

Thomas Vs. the State of Kerala

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Court : Kerala

Decided On : Jan-02-2014

Judge : Honourable Mr.Justice K.Surendra Mohan

Appellant : Thomas

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN THURSDAY, THE 2D DAY OF JANUARY 2014 12TH POUSHA, 1935 WP(C).No. 18516 of 2013 (L) ----- PETITIONER: ----- THOMAS, AGED 48 YEARS S/O. NJATTUNKALAYIL ABRAHAM, KADAYIREUPU P.O. ERNAKULAM DISTRICT-682311. BY ADV. SRI.G.SREEKUMAR (CHELUR) RESPONDENT(S): -----
1. THE STATE OF KERALA REP. BY THE SECRETARY TO THE GOVT. LOCAL SELF GOVERNMENT DEPARTMENT, GOVT. SECRETARIAT, THIRUVANANTHAPURAM-695001.

2. THE PINDIMANA GRAMA PANCHAYATH PINDIMANA P.O., REP. BY ITS SECRETARY ERNAKULAM-686698. Addl. 3. THE CHIEF TOWN PLANNER GOVERNMENT OF KERALA OFFICE OF THE CHIEF TOWN PLANNER KOTTARATHIL BUILDINGS, PALAYAM THIRUVANANTHAPURAM - 695 001. (ADDL. R3 IS IMPEADED AS PER

ORDER

DATED 28.10.2013 IN IA140732013) R2 BY ADV. SRI.ALEXANDER JOSEPH R3 BY GOVERNMENT PLEADER SRI RINNY STEPHEN CHAMAPARAMBIL THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02.01.2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).No. 18516 of 2013 (L) ----- A P P E N D I X PETITIONER(S)' EXHIBITS ----- EXHIBIT P1- A TRUE COPY OF THE

ORDER

NO.A3-157/2008 OF THE SECOND RESPONDENT DATED 17.07.09. EXHIBIT P2- A TRUE COPY OF THE RECEIPT ISSUED BY THE SECOND RESPONDENT DATED 17.07.2008. EXHIBIT P3- A TRUE COPY OF THE APPROVED BUILDING PLAN ISSUED TO THE PETITIONER DATED NIL. EXHIBIT P4- A TRUE COPY OF THE ACKNOWLEDGEMENT OF THE DEPARTMENT OF INDUSTRIES DATED 13.12.07. EXHIBIT P5- A TRUE COPY OF THE REPORT OF THE SECOND RESPONDENT DATED NIL. EXHIBIT P6- A TRUE COPY OF THE RECEIPT ISSUED BY THE SECOND RESPONDENT DATED 12.08. EXHIBIT P7- A TRUE COPY OF THE PROFESSION TAX RECEIPT ISSUED TO THE PETITIONER BY THE SECOND RESPONDENT DATED 24.04.2012. EXHIBIT P8- A TRUE COPY OF RECEIPT ISSUED BY THE ELECTRICITY BOARD DATED 27.05.2013. EXHIBIT P9- A TRUE COPY OF THE CERTIFICATE OF THE REGISTRATION ISSUED TO THE PETITIONER BY THE COMMERCIAL TAX OFFICER, KOTHAMANGALAM DATED 12.06.2013. EXHIBIT P10- A TRUE COPY OF THE CONSENT TO ESTABLISH ISSUED BY THE POLLUTION CONTROL BOARD DATED 15.03.2012. EXHIBIT P11- A TRUE COPY OF SANCTION ACCORDED BY THE CHIEF TOWN PLANNER D2/26/2009 DATED 20.02.09. EXHIBIT P12- A TRUE COPY OF THE COMMUNICATION A3-3613/13 OF THE SECOND RESPONDENT DATED 17.07.2013. 2ND RESPONDENT'S EXHIBITS ----- EXT.R2(a): TRUE COPY OF THE LETTER DT.12.08.13 SENT BY THE 2D RESPONDENT TO THE CHIEF TOWN PLANNER, TRIVANDRUM. 3RD RESPONDENT'S EXHIBITS EXT.R3(a): TRUE COPY OF THE CORRESPONDING PAGE OF THE DESPATCH REGISTER. EXT.R3(b): TRUE COPY OF

ORDER

----- W.P(c) No.18516 of 2013-L

----- Dated this the 2nd January, 2014

JUDGMENT

The petitioner is the owner of an extent of 6 acres of property within the 2nd respondent Panchayat. He had applied for permission to start a Metal Crusher Unit in his property. It is the case of the petitioner that he has obtained all the necessary permissions and licences from the concerned authorities including the Kerala State Pollution Control Board. As per Ext.P1, the petitioner was issued with an installation permit. Ext.P2 is the receipt for payment of the fee for the permit. According to the petitioner, the petitioner has thereafter completed the construction of a building and installed the necessary machinery for starting the Metal Crusher Unit. While so, as per Ext.P12 proceedings, the 2nd respondent has informed the petitioner that since he was not issued with a building permit to undertake the construction, he would have to apply and obtain the same. The petitioner is aggrieved by Ext.P12.

