

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 30TH DAY OF SEPTEMBER 2016/8TH ASWINA, 1938

WP(C).No. 12643 of 2016 (E)

PETITIONER(S) :

CHRISTIAN SAHAYA SABHA
MATHILAKOM P.O., THRISSUR, REPRESENTED BY ITS
PRESIDENT, K.SAJU LOUIS, RESIDING AT KALAPARAMBATH
HOUSE, MATHILAKOM P.O., THRISSUR

BY ADVS.SRI.V.G.ARUN
SRI.T.R.HARIKUMAR

RESPONDENT(S) :

1. THE MATHILAKAM GRAMA PANCHAYAT
REPRESENTED BY ITS SECRETARY, MATHILAKAM P.O., THRISSUR
DISTRICT-680 685
2. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
LOCAL SELF GOVERNMENT (RB), DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPRAM-695 001
3. KUTTAPPAN,
SECRETARY, MANUSHYAVAKASHA KOOTTAYMA,
RESIDING AT PLAKKATTAN CHULLI VEEDU, PANANGAD P.O.,
SREENARAYANAPURAM, THRISSUR DISTRICT-680 685.

R3 BY ADV. SRI.N.K.SUBRAMANIAN
R3 BY ADV. SRI.S.ANANTHAKRISHNAN
R3 BY ADV. SRI.K.C.KURIYAN
R1 BY ADV. SRI.BABU KARUKAPADATH
R1 BY ADV. SMT.M.A.VAHEEDA BABU
R1 BY ADV. SRI.K.A.NOUSHAD
R1 BY ADV. SRI.MITHUN BABY JOHN
R1 BY ADV. SRI.J.RAMKUMAR
R BY GOVERNMENT PLEADER SRI. RENIL ANTO (SR.)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30-09-2016,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

- EXT:P1 A TRUE COPY OF THE APPROVED BUILDING PLAN.
- EXT:P2 A TRUE COPY OF THE BUILDING PERMIT NO.BL-68/2015-16
DATED 02.12.2015 ISSUED BY THE 1ST RESPONDENT.
- EXT:P3 A TRUE COPY OF ORDER NO.772/RB2/16/LSGD DATED 04.03.2016
ISSUED BY THE 2ND RESPONDENT.
- EXT:P4 A TRUE COPY OF THE NOTICE NO.G-4894/11 DATED 26.03.2016
ISSUED BY THE 1ST RESPONDENT.
- EXT.P5 A TRUE COPY OF THE JUDGMENT DTD. 28.3.15 IN O.S NO.655 OF
2012 OF THE PRINCIPAL SUBORDINATE JUDGE'S COURT, IRINJALAKKUDA
- EXT.P6 A TRUE COPY OF THE LETTER DTD. 14.9.15 ISSUED BY THE
VILLAGE OFFICER, PAPPINIVATTOM ALONG WITH SURVEY FIELD SKETCH OF FIELD
NO.81 CONSISTING OF THE PETITIONER'S PROPERTY.

RESPONDENT(S) ' EXHIBITS

- EXT.R3(A) COPY OF SALE DEED NO.1338/1975 DTD. 5.3.75
- EXT.R3(B) COPY OF ORDER DT.8.3.16 IN O.S NO.285/16 OF MUNSIFF'S COURT,
KODUNGALLUR
- EXT.R3(C) COPY OF PLAINT DTD. 29.01.16
- EXT.R3(D) COPY OF THE PLAN
- EXT.R3(E) COPY OF MEMO NO.A4716/2012 DTD.31.7.12
- EXT.R3(F) COPY OF REPORT DTD. 7.8.12
- EXT.R3(G) COPY OF LETTER NO.A. 4894/12 DTD. 8.8.12
- EXT.R3(H) COPY OF REPORT NO.A7-9548/12 DTD.18.10.12
- EXT.R3(I) PHOTOGRAPH OF THE ILLEGAL CONSTRUCTION
- EXT.R3(J) COPY OF REPRESENTATION DTD. 25.6.16 WITH RECEIPT
- EXT.R3(K) COPY OF MASS PETITION DTD. 13.8.12
- EXT.R3(L) COPY PF I.A NO.1363/16, M.C.KODUNGALLUR
- EXT.R3(M) COPY OF I.A NO.1364/16, M.C.KODUNGALLUR
// TRUE COPY //

P.A TO JUDGE

SB

K. VINOD CHANDRAN, J.

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W.P.(C) No.12643 of 2016 - E

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Dated this the 30th day of September, 2016

J U D G M E N T

The petitioner is a Society, registered under the Travancore-Cochin Literary, Scientific and Charitable Societies (Registration) Act, who owns 12 cents of land, comprised in Survey No.81/4 in Pappinivattom Village in Kodungallur Taluk, Thrissur District. The petitioner is concerned with a permit, issued for a building in the said property by the Panchayath and the proceedings taken later, allegedly on the dictates of the Vigilance Wing of the Chief Town Planner's Office, on the complaint made by the 3rd respondent.

