

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.T.RAVIKUMAR

MONDAY, THE 28TH FEBRUARY 2011 / 9TH PHALGUNA 1932

WP(C).No. 3963 of 2011(U)

PETITIONER(S):

MAICHEL KURIAN,S/O.KURIAN,AGED 40 YEARS,
NOORAMMAKKIYIL HOUSE, MONIPPALLY PO,REPRESENTED
BY HIS WIFE AND POWER OF ATTORNEY HOLDER
PREETHI MAICHEL,W/O.MAICHEL KURIAN,AGED 37
NOORAMMAKKIYIL HOUSE, MONIPPALLY PO.

BY ADVS. SRI.K.M.FIROZ
SMT.M.SHAJNA
SRI.JACOB E SIMON

RESPONDENT(S):

1. THE SECRETARY,UZHAVOOR GRAMA PANCHAYATH,
UZHAVOOR PO,KOTTAYAM DISTRICT 686 634.
2. UZHAVOOR GRAMA PANCHAYATH,UZHAVOOR PO,
KOTTAYAM DISTRICT,REP.BY ITS SECRETARY 686 634.
3. THE DEPUTY DIRECTOR OF PANCHAYATH,
OFFICE OF THE DEPUTY DIRECTOR OF PANCHAYATH,
KOTTAYAM- 686 601.
4. THE DISTRICT TOWN PLANNER,
DISTRICT PLANNING OFFICE,ST.ANTONY'S COMPLEX II,
NEAR MUNICIPAL BUS STAND, NAGAMPADAM,KOTTAYAM 686601.
5. THE HIGHWAY AUTHORITY AND EXECUTIVE
ENGINEER(ROADS DIVISION),KERALA PUBLIC
WORKS DEPARTMENT, KOTTAYAM DIVISION,KOTTAYAM 686601.
6. THE ASSISTANT EXECUTIVE ENGINEER,
ROADS SUB DIVISION, KERALA PUBLIC WORKS
DEPARTMENT , VAIKOM 686605.

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**7. THE EXECUTIVE ENGINEER(PWD),
KERALA STATE TRANSPORT PROJECT(KSTP) DIVISION,
MUVATTUPUZHA,MUVATTUPUZHA PO,
ERNAKULAM DISTRICT. 687 504.**

**8. THE CHIEF ENGINEER(ROADS AND BRIDGES),
KERALA PUBLIC WORKS DEPARTMENT,
THIRUVANANTHAPURAM.695 001.**

**R1 & 2 BY SRI.P.SANTHALINGAM, SENIOR ADVOCATE
R1 & R2 BY ADV. SRI.S.SHARAN
R3 TO R8 BY GOVERNMENT PLEADER SMT.K.R.DEEPA**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 28/02/2011, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

tss

C.T.RAVIKUMAR, J.

W.P.(C)No.3963 OF 2011

Dated this the 28th day of February, 2011

J U D G M E N T

The contention of the petitioner, who is the owner and possession of 2.12 cents of land in Survey No.194/15 of Monippally Village in Meenachil Taluk, is that he had constructed a small building attached to the existing building thereon. In fact, it is a three storied building. The said construction was carried out on the strength of Ext.P1 building permit dated 14.12.2009. Subsequently, the petitioner has approached the 2nd respondent for getting building number. In fact, after completion of the construction, the petitioner was served with a stop memo by the 1st respondent based on letter No.KSTP/M/83K/2009 dated 25.2.2010 from the Executive Engineer, Kerala State Transport Project (KSTP) Division, Muvattupuzha, the 7th respondent. It is produced in the writ petition by the 1st respondent as Ext.R1(e). Obviously, such an objection was raised thereunder in terms of the provisions under

Section 18 of Kerala Highway Protection Act 1999 (for short 'the Act'). According to the petitioner, he had completed the construction much before the issuance of the said stop memo. In the said circumstances, the petitioner was constrained to approach the Adalath organised by the Government through Ext.P2. As per Ext.P3, the petitioner was informed that the request of the petitioner could not be considered as KSTP has taken steps for expansion of the road and that KSTP has directed the Secretary of the Panchayath to stop construction activities. It is in the said circumstance, that the writ petition has been filed, mainly with the prayer to direct respondents 1 and 2 to number the portion of building constructed on the strength of Ext.P1 and also to set aside Ext.P3. The further prayer is for issuance of a declaration that the respondents are bound to take steps to number the building constructed as per Ext.P1, without insisting No Objection Certificate from the authorities under the Public Works Department.

2. I have heard the learned counsel for the petitioner, learned Standing Counsel for the respondents 1 and 2 and also the learned Government Pleader.

3. The learned Counsel for the petitioner submitted that the matter in issue is squarely covered in favour of the petitioner by the judgment of this Court in **Peer Mohammed v. Chirakandam Grama Panchayath** reported in **2008 (3) KLT 300**. As already noticed herein, the respondents are refusing to number the building constructed by the petitioner on the strength of Ext.P1 permission on the ground of non-compliance of the conditions under Section 18 of the Act. In the said context, it is relevant to refer to Section 18 of the Act and the same reads thus:-

“S.18: Building lines and Control lines:----
(1) The competent authority shall determine building lines and control lines in respect of any category of highway in such a way that the distance between the middle of a highway and the building line or that between the building line and the control line shall be fixed with due regard to the requirements of safety and convenience of traffic and of future development of the highway.

