

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY, THE 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

WP(C).No. 32162 of 2014 (U)

PETITIONER :

**KURIAN GEORGE, AGED 69 YEARS,
S/O.T.K.GEORGE, THEKKINKADU NEW HOUSE, AREEPLACHI P.O.,
ANCHAL VILLAGE, PUNALUR TALUK, KOLLAM DISTRICT**

**BY ADVS.SRI.T.A.UNNIKRISHNAN
SRI.K.S.PRAVEEN**

RESPONDENTS :

- 1. ANCHAL GRAMA PANCHAYAT
REPRESENTED BY ITS SECRETARY, ANCHAL P.O.,
KOLLAM DISTRICT, PIN 691 306**
- 2. THE SECRETARY
ANCHAL GRAMA PANCHAYATANCHAL P.O.,
KOLLAM DISTRICT - PIN 691 306**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 10-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: COPY OF LAB REPORT DATED 28/5/2009

**EXHIBIT P2: COPY OF THE APPLICATION FOR PERMIT SUBMITTED BY THE
PETITIONER DATED 9/10/2014 ALONG WITH LOCATION SKETCH.**

**EXHIBIT P3: COPY OF THE POSSESSION CERTIFICATE DATED 9/10/14 ISSUED BY
THE VILLAGE OFFICER, ANCHAL.**

**EXHIBIT P4: COPY OF A LETTER ISSUED BY A.G.RAVEENDRAN NJAIR, RETIRED
DISTRICT OFFICER,GROUND WATER DEPARTMENT, ERNAKULAM DT.
18/9/2014.**

**EXHIBIT P5: COPY OF THE COMMUNICATION DATED 28/10/14 ISSUED BY THE 2ND
RESPONDENT**

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 32162 of 2014

Dated this the 10th day of February, 2015

JUDGMENT

Briefly stated, the petitioner, a retired Engineer, having 4 Acres of land in Re-Survey No. 287/2 in block 33 in Anchal Village, desirous of digging a bore well, submitted Exhibit P2 application before the second respondent. The second respondent, however, issued Exhibit P5 communication to the petitioner requiring him, *inter alia*, to obtain a permit from the Ground Water Department. Aggrieved thereby, the petitioner has filed the present writ petition.

2. The learned counsel for the petitioner has contended that Section 7 of the Kerala Ground Water (Control and Regulation) Act, 2002, determines under which circumstances a permit is required to be obtained. According to him, since it is not a notified area, the second

respondent ought not have insisted on the petitioner's securing a permit from the Ground Water Department. He has further submitted that though Exhibit P5 refers to certain other deficiencies, the petitioner is willing to cure those defects.

3. Despite service of notice, I do not see any representation for the first and second respondents.

4. The principal requirement directed to be fulfilled by the petitioner is to obtain a permit from the Ground Water Department. Section 7 of the Kerala Ground Water (Control and Regulation) Act, 2002, reads as follows:

"7. Grant of Permit to extract and use ground water - (1) Any person desiring to dig a well or to convert the existing well into pumping well, for his own or social purpose in the notified area, shall submit an application before the Authority for the grant of a permit it for the purpose and shall not proceed with any activity connected with such digging or conversion unless a permit has been granted by the Authority.

(2) Every application under sub-section (1) shall be in such form and shall contain such particulars as may be prescribed.

(3) The Authority shall acknowledge the receipt of every application in the manner as may be prescribed.

(4) On receipt of an application under sub-section (1) the Authority shall, if satisfied that it shall not be against the public interest so to do grant; subject to such conditions as may be prescribed permit authorizing to draw ground water or reject the application.

Provided that no person shall be refused a permit without giving an opportunity of being heard.

(5) The decision regarding the grant or refusal of the permit shall be communicated to the applicant by the Authority in writing within ninety days from the date of receipt of the application.

(6) Where the Authority received the application under sub-section (1) fails to inform "the applicant" of its decision on the application within ninety days from the date of receipt of the application, the permit shall be deemed to have been granted to the applicant and such person shall for the purpose of this Act be deemed to be a permit holder.

(7) In granting or refusing the permit the Authority shall consider the following matters, namely:-

- (a) the purpose or purposes for which the water is used;
- (b) the other existing users of that locality.
- (c) the availability of ground water of that area;
- (d) the quality of ground water in connection with its use;
- (e) the distance of the proposed well with the adjoining well and the number of wells in the area and the chance of interference with existing wells;
- (f) chances of ground water pollution;
- (g) the long term nature of ground water level in the area
- (h) any other factors relevant thereto."

5. The booklet published by the Ground Water Department, Ernakulam, shows the areas which have been notified in terms of Section 7. The learned counsel, having read out the names, has submitted that the area in which the petitioner intends to dig the bore well does not find place in the list.

6. In the facts and circumstances, having regard to the submissions made by the learned counsel for the petitioner, this Court disposes of the writ petition with a direction to the second respondent to consider petitioner's Exhibit P2

application, without reference to any permit to be obtained from the Ground Water Department, as has been indicated in Exhibit P5, and provide the necessary permission subject to the petitioner's fulfilling all other statutory parameters. It is needless to observe that Exhibit P5 stands modified to the extent indicated above.

7. It is needless to observe that the second respondent may expedite the process and complete the proceedings, as expeditiously as possible, at any rate, within a period of one month from the date of receipt of a copy of this judgment.

With the above observation, this writ petition is disposed of. No order as to costs.

**DAMA SESHADRI NAIDU
JUDGE**

DMR/-