

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 16TH DAY OF JULY 2015/25TH ASHADHA, 1937

WP(C).No. 32750 of 2014 (P)

PETITIONER'S:

- 1. K.ABDUSAMAD, AGED 50 YEARS,
S/O.MOHAMMED KUTTY MASTER,
KOLLATHODI HOUSE,AREACODE P.O.,
ERNAD TALUK, MALAPPURAM DIST.**
- 2. NASEERATH, AGED 39 YEARS,
W/O.K.ABDUSAMAD, KOLLATHODI HOUSE,
AREACODE P.O.,ERNAD TALUK, MALAPPURAM DIST.**

**BY ADVS.SRI.K.SHIBILI NAHA
SRI.SAJU RAGHAVAN**

RESPONDENT:

**AREACODE GRAMAPANCHAYATH,
REP. BY ITS SECRETARY,AREACODE GRAMA PANCHAYATH,
AREACODE-679 523,MALAPPURAM DIST.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 16-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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WP(C).No. 32750 of 2014 (P)

APPENDIX

PETITIONER'S EXHIBITS:

P1: A TRUE COPY OF THE JUDGMENT IN WPC NO.7061/13 DATED 16/7/13.

P2: A TRUE COPY OF THE BUILDING PERMIT NO.A5-167/2014 DATED 01/08/2014.

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

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A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.32750 of 2014

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Dated this the 16th day of July, 2015

JUDGMENT

Clause (5) of Ext.P2 building permit is under challenge in this writ petition.

2. The petitioner has approached this Court aggrieved by Ext.P2 building permit issued by the respondent which, *inter alia*, imposes a condition restraining alienation of the property for a period of 10 years. The petitioner alleges that clause (5) of the Ext.P2 is illegal, arbitrary and against Articles 19, 21 and 300A of the Constitution of India. The petitioner further alleges that although the respondent was directed to consider the application afresh advertent to the relevant facts and materials thereunder within a period of two months, they protracted the matter and finally passed Ext.P2. According to the petitioner, the same is issued in total derogation of Ext.P1 judgment.

3. Though notice has been served on the respondent, no counter affidavit has been filed.

5. Heard the learned counsel for the petitioner.

6. The learned counsel for the petitioner submitted that the respondent panchayat is incompetent to impose restriction as contained in clause (5) of Ext.P2 which in all probabilities unreasonable, unfair and unwarranted. According to the learned counsel, the same is a clear deprivation of the petitioner's valuable rights and does not in any manner stand the test of reasonableness.

7. It is crucial to note that neither the Panchayat Raj Act nor the Building Rules or any other law for the time being in force confers such a power on the respondent panchayat to impose restrictions on the transfer of property. Though the right to property has been taken away from Part III of the Constitution by the 44th amendment of the Constitution, the same is retained in the Constitution as a legal right under Article 300 A. Therefore, any restriction on the enjoyment of the property can only be in accordance with law.

8. Clause (5) of Ext.P2 imposes total restriction on the right transfer of the petitioner over the property for a period of ten years which is against the principles that has been re-iterated by the Apex Court in **India Handicrafts Emporium** v. **Union of India** (AIR 2003 SC 3240), **Raju S. Jethmalani** v. **State of Maharashtra** [2000 (6) SCC 222] and AIR 2012 SC 573.

9. As clause (5) of Ext.P2 is a clear infringement of the petitioner's right guaranteed by the Constitution of India, the same shall not be allowed to stand.

In the result, the writ petition is allowed. Clause (5) in Ext.P2 is quashed. It is hereby declared that the imposition of restriction of on alienation or transfer of sale for ten years is without any authority of law. The petitioner can avail benefit of Ext.P2 permit *de hors* clause (5) of Ext.P2.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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