Explanation:--- For the purpose of this subsection middle of a highway means, in relation to any highway for the improvement of which plans have been prepared by the highway authority, the middle of the highway as proposed to be improved in accordance with the plans, and where no such plans have been prepared, the point halfway between the boundaries of the highway.

(2) The building lines and control lines as determined for any category of highway or part thereof shall be published in the Gazette and in two daily news papers by the competent authority.”

4. A perusal of sub sections (1) and (2) of Section 18 of the Act would reveal that it is incumbent on the competent authority to notify and publish the determination regarding the building lines and control lines for any category of highway in the gazette and in two daily newspapers. Admittedly, hither to, no such notification or publication has been effected showing determination of the building lines and control lines, in terms of the provisions under Section 18(2) of the Act. The questions to be considered are 'what is the effect and impact of failure to comply with the mandatory requirements under Section 18(2) of the Act and whether, in such circumstances, the petitioner would be entitled to get the relief sought for in this writ petition'. The learned Government Pleader submitted that, even the failure on the part of the competent authority in issuing the notification as required under Section 18(2) of the Act, would not be fetch any benefit of the petitioner in view of the provisions under Section 9

and 10 of the Act. Sections 9 and 10 of the Act reads thus:-

“ S.9: Maintenance of highway plans:-

(1) The highway authority shall, after having made a survey of each highway and its boundaries, prepare and maintain a plan as approved by the competent authority in respect of such highway.

(2) A plan maintained under sub-section (1) shall show clearly the boundaries of the highway, the detailed measurements of road widths, the distance between boundary marks and sufficient measurements from fixed points to enable the re-fixation in position of boundary marks in case they have been displaced or tampered with.

S.10: Demarcation of highway boundaries:-

(1) The highway authority shall have the boundaries of the highways in its charge demarcated with reference to the plans maintained by it under sub-section (1) of section 9, by planting stones or other suitable marks of a durable nature at intervals all along with highway in such a manner that the imaginary line joining such stones or marks shall show the road boundary correctly.

(2) Where there are bends or links in the road boundary, the stone or marks shall be so located as to give the correct configuration of the boundary when they are jointed by straight lines.

(3) The boundary stones or marks, which may be given consecutive numbers, shall be maintained on the ground as if they constitute part of the highway.”

5. In terms of Section 9 of the Act, the highway authority after conducting a survey of each highway and its boundaries shall prepare and maintain a plan as approved by the competent authority in respect of such highway. As per Section 10, the demarcation of highway boundaries are to be effected with reference to the plans maintained by it under sub-section (1) of Section 9. In short, in terms of Section 9 and 10 of the Act, the competent authorities under the highway authority are under an obligation to discharge the duties as specifically contemplated under Section 9 and 10 of the Act. That apart, in terms of Section 18 of the Act, even after preparation of such a plan and demarcation of the boundaries, the competent authority has a further statutorily bounden duty to notify and publish the determination regarding the building lines and control lines in respect of any category of highway. The very intention behind casting such a duty on the competent authority to notify and publish determination of the building lines and control lines viz; letting it known to the public would be defeated if the contention of the learned Government Pleader is accepted. When the statute

makes it mandatory to publish the determination of the building lines and control lines in respect of any category of highway or part thereof, in the gazette and in two daily newspapers by the competent authority the competent authority cannot be heard to contend that failure to do so would be having no significance or consequence. In fact, what exactly is, its effect and impact considered by this Court in the decision reported in **2008 (3) KLT 300** rendered relying on the decision of the Hon'ble Apex Court in **I.T.C.Bhadrachalam Paperboards & another v. Mandal Revenue Officer, A.P & others** reported in **1996 (6) SCC 634**. It was held that Gazette notification and news paper publication are essential part of the process of determination of building lines and control lines and for its implementation. It was also held that Section 18(2) provides the manner in which the publication is to be effected and therefore the mode prescribed by the statute must be followed and such a requirement is imperative and cannot be dispensed with. In short, going by the said decision the determination of the building line and control line would take effect only from the date of such publication prescribed under Section 18(2) of the

Act. In the light of the said factual and legal positions, I am of the view that Ext.R1(e) letter of the 7th respondent requiring the respondents 1 and 2 to stop the construction cannot be sustained at all. That apart, indisputably, prior to the issuance of Ext.R1(e) letter and also the stop memo, the petitioner had already completed the construction on the strength of Ext.P1 building permit. Add to it, there is no case for the respondents that the building line and control line have been determined. Even if, they are determined, admittedly, they were not notified and published as contemplated under Section 18(2) of the Act. In the said circumstances, in the light of the decision of this Court in **2008 (3) KLT 300**, the petitioner is entitled to get relief as sought for in this writ petition.

6. Accordingly, it is declared that respondents 1 and 2 are bound to number the building constructed by the petitioner on the strength of Ext.P1 in the property in 2.12 cents of property comprised in Survey No.194/15 of Monippally Village in Meenachil Taluk. Consequently, there will be a direction to respondents 1 and 2 to number the building constructed by the petitioner on the strength of Ext.P1 in the aforesaid property

without insisting 'No Objection Certificate' from the authorities under the Public Works Department and pass appropriate orders thereon. This shall be done as expeditiously as possible, at any rate, within a period of one month from the date of receipt of a copy of this judgment. Needless to say that this judgment will not stand in the way of initiation or continuation of any acquisition proceedings in accordance with law.

**C.T.RAVIKUMAR
JUDGE**

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