOOP
R2 BY ADV. SRI.S.V.BALAKRISHNA IYER (SR.)
R2 BY ADV. SRI.P.B.KRISHNAN
R2 BY ADV. SRI.SABU GEORGE
R2 BY ADV. SRI.P.B.SUBRAMANYAN
R2 BY ADV. SRI.P.M.NEELAKANDAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
12-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S) EXHIBITS:

- EXT.P1: COPY OF THE APPROVED LAY-OUT.
- EXT.P2: COPY OF THE REPRESENTATION DATED 15.03.2010 SUBMITTED BEFORE THE 1ST RESPONDENT.
- EXT.P3: COPY OF THE NOTICE DATED 16.03.2010.
- EXT.P4: COPY OF THE JUDGMENT IN W.P.(C) NO. 16801 OF 2010 DATED 1.6.2010.
- EXT.P5: COPY OF THE ORDER DATED 25.06.2010.
- EXT.P6: COPY OF THE JUDGMENT DATED 5.7.2010 IN W.P.(C) NO. 20835/2010.
- EXT.P7: COPY OF THE APPEAL DATED 28.09.2010.
- EXT.P8: COPY OF THE ORDER IN I.A. NO.1215/2010 IN THE UNNUMBERED APPEAL DATED 29.9.2010.
- EXT.P9: COPY OF THE REPORT DATED 12.08.2010 SUBMITTED BY THE REGIONAL JOINT DIRECTOR OF URBAN AFFAIRS.

RESPONDENT(S) EXHIBITS:

- EXT.R2(a): COPY OF SALE DEED DATED 25.04.1995 REGISTERED AS DOCUMENT NO.2748 OF 1995 OF THE PALAKKAD SUB REGISTRY OFFICE.
- EXT.R2(b): COPY OF THE BUILDING PERMIT DATED 5.11.2008.
- EXT.R2(c): COPY OF THE PLAINT DATED 31.03.2010 IN O.S. NO. 323 OF 2010 BEFORE THE HON'BLE MUNSIF'S COURT, PALAKKAD.
- EXT.R2(d): COPY OF THE JUDGMENT DATED 28.7.2011 IN O.S. NO.323 OF 2010 BEFORE THE HON'BLE ADDITIONAL MUNSIF'S COURT, PALAKKAD.
- EXT.R2(e): COPY OF THE ORDER DATED 17.08.2010 IIN PETITION NO.749 OF 2010 BEFORE THE OMBUDSMAN FOR LOCAL SELF GOVERNMENT INSTITUTIONS.

//True copy//

P.A. to Judge

P.BHAVADASAN, J.

W.P.(C) No. 34656 of 2010

Dated this the 12th day of November, 2015

J U D G M E N T

The reliefs sought for in this writ petition are as follows:

“i) Issue a writ of certiorari, calling for the records relating to Exhibit-P5 and Exhibit-P8 and quash the same.

ii) Issue a writ of mandamus directing the 1st respondent to consider and pass orders on Exhibit-P2 representation, after conducting necessary enquiry in the matter and after verifying the relevant files relating to Exhibit-P1, in the light of Exhibit-P9 report, immediately.

iii) Issue a writ of mandamus directing the 1st respondent to conduct a detailed enquiry in the matter of loss of the relevant files regarding Exhibit-P1 approved Lay-Out and to take appropriate action against the erring employees, in the light of Exhibit-P9 report.”

2. The facts absolutely necessary for the disposal of this writ petition are as follows:

The petitioner claims to be a resident of Ayodhya Nagar Residential Colony situated within the limits of the first respondent Municipality. That colony has 40 residential houses. According to the petitioner, the land was developed by one Mr. N.V. Padmanabhan, who, the petitioner says, was managing the affairs on behalf of the joint family. After having submitted the plan as evidenced by Ext.P1, he obtained sanction to develop the house sites. It is further averred in the petition that subsequent constructions were in tune with the Lay-Out plan namely, Ext.P1. The petitioner points out that Plot No. 19 in Ext.P1 as required under the Rules was set apart for providing the Children's Park or in other words, open space as required under the law as it then stood.

3. The petitioner alleges that the second respondent is also one of the residents of the Colony. Her husband is a very influential person. The petitioner noticed that on 14.3.2010, the 2nd respondent started making constructions

in the vacant plot i.e. Plot No.19 covered by Ext.P1 Lay-Out plan. Though objection was taken, the second respondent continued with the work. The petitioner and other residents submitted a complaint to the Sub Inspector of Police and that is produced as Ext.P2. The Police advised the petitioner and others to approach the local authority for redressal of their grievances.

4. As per Ext.P3, the first respondent issued notice to the second respondent calling upon her to produce the relevant documents regarding to her title over the property in relation to which the objectionable construction was being carried on. That notice was challenged in writ petition as W.P.(C) No. 16801/2010 which was disposed of with a direction to take decision in the matter after hearing the petitioner and the third respondent within a period of one month from the date of receipt of a copy of the judgment.

