

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 5TH DAY OF FEBRUARY 2015/16TH MAGHA, 1936

WP(C).No. 31551 of 2014 (T)

PETITIONERS:

1. JINSAMMA JOSEPH, KOZHIMALA HOUSE,
ANAKKAL P.O., KANJIRAPPALLY,
KOTTAYAM DISTRICT.
2. JOSEPH JOSEPH, CHENNAMKARA PADINJARE
VEETIL PACHA, CHEKKIDIKKADU P.O.,
EDATHUA, ALAPPUZHA DISTRICT.

BY ADV. SRI.UNNI. K.K. (EZHUMATTOOR)

RESPONDENTS:

1. STATE OF KERALA
REP. BY SECRETARY TO GOVERNMENT,
LOCAL SELF GOVERNMENT DEPARTMENT,
GOVERNMENT OF KERALA, GOVT. SECRETARIAT,
THIRUVANANTHAPURAM- 695 001.
2. DIRECTOR OF PANCHAYATH,
PANCHAYATH DIRECTORATE,
PUBLIC OFFICE BUILDING, MUSEUM P.O.,
THIRUVANANTHAPURAM - 695 001.
3. DEPUTY DIRECTOR OF PANCHAYATH,
OFFICE OF THE DEPUTY DIRECTOR,
ALAPPUZHA - 688 001.
4. EDATHUA GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY,
EDATHUA GRAMA PANCHAYATH,
EDATHUA P.O., ALAPPUZHA 689 573.
5. REVENUE DIVISIONAL OFFICER,
REVENUE DIVISIONAL OFFICE,
ALAPPUZHA - 688 001.

R4 BY ADV. SRI.P.VINODKUMAR

R1 to R3 & R5 BY GOVT. PLEADER SRI.G.GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
05-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 31551 of 2014 (T)

PETITIONER'S EXHIBITS:

EXT. P1: TRUE COPY OF THE CERTIFICATE DATED 28/7/2008 OF THE VILLAGE OFFICER EDATHUA.

EXT. P2: TRUE COPY OF THE RECEIPT ISSUED BY THE 4TH RESPONDENT

EXT. P3: TRUE COPY OF THE CERTIFICATE DATED 29/9/2010 OF THE REVENUE DIVISIONAL OFFICER.

EXT. P4: TRUE COPY OF THE RECEIPT ISSUED BY THE 4TH RESPONDENT.

EXT. P5: TRUE COPY OF THE LETTER OF THE REVENUE DIVISIONAL OFFICER DATED 7/1/2012.

EXT. P6: TRUE COPY OF THE RECEIPT ISSUED BY THE 4TH RESPONDENT DATED 9/1/2012.

EXT. P7: TRUE COPY OF THE NOTICE DATED NIL OF THE 4TH RESPONDENT.

EXT. P8: TRUE COPY OF THE APPLICATION SUBMITTED TO THE ADDITIONAL DISTRICT MAGISTRATE DATED 17/10/2014.

EXT. P9: TRUE COPY OF THE NOTICE DATED 6/11/2014 OF THE 4TH RESPONDENT.

EXT. P10: TRUE COPY OF THE RECEIPT ISSUED BY THE 4TH RESPONDENT

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.31551 of 2014 T

Dated this the 5th day of February, 2015

JUDGMENT

Heard the learned counsel for the petitioners and the learned Government Pleader for respondents 1 to 3 and 5, as well as the learned Standing Counsel for the fourth respondent, apart from perusing the record. Since the issue lies in a narrow compass, this Court proposes to dispose of the writ petition at the admission stage itself.

2. Briefly stated, the petitioner is said to have constructed a commercial building having five shops way back in 2008. Evidently the building was constructed without prior permission from the respondent Grama Panchayat. It is contention of the petitioners that in 2008 itself they made an application for assignment of building number. Though the petitioners could not place on record

any proof with regard to their making any application in 2008, Exhibit P1 certificate issued by the Village Officer is dated 28.07.2008 and Exhibit P3 certificate issued by the Revenue Divisional Officer is dated 29.09.2010. Both the certificates are to the effect that the land stood converted long back and it is no longer a wet land.

3. As could be seen from Exhibit P4 dated 17.12.2010, the petitioners have once again applied for the building number along with Exhibit P5 certificate issued by the Revenue Divisional Officer, who, in tune with his earlier certificate in Exhibit P3, reiterated that the land does not fall under any prohibitory category. Aggrieved by the inaction on the part of the respondent Grama Panchayat to assign the building number, the petitioners have approached this Court.

4. The learned counsel for the petitioners has contended that beginning from 2008 to this day, the

respondent Grama Panchayat has so far not passed any orders on the applications of the petitioners for having building number assigned to their property. He has further contended that any objection on the part of the respondent Grama Panchayat on the ground that the land being nilam or wet land cannot be sustained in the face of Exhibits P1, P3 and P5 certificates issued by the competent authorities.

5. Referring to the counter affidavit filed by the fourth respondent, the learned counsel for the petitioners would contend that for the first time in the counter affidavit the respondent Grama Panchayat has put forward an objection under Section 220(b) of the Kerala Panchayat Raj Act to the effect that the petitioners' building is not situated at a distance beyond three metres from the public road. According to him, this Court is at liberty to appoint an Advocate Commissioner to measure the distance and establish that the petitioners, in fact, constructed the

building beyond three metres from the public road.

6. The learned Standing Counsel, to his credit, has submitted that the Grama Panchayat does not have any objection on the category of land. According to him, in the face of Exhibits P1, P3 and P5 certificates, the Grama Panchayat does not entertain any doubt regarding the nature of the land. He has, however, contended that Section 220(b) of the Act had been in operation prior to the petitioners constructing the building and as such, it is mandatory that the petitioners ought to have kept a distance of three metres from the public road. According to him, the petitioners' building is situated within three metres from the public road.

7. Be that as it may, it cannot be denied that, to this day, the respondent Grama Panchayat has not passed any orders on the request of the petitioners for having building number assigned to their property. Though the initial

application alleged to have been submitted by the petitioners in 2008 could not be produced before this Court, it is evident that the petitioners, at least, applied in 2010 and as such, the respondent Grama Panchayat ought to have disposed of the application expeditiously.

8. At any rate, in the light of the submissions of the learned Standing Counsel for respondent Grama Panchayat, the bone of contention is with regard to the petitioners' compliance with Section 220(b) of the Act, which is a variable fact.

In the facts and circumstances, having regard to the respective submissions of the learned counsel for the petitioners and the learned Government Pleader, as well as the learned Standing Counsel, this Court disposes of the writ petition with a direction to the fourth respondent to consider the petitioners' application for assignment of building number, in terms of Section 220(b) of the Act, and

pass appropriate orders thereon as expeditiously as possible, at any rate, within a period of one month from the date of receipt of a copy of this judgment. If the respondent Grama Panchayat desires to measure the distance between the public road and the petitioners' building, it is at liberty to take recourse to the said process after issuing notice to the petitioners in that regard.

Dama Seshadri Naidu, Judge

tkv