

Krishnan Mahadevan @ Mahadevan Vs. K.R.Moniamma and Another

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Court : Kerala

Decided On : Feb-04-2013

Judge : Honourable Mr.Justice S.S.Satheesachandran

Appellant : Krishnan Mahadevan @ Mahadevan

Respondent : K.R.Moniamma and Another

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE S.S.SATHEESACHANDRAN MONDAY, THE 4TH DAY OF FEBRUARY 2013 15TH MAGHA 193 OP(C).No. 2388 of 2011 (O) ----- ORDER DATED 14 03.2011 IN APPEAL NO.968/2010 OF THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM PETITIONER : ----- KRISHNAN MAHADEVAN @ MAHADEVAN, S/O.KRISHNA IYER, T.C.24/1927, POURNAMI, THYCAUD, P.O., THIRUVANANTHAPURAM, REPRESENTED BY POWER OF ATTORNEY HOLDER-ELIZABETH JANE VARGHESE, T.C.24/1927, POURNAMI, THYCAUD P.O. BY ADVS.SRI.GRASHIOUS KURIAKOSE (SR.) SRI.GEORGE MATHEWS SRI.H.JOSH RESPONDENTS : ----- 1. K.R.MONIAMMA, W/O.JAYAN, 'ANUGRAH', V.P.2/1204, B.P.NAGAR, PAYAD P.O., THIRUVANANTHAPURAM

2. THE SECRETARY, VILAPPIL GRAMA PANCHAYATH, PAYAD P.O., THIRUVANANTHAPURAM. R1 BY ADVS. DR.K.P.SATHEESAN SRI.M.R.JAYAPRASAD SRI.P.MOHANDAS (ERNAKULAM) SRI.MATHEW SUNNY SRI.ANOOP.V.NAIR R2 BY ADVS. SRI.RAM MOHAN.G. SRI.G.P.SHINOD THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 04-02-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: RKM OP(C).No. 2388 of 2011 (O) ----- APPENDIX PETITIONER'S EXHIBITS : EXT.P1 : COPY OF THE ORDER DATED 14 03.2011 IN APPEAL NO.968/2010 OF THE LOCAL SELF GOVERNMENT INSTITUTION, THIRUVANANTHAPURAM EXT.P2 : COPY OF THE COMPLAINT DATED 13 08.2010 SUBMITTED BY THE 1ST RESPONDENT TO THE 2ND RESPONDENT. EXT.P3 : COPY OF THE DOCUMENT NO.4936 OF 200.OF THE SRO MALAYANKEEZHU DATED 23 12.2009 EXT.P4 : COPY OF THE WRITTEN STATEMENT DATED 03 12.2010 SUBMITTED BY THE PANCHAYATH. EXT.P5 : COPY OF THE ASSIGNMENT DEED NO.4912 OF 200.DATED 21 12.2009 RESPONDENTS' EXHIBITS : NIL TRUE COPY PA TO JUDGE RKM C.R S.S.SATHEESACHANDRAN, J.

----- O.P.(C) No.2388 of 2011 -----
----- Dated this the 4th day of February, 2013 JUDGMENT Challenge is against Ext.P1 order passed by the Tribunal for Local Self Government Institutions, Trivandrum. A building permit granted to petitioner by the 2nd respondent Panchayath was cancelled by the Tribunal directing the Secretary of that respondent to examine whether the building put up by petitioner on the permit issued was in conformity with the provisions of the Kerala Panchayath Raj Act and Kerala Municipality Building Rules. If the construction was found to be not in compliance with the provisions of the above two Acts that respondent was directed to examine whether regularisation was possible as per the Rules. Petitioner has also been directed not to carry on with any construction or occupy the already constructed area till a final decision is taken by the Panchayath.