5. In pursuance to Ext.P4 order i.e. the judgment in W.P.(C)No.16801/2010, hearing was conducted. It is pointed

out by the petitioner that at the time of hearing, the petitioner insisted that the relevant records relating to Ext.P1 may be called for and verified. Without adverting to the relevant aspects, the complaint of the petitioner is that the first respondent withdrew Ext.P3 notice and let the construction be carried on. The said order is Ext.P5. The petitioner challenged Ext.P5 before this Court vide W.P.(C) No. 20835/2010 which was disposed of by this Court finding that there is a provision for appeal, the petitioner may prefer an appeal before the competent authority which shall be disposed of in accordance with law. It was also observed that any construction carried on by the second respondent will be subject to the result of the appeal which may be filed by the petitioner. That led the petitioner to file Ext.P7 appeal before the Tribunal for Local Self Government Institutions. Since the appeal was filed far out of time, the Tribunal, holding that it had no power to condone the delay, dismissed the appeal by Ext.P8 order.

6. While things stood so, as per the directions of the Ombudsman for Local Self Government Institutions, Thiruvananthapuram in O.P.No. 749/2010, a report was submitted by the Regional Joint Director of Urban Affairs, who conducted an enquiry into the issue and submitted Ext.P9 report.

7. Since the construction was going on unabated in view of Ext.P5 order and since no remedy was being made available to the petitioner with respect to the objectionable constructions, the petitioner was constrained to approach this Court for necessary reliefs.

8. The petitioner points out that as per the provisions of the Kerala Municipality Building Rules, once a Lay-Out plan is approved, deviation can only be with the approval of the local authority. There is no such approval in the case on hand. Ext.P1 as it originally stood continues to be in force, according to the petitioner. If that be so, the petitioner says that the permit granted for construction that is being carried

on in Plot No.19 as covered by Ext.P1 cannot be allowed as it is an unauthorized construction.

9. The petitioner pointed out that in spite of his best efforts and his fervent plea to the local authority to trace out the file relating to the Lay-Out plan originally submitted, nothing has been done in that matter and that each time when he approaches the appropriate authorities, the petitioner is confronted with the fact that as the original Lay-Out plan is not available, no remedy can be given to the petitioner. The petitioner points out that it is almost very clear that the original Lay-Out Plan has been deliberately removed from the relevant files and that it is absolutely necessary that an enquiry be conducted in that regard. It is with the above averments that the petition has been laid.

10. The first respondent has filed a statement in this regard. According to the first respondent, in pursuant to Ext.P4 judgment, parties were heard on 21.6.2010. The husband of the second respondent produced sale deed No.

2748/1995 dated 25.4.1995 and the building permit issued from the local authority. The sale deed indicated that the second respondent had purchased the property from one Smt. Jayalakshmi, the wife of N.V.Subramanian and their children Venkata Ramayyar and Kamakshi and not from N.V.Padmanabhan as claimed by the petitioner. In the light of the fact that it was revealed that the property actually belonged to N.V. Subramanian as revealed from the document, the Municipality issued Ext.P5 order. The local authority refers to the observation of the Ombudsman which directed the Municipality to take such steps after verifying the ownership of the land. The Municipality hence winds up the statement by pointing out that in spite of repeated directions to the second respondent to produce prior documents of title, they have not done so.

11. The second respondent has filed a detailed counter in which she has pointed out that there is no substance in the complaint voiced by the petitioner and it is

only an experimental one. Ext.R2(a) is the sale deed by which the second respondent obtained the property. The second respondent categorically denied that even assuming Padmanabhan was responsible for the parting of the land, he was doing it on behalf of the joint family. She disputed the very existence of the Lay-Out plan. It is also pointed out that there was a partition in the year 1975 in the family of Padmanabhan and Subramanian and the property now question which the second respondent purchased was set apart to the share of Subramanian. If that be so, it is contended that Padmanabhan had no authority to show the plot which belonged to Subramanian as a part of his Lay-Out plan. Further, it is pointed out that O.S.No.323/2010 was filed before Munsiff's Court, Palakkad seeking to restrain the second respondent from carrying out the construction and also against the Municipality for permitting the second respondent from carrying out construction. Ultimately, the suit was dismissed and the judgment is produced as Ext.R2

(d). In short, the contention is that Padmanabhan had nothing to do with the plot now purchased by the second respondent from the legal heirs of Subramanian and if at all that plot has been shown as an open land for the purpose of Lay-Out, that cannot be binding on the second respondent either Subramanian or his successors-in-interest. The second respondent has also produced Ext.R2(e), an order passed by the Ombudsman pointing out that in view of the fact that a civil suit is pending, the said authority is precluded from proceeding with the matter under Section 271 M (4) (c) and dismissed the complaint pending before the said authority.

