

Usman vs State of Kerala

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Court : Kerala

Decided On : Mar-01-2023

Judge : Honourable Mrs. Justice Anu Sivaraman

Appeal No. : WP(C)/18852/2022

Appellant : USMAN

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN
WEDNESDAY, THE 1ST DAY OF MARCH 2023 / 10TH PHALGUNA,
1944 PETITIONER :- USMAN, AGED 68 YEARS S/O.UNNEENKUTTY,
R/O CHETTIYANTHODI HOUSE, PALLIKUTH, PATTIKAD POST,
PERINTHALMANNA, MALAPPURAM, KERALA - 679 325. BY ADVS.
M.K.CHANDRA MOHANDAS SHAKTHI PRAKASH PRATHEEK
VISWANATHAN HARIKRISHNAN M.S. K.DHRUV KUMAR
RESPONDENTS :-

1 STATE OF KERALA REPRESENTED BY THE CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM, KERALA - 695 001. 2

PERINTHALMANNA MUNICIPALITY REPRESENTED BY THE SECRETARY, PERINTHALMANNA P. O., MALAPPURAM, KERALA - 679 322. 3 CHIEF TOWN PLANNER SWARAJ BHAVAN, 3RD FLOOR, NANTHANCODE, KOWDIAR P. O., THIRUVANANTHAPURAM - 695 003. 4 DISTRICT TOWN PLANNER CIVIL STATION, MALAPPURAM, KERALA - 676 505. BY SRI.P.C.SASIDHARAN, SC BY SMT.PARVATHY K., GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01.03.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -: 2 :-

JUDGMENT

Dated this the 1st day of March, 2023

This writ petition is filed seeking the following reliefs :- (i) Issue a writ, order or direction declaring that the restriction on constructions in the Kulirmala Bio-park Zone under the Perinthalmanna Zonal Regulations, being, Only single storied buildings shall be permitted in this zone and it shall be ensured by the secretary that the constructions are carried out with minimum disturbance to the terrain and ecology of the area. The uses listed under Parks and Open Spaces Zone may be permitted in this zone. The development of the existing residential settlements in this area, including addition/ alteration/renovation of existing houses, construction of new houses and ancillary buildings essential for the community shall be permitted. Other developments in this area reserved for Kulirmala bio-park shall be for eco-restoration, recreational park (including open air theatre), museums/planetariums/exhibition spaces and bio-reserve. Also, to act as a public interface and to ensure revenue generation, a multiplex and an indoor stadium may also be accommodated along with the bio- park. All these developments shall be according to the detailed design and DPR to be prepared for the purpose by the Municipality. The detailed lay out design and DPR shall be subject

to the approval of the Chief Town Planner., as inapplicable in the light of the fact that the Bio-park merely remains on paper and has not been established till date. -: 3 :-

(ii) Issue a writ of certiorari or any other appropriate writ,

order or direction striking down the restriction on

constructions in the Kulirmala Bio-park Zone under the Perinthalmanna Zonal Regulations, as unconstitutional, ambiguous and unreasonable.

(iii) Issue a writ of certiorari or any other writ, order or direction quashing Exhibit P3 Notice and P6 intimation issued by the 2nd respondent Municipality, as being illegal.

(iv) Issue a writ of mandamus or any other appropriate writ,

order or direction directing the 2nd respondent to issue

building permit for the constructions on the basis of Exhibit P2 application. (OR in the alternative) Issue a writ of mandamus or any other appropriate writ,

order or direction directing the 1st and 2nd respondent to

consider Exhibit P5 representation submitted by the petitioner and purchase the 0.5059 hectares of land situated in Survey No.48/2 of Perinthalmanna Taluk, owned by the petitioner.

2. Heard the learned counsel for the petitioner and the learned Government Pleader as well as the learned Standing Counsel appearing for the respondent Municipality.

3. The learned counsel for the petitioner submits that the petitioner is the owner of 50.59 Ares of land in Perinthalmanna

Taluk. He submitted an application for building permit incorporating a gymnasium, an auditorium, a restaurant and a health club and four cottages in his property.