2. Ext.P4 building permit was granted to petitioner by 2nd respondent to put up a construction in his plot having an extent of 1.14 ares. Validity of Ext.P4 was challenged by first O.P.(C) No.2388 o

2. respondent before the Panchayath and, later, before the Tribunal contending that the permit issued for construction was in violation of the Building Rules. Petitioner has another property abutting the plot in which the proposed construction is put up under Ext.P4 permit, was the case of 1st respondent to contend that Ext.P4 permit issued extending the exemption covered by Chapter VIII of the Building Rules as if the petitioner is a small plot holder having less than 3 cents is unsustainable. Challenge canvassed by the 1st respondent found approval with the Tribunal, which allowing his appeal passed Ext.P1 order with directions as indicated earlier.

3. I heard the senior counsel appearing for petitioner and also the respective counsel appearing for 1st and 2nd respondents. Interpretation placed by the Tribunal over Rule 60 of the Building Rules is erroneous, is the submission of the learned senior counsel for petitioner. Proviso to Rule 60, according to the counsel, makes it abundantly clear that where permit is applied for constructing different buildings, then alone, it will disentitle a person from getting the benefit conferred under that Rule. I do not find any merit in the above submission. Rule O.P.(C) No.2388 o

3. 60 of the Building Rules reads thus :- [60. Special provisions for construction in small plots :- The provisions in the Kerala Municipality Building Rules shall apply to construction of building under residential and or commercial occupancy, in plots not exceeding 125 sq.metres of area subject to the modifications in this chapter : Provided that permit shall not be granted under this chapter to one and the same person or with his consent to another person, for constructing different buildings, whether separately or abutting each other, in plots formed by division of one or more plots, he remaining as owner of more than one such divided plots or if that person has another plot abutting the proposed plot.] Exemption from the rigours imposed by various provisions under the Building Rules in providing setbacks from adjacent plots, roads etc. is provided to owners of small plots having less than 125 sq.mtrs. for putting up construction in such land. Treating such small plot owners as a special category some relaxation from the general provisions of the Building Rules is given, but, stipulating that construction in such small plots will be governed by the provisions under Chapter VIII of the above Rules. Proviso added

to Rule 60 cannot be interpreted in a manner destroying the spirit of what is provided and extended to owners of small O.P.(C) No.2388 o

4. plots having less than 125 sq.mtres. of land. Proviso to Rule 60 does not enlarge the exemption but restrict the applicability excluding some persons who otherwise also could claim exemption as small plot owners. A permit under the above Rule cannot be granted to one and the same person for constructing different buildings in plots divided by one or more plots when such person continued as owner of more than one such plot, or if that person has another plot abutting the small plot in which construction is to be put up, is the interdiction placed by the proviso to Rule 60. The interpretation attempted to be placed by the counsel over the above proviso that only when construction of different buildings by the same person when he continues as owner of more than one divided plots or has another plot abutting the proposed plot he will be disentitled to claim the benefit under Rule 60 is unworthy of any merit. Petitioner admittedly has another plot abutting the small plot over which Ext.P4 permit was issued treating him as a small plot owner to provide him exemption in construction under Chapter VIII of the Building Rules. If a person is having any plot adjacent to or abutting to the small plot whether with or without building in O.P.(C) No.2388 o

5. such plot, he cannot be considered as a small plot holder having less than 125 sq.mtrs. The words used "for constructing different buildings" in the proviso to Rule 60 no way enlarge or militate against the spirit of what is stipulated and provided under the Rule that the benefit thereof is available only to a small plot holder having less than 125 sq.mtrs. of land. If a small plot holder is having other lands not touching upon or adjoining to or abutting to the small plot of land, he can of course claim the benefit of the Rule. But where he has a land abutting to or adjoining or adjacent to the plot, even if that land is less than 125 sq.mtrs., but together with the other plot the land exceeds the extent fixed he will not be entitled to the benefit of the Rule under Chapter VIII of the Building Rules. I do not find any impropriety, leave alone any illegality, in Ext.P1 order passed by the Tribunal. Original Petition is dismissed. Sd/- S.S.SATHEESACHANDRAN JUDGE RKM