2. The brief facts to be noticed as submitted by the petitioner are that the petitioner had obtained Ext.P1 plan for the construction of a two row building with shop rooms. The

petitioner, while proceeding with the construction, was issued with Ext.P3, which alleged violation of Rules 4(2) and 7(1) of the Kerala Panchayath Building Rules, 2011 (for brevity 'the Building Rules). Ext.P3 is issued by the Secretary of the Local Self Government Department to the Secretary of the Panchayath based on the report of the Vigilnce Wing. Ext.P4 has been issued by the Secretary of the Panchayath on the definite directions issued therein.

3. The learned Counsel for the petitioner submits that there is no violation as alleged. However, it is admitted that though the plan indicated the two row buildings to be separate and not connected on construction, the roof has been connected with a covered veranda in between the two shop rooms. Hence there would be definitely violation of Rule 4(2) of the Building Rules especially since, no application has been made by the petitioner under Rule 7(1) of the Building Rules, for covering the veranda in between the two separately shown row of shop rooms.

4. It is Exhibit P4 notice that is impugned herein. The additional plinth area alleged in item No.1 of Ext.P4, would be on account of such covering of the veranda, which is the violation alleged as per item No.2. The further allegation raised in Ext.P4 as item No.3, is with respect to an existing building shown in the plan with lesser plinth area than that actually exists. Item No.4 merely states a complaint having been submitted by the 3rd respondent and item No.5 speaks of the site plan having shown more extent of land (539 sq.metres) than that existing (486 sq.metres). On that allegation, the learned Counsel points to Ext.P1 plan, which only shows the extent of plot area to be 485.64 sq.metres, hence there is no substance in the said allegation.

5. With respect to the allegation under Rule 4(1) of the Building Rules and the covering of the veranda, the learned Counsel for the petitioner would contend that the petitioner would be entitled to make an application for regularisation and the same could be considered in accordance with the Kerala

Panchyath Raj Act, 1994 (for brevity 'the Panchayath Raj Act) and the Building Rules. Item No.3 referred to in Ext.P4 is with respect to an existing building, which does not have any significance and it could very well be verified as to whether the floor area ratio (F.A.R), together with the plinth area of the two buildings, exceed that provided in the Building Rules. With the above facts and allegations, the issue does not call for any serious adjudication, but to leave the Panchayath to conclude the proceedings. But the 3rd respondent has very serious contentions, which go far beyond the rather simple facts laid out by the petitioner in the writ petition. The emphasis is on the complaint raised by the 3rd respondent which has been casually referred to by the Panchayath, in Exhibit P4 notice.

6. The complaint of the 3rd respondent is grounded on the existence of a pathway, which allegedly has been annexed by the petitioner to their property and constructions made thereon. The 3rd respondent also does not have any contention, with respect to the other allegations and lays stress on the

complaint raised by the 3rd respondent, with respect to the pathway, which was used by the public and in which, enquiry has been initiated by the Panchayath and not completed yet. The 3rd respondent by the counter affidavit produces various documents to seek dismissal of the writ petition on grounds of a pending litigation before the Civil Court initiated by third parties and also on grounds of suppression of material facts, which according to the 3rd respondent would commend refusal of exercise of the discretionary, extraordinary remedy under Article 226 of the Constitution of India.

7. Ext.R3(a) produced by the 3rd respondent is the title deed of the petitioner. Eastern boundary shown in the scheduled title deed is a pathway. Two persons of the locality had filed O.S No.285 of 2016 against the President, Secretary and the Office Secretary of the petitioner Society for declaration and a prohibitory injunction from encroaching into the pathway. The Munsiff's Court, Kodungallur has passed Ext.R3(b) order in an application for injunction filed by the plaintiffs therein. A reading

of the injunction order would indicate that the A schedule property is the subject property of the petitioner and B schedule is 42 cents situated in Survey No.81/5 of Pappinivattom Village, lying to the east of the petitioner's property, but however with a pathway in between. The title deeds of the petitioner and the nearby land owner indicates a pathway in the schedule, on their respective boundaries. The specific allegation raised by the plaintiffs was that the said pathway was being used for bringing goods from the public road to the Mathilakam market and that it was customarily so used from 1924 onwards. The office bearers of the petitioner society, who were defendants in the said suit were alleged to have reduced the pathway and annexed it to their property. The plaintiffs prayed for a temporary injunction from obstructing the use of plaint C schedule pathway and from reducing the width of plaint C schedule pathway.