The same has been -: 4 :-

rejected by Ext.P3 on the ground that the property is included in the Kulirmala Bio-park Zone of the Master Plan for Perinthalmanna Town and that a two storey building cannot be permitted to be constructed. It is submitted that Ext.P4 Zonal Regulations have not been implemented by the Municipality and that the petitioner's application being for tourism friendly activities, the same is liable to be allowed even in terms of the Master Plan and the Zonal Regulations.

4. The 4th respondent has placed a counter affidavit on record pointing out that only single storey constructions are permitted in the Bio-park Zone which is an area reserved for eco- restoration, recreational park, open air theatre, museums, planetariums, exhibition spaces and bio-reserve.

5. The learned counsel for the petitioner submits that the

petitioner had submitted a request before the respondents for the acquisition of his property as provided under Section 67(1) of the Kerala Town and Country Planning Act, 2016, but a reply had been given stating that if the property is handed over free of costs, the Municipality will accept the same. The learned counsel for the petitioner submits that it is evident that the Municipality has not taken any steps for implementing the Project of the Bio-park and -: 5 :- that since they do not intend to acquire the properties, the petitioner is entitled to the constructions in the property.

6. A counter affidavit has been placed on record by the 2 nd respondent as well stating that the building permit as sought for by the petitioner cannot be granted in the light of the Zonal Regulations.

7. A reply affidavit has been placed on record by the

petitioner stating that the petitioner's property is in the Perinthalmanna Town and that there are several commercial buildings in the vicinity and that since no steps are taken to implement the Project, the petitioner's application is liable to be considered.

8. The learned counsel for the petitioner places reliance on

the decisions of this Court in *Basheer C. K. v. Kozhikode Corporation and others* [2021 (3) KHC 578] and a judgment dated 20.6.2014 in W.P.(C) No.12412/2011 and connected cases.

9. Having heard the learned counsel for the petitioner and

having considered the contentions advanced, I notice that the area where the petitioner proposed a construction is included in the Bio- park zone under the Master Plan. The respondents do not have a case that they intend to compulsorily acquire the property of the :- 6 :- petitioner for the purpose of a Bio-park. The contention is only that in view of the fact that the property is included in the said zone, building having more than one storey cannot be permitted to be constructed in the area in question.

10. The learned Standing Counsel appearing for the

respondent Municipality and the learned Government Pleader submit that in case the petitioner requires any variation to the Master Plan, the petitioner can approach the Government, who is duty bound to consider such request for variation, in accordance with law. The provisions of Section 50(3) of the Kerala Town and Country Planning Act, 2016 are also relied on.

Having considered the contentions advanced and in view

of the submissions made on all sides, I am of the opinion that since the Master Plan has admittedly been notified in the year 2018, in case the petitioner seeks the issuance of building permit in variation with the Master Plan, the petitioner may approach the Government seeking the variation of the Master Plan, taking note of

the factual situations. The petitioner shall approach the 1st respondent with an appropriate representation seeking the variation including the details of the developments in the area in question. If such a representation is preferred, the same shall be :- 7 :-

considered with notice to the petitioner as well as the local authority and after following all due procedures. Appropriate steps shall be taken within a period of two months from the date on which the petitioner submits such an application as directed above. In the meanwhile, the petitioner will be free to submit a modified application before the Municipality which shall also be considered in accordance with law.

This writ petition is ordered accordingly. Sd/- ANU SIVARAMAN JUDGE
Jvt/6.3.2023 -: 8 :- APPENDIX OF WP(C) 18852/2022 PETITIONER EXHIBITS
Exhibit P1 TRUE COPY OF THE POSSESSION CERTIFICATE DATED 07.01.2022. Exhibit P2 TRUE COPY OF THE APPLICATION FOR BUILDING PERMIT SUBMITTED BY THE PETITIONER . Exhibit P3 TRUE COPY OF THE NOTICE DATED 16.03.2022 ISSUED BY THE 2ND RESPONDENT MUNICIPALITY. Exhibit P4 TRUE COPY OF THE PERINTHALMANNA ZONAL REGULATIONS. Exhibit P5 TRUE COPY OF THE REPRESENTATION DATED 31.03.2022 SUBMITTED BY THE PETITIONER. Exhibit P6 TRUE COPY OF THE INTIMATION DATED 26.05.2022 RECEIVED FROM THE 2ND 2ND RESPONDENT MUNICIPALITY. Exhibit P7 True copies of the photographs evidencing the nature of Petitioner's properties and neighbouring properties

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