12. Smt. Daisy A. Philipose, the learned counsel appearing for the petitioner contended that it is too much to believe that the local authority could not be in possession of the Lay-Out Plan as evidenced by Ext.P1. It was as per the Lay-Out plan Ext.P1 that the various residents who put up structures in the property comprised in Ext.P1 were granted

permit. According to learned counsel, there can be no manner of doubt that the said Lay-Out Plan has been deliberately removed or concealed so as to defeat the claim of the petitioner. At any rate, it is necessary for the local authority to conduct an enquiry into the matter and to bring out the truth. If as a matter of fact, according to the learned counsel, Ext.P1 Lay-Out plan does exist, then the construction carried on by the second respondent becomes unauthorized as per the Rules, since any deviation in the original Lay-Out plan sanctioned by the local authorities can be only with the concurrence of the local authority and there is no such concurrence in the case on hand.

13. Sri. S.V. Balakrishna Iyer, the learned senior counsel appearing for the second respondent on the other hand contended that even assuming that there is a Lay-Out plan as evidenced by Ext.P1, that cannot be binding on the second respondent for the simple reason that the property which is shown as the vacant plot in that Lay-Out plan did

not belong to Padmanabhan, who is the author of Ext.P1. It belonged to N.V.Subramanian from whose legal heirs the second respondent has purchased the property. If as a matter of fact, Padmanabhan has shown Plot No. 19 which does not actually belong to him as an open space, it cannot bind Subramanian nor his successors-in-interest. The learned counsel also placed considerable reliance on the judgment in O.S.No.323/2010, which was filed on identical averments though the petitioner herein may not be a party to the suit. In suit, the issue was the same and the suit happened to be dismissed.

14. The learned senior counsel went on to contend that there is no merit in the writ petition and it is only to harass and delay the construction being made by the second respondent that the petition has been filed.

15. The learned counsel appearing for the first respondent Municipality contended that the Lay-Out plan and leaving of vacant space are of irrelevant only on the first

instance and not on a subsequent stage where the Municipality has no control over the same.

16. Essentially, the question would turn up on the issue as to who is the owner of the property which was purchased by the second respondent as per Ext.R2(a).

17. Ext.R2(a) makes mention of a partition in the family of the year 1975 and the specific averments in the counter affidavit is that the plot now in question over which the construction is being made by the second respondent was set apart to the share of Subramanian. It is significant to notice here that the petitioner has only stated that Padmanabham was acting on behalf of the joint family. Whether Padmanabhan could act on behalf of the joint family is a vexed question and if he did so, when did he act and when who accepted that arrangement are other questions. If it was after the partition, he had no authority and if it is before partition unless he was the manager of the family, he still had no authority to set apart the plot as Plot

No.19. Whatever that be, now in the suit evidenced by Ext.R2(a), suit was dismissed holding that there is nothing to show that the Padmanabhan had any manner of right over Plot No.19.

18. It is true that the petitioner is not a formal party to the suit and strictly speaking he may not be bound by that judgment. But the fact remains that the identical question was considered in suit and it was also by two residents of the Colony to which this issue relates.

19. Since there is a categoric finding in the suit that the property now in the possession of the second respondent and in relation to which the construction is being carried on, belonged to Subramanian, *prima facie*, the Lay-Out plan submitted by Padamanabhan may not be binding on the petitioner even assuming there is such a Lay-Out plan in existence.

20. But as rightly noticed by this Court, while passing the order dated 18.11.2010, in the light of Ext.P9 report, the

state of affairs is indeed miserable. This Court had occasion to observe the manner in which the local authorities were carrying out their affairs.

21. Whether there was any plan as Ext.P1, is a matter for enquiry. Whatever that be, the relief against the second respondent continuing her construction cannot be granted in this writ petition for the simple reason that at least prima facie there are materials to show that she has purchased the property from Subramaniam and the Lay-Out plan is by Padmanabhan.

22. But that is not the end of the matter. One cannot simply swallow the statement that Ext.P1 Lay-Out plan is no longer available in the file. Necessarily it has to be available in the record of the Municipality.

Therefore while declining to grant relief Nos. 1 and 2 in this writ petition, the local authority is directed to conduct a detail enquiry into the matter relating to the loss of file regarding to Lay-Out plan mentioned in the writ petition and

take such actions as are available to them in law when the enquiry report is received. If the report indicates that the claim made by the second respondent that the property belonged to Subramanian turns out to be false, petitioner will be entitled to seek such remedies as are available to him in law at that point of time. This judgment will not preclude the petitioner in this writ petition for seeking appropriate relief from the appropriate forum with regard to the title to Plot No. 19 shown in Ext.P2.

sd/-
P.BHAVADASAN
JUDGE

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