

John Raphy vs the District Geologist

John Raphy vs the District Geologist

SooperKanoon Citation : sooperkanoon.com/1334765

Court : Kerala

Decided On : Jan-30-2023

Judge : Honourable Mrs. Justice Anu Sivaraman

Appeal No. : WP(C)/2853/2023

Appellant : John Raphy

Respondent : The District Geologist

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN
MONDAY, THE 30TH DAY OF JANUARY 2023 / 10TH MAGHA, 1944
WP(C) NO. 2853 OF 2023 PETITIONER: JOHN RAPHY AGED 53
YEARS S/O.JOSEPH, KANJIRATHINGAL HOUSE, MULLASSERI (PO),
THRISSUR DISTRICT, PIN - 680 509 BY ADV BINOY VASUDEVAN
RESPONDENTS: 1 THE DISTRICT GEOLOGIST OFFICE OF THE
DISTRICT GEOLOGIST, MINI CIVIL STATION, CHEMBOOKKAVU,
THRISSUR, PIN - 680020 2 THE TAHSILDAR (LAND RECORDS)
TALUK OFFICE, PALACE ROAD, THRISSUR, PIN-680 020 3 THE
VILLAGE OFFICER MADAKKATHARA VILLAGE, MADAKKATHARA
P.O., THRISSUR DISTRICT, PIN - 680020 SRI.APPU.P.S-GP THIS

WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30.01.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 30th day of January, 2023 Petitioner is the absolute owner of 18.21 Ares of dry land in Sy.No.1224/3PT of Madakkathara Village. The property was originally assigned as per Ext.P8 proceedings to the predecessor in interest of the petitioner. The petitioner had purchased the property and has obtained a building permit for the construction of a residential house in the aforesaid property from the Madakkathara Grama Panchayat. Ext.P4 is the building permit. The petitioner applied to the 1 st respondent for issuance of transit passes for removing the earth. By Ext.P7, the 1st respondent has rejected the request. The reason for the rejection is that the property is a patta land and patta is issued only for three purposes. It is stated that assignments are usually granted as per the Land Assignment Rules of 1964 and Rules issued in 1993, for purposes of Agriculture, construction of residence, construction of small shop rooms and beneficial enjoyment. A report of the Tahsildar dated 28.1.2022 which had been obtained by the 1st respondent is cited in Ext.P7 to say that user of land for purposes other than for which it has been assigned can only be treated as a violation of the Rules. Thereafter, Ext.P7 concludes that in view of the clarification obtained from the Tahsildar, transit passes cannot be issued.

2. Heard the learned counsel for the petitioner and the learned Government Pleader on behalf of the respondents.

3. It is evident from Ext.P8 that the construction of residential

buildings are not prohibited in the assigned land. There is also no contention for the respondents that the land is not alienable. It is also not disputed that use for residential purposes will not be a violation of the conditions of the assignment. The development permit is ancillary to the building permit and the removal of the ordinary earth is only for the purpose of effecting the construction. As such, the reasons stated in Ext.P7 are not legally sustainable. The patta was issued as early

as 20.06.1970 and there is no case for the respondents that there has been a violation of any of the conditions of the patta from 1970, till the date of transfer of the property to the petitioner. It is also evident that the petitioner only seeks to use the land for residential purposes, which is an activity permitted as per the assignment. It is also evident that whoever resides in the property will be a successor-in-interest, since alienation is permitted. In the result, this writ petition is allowed. The Ext.P7 is quashed. There will be a direction to the 1st respondent to consider the application submitted by the petitioner for transit passes and grant the same, if the petitioner is otherwise entitled. It is made clear that this judgment will not, in any manner, affect the reservations available to the Government as per the Land Assignment Rules. The 1st respondent shall issue necessary passes after verifying the site plan submitted by the petitioner along with the building permit and ensure that the removal of earth is conducted only in accordance with the permissions granted by the local authority. Appropriate action shall be taken within a period of one month from the date of receipt of a copy of this judgment. Sd/-

ANU SIVARAMAN JUDGE NP APPENDIX OF WP(C) 2853/2023 PETITIONERS EXHIBITS Exhibit P1 TRUE COPY OF DOCUMENT NO.1621/2015 OF S.R.O. OLLUKKARA DATED 06.06.2015 Exhibit P2 TRUE COPY OF THE POSSESSION CERTIFICATE DATED 11.01.2023 ISSUED BY THE 3RD RESPONDENT Exhibit P3 TRUE COPY OF THE LAND TAX RECEIPT DATED 12.05.2022 ISSUED BY THE 3RD RESPONDENT Exhibit P4 TRUE COPY OF THE BUILDING PERMIT BEARING NO. A4-5451/15 ON 07-10-2015 Exhibit P5 TRUE COPY OF THE DEVELOPMENT PERMIT ISSUED BY THE SECRETARY OF THE MADAKKATHARA GRAMA PANCHAYAT DATED 16-10-2018 Exhibit P6 TRUE COPY OF THE CHALLAN EVIDENCING PAYMENT OF THE ROYALTY AMOUNT OF RS.87,560/- Exhibit P7 TRUE COPY OF THE ORDER NO.2029/C1/TDO/20 DATED 23.01.2023 ISSUED BY THE 1ST RESPONDENT Exhibit P8 TRUE COPY OF THE PATTA NO.59 OF 1970 DATED 20.06.1970 ISSUED BY THE SPECIAL TAHSILDAR, LAND ASSIGNMENT, THRISSUR Exhibit P9 TRUE COPY OF THE JUDGMENT DATED 30.03.2022 IN W.P.(C)NO.7362 OF 2022 Exhibit P10 TRUE COPY OF THE JUDGMENT DATED 10.05.2022 IN W.P.(C)NO. 4782 OF 2022 Exhibit P11 TRUE COPY OF THE JUDGMENT DATED 14.06.2022 IN W.P.(C)NO.16226 OF 2022

RESPONDENTS EXHIBITS: NIL

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com