2. A counter affidavit has been filed by the 2nd respondent refuting the allegations of the petitioner. According W.P(c) No.18516 of 2013-L2to the 2nd respondent Panchayat, Ext.P1 was issued before the construction was effected. It was incumbent upon the petitioner to have obtained a consent from the Town Planner as well as permission from the Panchayat before undertaking the construction. According to the Panchayat, Ext.P3 plan had been forwarded to the additional 3rd respondent, the Chief Town Planner. Permit could be issued to the petitioner only after obtaining sanction from the said authority.

3. A separate counter affidavit has been filed on behalf of the 3rd respondent. According to the 3rd respondent, sanction had been granted to the petitioner as per Ext.R3(b) proceedings dated 20.02.2009. As per Ext.R3(b), 5 conditions have been stipulated subject to which alone, the 2nd respondent is entitled to grant permission to the petitioner. Though Ext.R3(b) had been communicated to the 2nd

respondent, it is not clear as to why the same was not referred to or prompt action taken in the matter thereafter.

4. It is the contention of Sri Sreekumar G. (Chelur), who appears for the petitioner, that the building had been constructed in the year 2009 at a time when the Municipality Building Rules was applicable to the Panchayat. According to W.P(c) No.18516 of 2013-L3 the counsel, the construction is in conformity with the provisions of the said Rules. However, he has no explanation as to why a building permit was not applied for or obtained, before undertaking the construction. The contention of the counsel is that, the question as to whether his construction is unauthorized or not would have to be considered under the Municipality Building Rules that was applicable at that time.

5. Advocate Alexander Joseph, who appears for the 2nd respondent, on the other hand points out that it was necessary for the petitioner to have obtained a building permit before commencing his construction. Therefore, he had no building permit at the time of construction. The construction is therefore an unauthorised construction, which has to be either demolished or regularised, if such a course is permissible. For the purpose, the petitioner would have to prefer a proper application to the Panchayat.

6. The learned Government Pleader Sri Rinny Stephen Chamaparambil places reliance on Ext.R3(b) sanction, that has been issued by the additional 3rd respondent. As per Ext.R3(b), permission to undertake any construction can be granted only subject to the stipulations contained therein. Therefore, W.P(c) No.18516 of 2013-L4 whatever course the Panchayat may adopt in respect of the petitioner's building, the same would have to conform to the conditions in Ext.R3(b) also.

7. Heard. It is no doubt true that the petitioner has proceeded with his construction without obtaining any building permit from the 2nd respondent Panchayat. The construction having been completed, the only course open to the petitioner is to seek regularisation thereof, if it is permissible. It is not in dispute that the Municipality Building Rules that was applicable to the Panchayat at the time when the petitioner effected his construction, is no longer in force. The law that is

applicable at present is the Kerala Panchayat Building Rules, 2011. The fact remains that the petitioner's construction was made in violation of the Building Rules that was applicable at that time also, for the reason that no permit as per the said law has been obtained by him. Therefore, I am not satisfied that the contention of the counsel for the petitioner should be accepted. The application for regularisation can be submitted only under the provisions of the Kerala Panchayat Building Rules, 2011. The same would also have to be considered by the Panchayat under the provisions of the present Building Rules. If the petitioner is desirous of W.P(c) No.18516 of 2013-L5 obtaining regularisation under the said Rules, he would certainly have to make necessary modifications or alterations to his construction, to make the same in conformity with the present Rules. The petitioner would also have to conform to the conditions stipulated by Ext.R3(b) sanction that was accorded by the additional 3rd respondent. In view of the above, this Writ Petition is disposed of with the following directions: i) The petitioner is permitted to submit an application for regularisation supported by a revised plan and seek regularisation of his construction from the 2nd respondent Panchayat, within a period of two weeks of the date of receipt of a copy of this judgment; ii) If the application for regularisation is submitted in accordance with the above directions, the 2nd respondent shall consider the same, after conducting an inspection of the property of the petitioner and the construction put up by him, and if necessary after conducting a measurement thereon to ensure that the same is in conformity with the provisions of law, and shall pass appropriate orders thereon, as expeditiously as possible and at any rate, within a period of one month of the date W.P(c) No.18516 of 2013-L6 of receipt of the said application; iii) If there is any conflict with the present Building Rules and Ext.R3(b), the question of regularisation shall be considered by the Panchayat in accordance with Ext.R3(b). Sd/- (K.SURENDRA MOHAN, JUDGE) rtr/