8. The learned Munsiff looked at the description of the plaint A, B and C schedule properties from the title deeds and also examined a report of the Village Officer, Pappinivattom,

which certified that as per the village records there was no pathway in existence. The field sketch was not produced along with the report of the Village Officer, in which event the learned Munsiff refused to accept the same. The photographs produced by the plaintiffs evidenced at Ext.A3, was specifically relied on, which according to the learned Munsiff indicated the existence of plaint C schedule. The petitioner before the Civil Court, submitted that they had obtained a permit for construction of a building in the said property. An injunction was granted, restraining the defendants from reducing the width of the plaint C schedule pathway. The plaintiffs had no objection in the defendants proceeding with the construction, provided the construction is confined to the 4.80 Ares of property in Survey No.81/4 Pappinivattom Village belonging to the petitioner as found in their title deed. The defendants also undertook to confine the construction to the property exclusively held by them. In such circumstance, construction was permitted but leaving the pathway and restraining reduction or annexing of

any portion of the pathway to the petitioner's property. The construction was also to be subject to the result of the suit.

9. The learned Counsel for the petitioner would contend that the subject matter of the suit and the present writ petition are distinct and different. The petitioner hence would argue that the notice issued by the Panchayath be set aside, for reason of the same having been issued only on the dictates of the Vigilance Wing of the Chief Town Planner's Office. It is also submitted that the petitioner would seek for regularisation of the covering of the veranda, which could be considered by the Panchayath and till then, any further proceedings be kept in abeyance and a provisional numbering of the building may be granted. The Panchayath and 3rd respondent however, opposes the said contention.

10. The Panchayath has filed a counter affidavit pointing out that the petitioner had filed an application for permit in the year 2012 and without the same being sanctioned, the petitioner had commenced the construction. The said plan is produced by

the 3rd respondent as Ext.R3(d). Pausing here for a moment, it is pertinent to note that in Ext.R3(d) also shows, on the eastern side of the petitioner's property, a pathway as has been indicated in the petitioner's title deed also.

11. The Panchayath had then issued a stop memo, since the construction was going on in violation of Rule 28 of the Building Rules and then the petitioner had submitted an application with a plan, which has been approved by Ext.P1. The Panchayath also specifically points out that when complaints were received of a path way, the Panchayath had requested for clarification from the Village Officer, which was issued by communication dated 14.09.2015 (Ext.P6), produced along with the reply affidavit. The neighbouring property owner one Marykutty on the eastern side had also given consent and it was hence the Panchayath issued permit. The Panchayath and the 3rd respondent now submits that the crucial allegation would be of the path way, which if found to be in existence the permit would have to be revised in compliance with the Building Rules and

also verifying whether any constructions were made on the said pathway. The issue is pending before the civil court and the same had to be disclosed here.

12. As was noticed above, the title deed of the petitioner, shows the pathway and the plan submitted by the petitioner in the year 2012, produced by the 3rd respondent as Ext.R3(d) also indicates a side 'idavazhy' on the eastern boundary. There is also a suit in existence filed by two persons from the general public, who had asserted their customary right to use such pathway. There was also a specific injunction order, restraining the petitioner from reducing the pathway and permitting construction only in the 4.80 cents of property owned by the petitioner. When the writ petition was filed, ideally the plaintiffs in the suit should have been impleaded and the factum of the injunction order passed, brought to the notice of this Court. The Panchayath also has a contention that they issued the permit on the certificate issued by the Village Officer. As of now, this has resulted in a situation, where this Court had granted an

interim order dated 03.03.2016 staying the proceedings pursuant to Ext.P4 notice on the strength of which, the petitioner has continued the construction and completed it.

13. There is also said to be an application filed in the suit; for violation of injunction as produced by the 3rd respondent in Ext.R3(m) and Ext.R3(l) application for appointing a Commissioner to measure the property both dated 06/04/2016. The impugned order in the present writ petition is dated 26/03/2016 and the injunction order passed in the suit is dated 08/03/2016, just prior to the impugned order. Hence there has to be found a co-relation of the various factors especially the existence of a pathway, agitated in the suit and taken note of by the Panchayath. In such circumstance, the crucial issue is the existence or non-existence of the pathway on the eastern side of the petitioner's property. The challenge made in the writ petition without bringing the entire facts to the notice of this Court has to be found to be a deliberate action of suppression by the petitioner, to somehow frustrate the adjudication by the civil

Court. That cannot be permitted by this Court and the interim order passed by this Court is in anyway subject to the result of the writ petition. The injunction order passed by the civil court also permits the petitioner to build only in the property available to the petitioner as per the title deed.

14. It would not be proper for this Court to exercise the extra ordinary discretionary remedy under Article 226, to frustrate a proper consideration by the Civil Court, which has to consider the same on a proper measurement being taken, if need be, with the help of a Surveyor. Further, the Panchayath has also to verify the existence of the pathway and there is as of now a violation of the building permit, which is admitted by the petitioner. This Court hence is not inclined to interfere with Ext.P4 notice issued by the Panchayath. The Panchayath would be entitled to take proceedings in accordance with law under the Panchayath Raj Act and the Building Rules and needless to say, the parties would also be governed by the decision of the Civil Court. Suffice it to observe that the Panchayath cannot act

merely on the dictates issued by the Vigilance Wing of the Chief Town Planner's Office and has to independently consider the violations if any and proceed in accordance with law.

With the above observation, the writ petition would stand dismissed. No costs.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

SB/01/10/2016

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P.A to Judge