

Rasheed vs the Kerala Coastal Zone Management Authority

Rasheed vs the Kerala Coastal Zone Management Authority

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Court : Kerala

Decided On : Aug-31-2021

Judge : Honourable Mr.Justice N.Nagaresh

Appeal No. : WP(C)/4894/2021

Appellant : Rasheed

Respondent : The Kerala Coastal Zone Management Authority

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE N.NAGARESH
TUESDAY, THE 31ST DAY OF AUGUST 2021 / 9TH BHADRA, 1943
WP(C) NO. 4894 OF 2021 PETITIONER: RASHEED, AGED 55 YEARS,
S/O. HAMSA, AMBALATHU HOUSE, VENKITANGU, ENAMAKKAL P.O,
CHAVAKKAD THRISSUR. BY ADVS. S.SHANAVAS KHAN
SMT.S.INDU RESPONDENTS:

1 THE KERALA COASTAL ZONE MANAGEMENT AUTHORITY
SCIENCE AND TECHNOLOGY DEPARTMENT, SASTRA BHAVAN,
PATTOM, THIRUVANANTHAPURAM - 695004, REPRESENTED BY
ITS CHAIRMAN. 2 THE DISTRICT COLLECTOR(CHAIRPERSON),

KERALA COASTAL ZONE MANAGEMENT AUTHORITY, DISTRICT CLEARANCE COMMITTEE, COLLECTORATE, CIVIL STATION, THRISSUR - 680004. 3 VENKITANGU GRAMA PANCHAYAT, VENKITANGU P.O, THRISSUR - 680510, REPRESENTED BY ITS SECRETARY. 4 THE SECRETARY, VENKITANGU GRAMA PANCHAYATH, VENKITANGU P.O, THRISSUR - 680510. BY ADVS. SRI.M.P.PRAKASH SRI.BRIJESH MOHAN SRI.R.RAJPRADEEP THIS WRIT PETITION (CIVIL) HAVING COME UP FOR

ADMISSION ON 31.08.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: :2 :

JUDGMENT

Dated this the 31st day of August, 2021 Aggrieved by the rejection of the application for Occupancy Certificate submitted by the petitioner, this writ petition has been filed seeking to declare that the petitioner is entitled to get Occupancy Certificate in respect of his building and to direct respondents 3 and 4 to issue the certificate.

2. The petitioner states that he owns 2.92 Ares of land

comprised in Survey No.31/2A, 31/2B of Irimpranelloor Village. The property when purchased by the petitioner on 28.04.2009, had two old residential buildings put up on a single foundation. The petitioner purchased the property to construct a residential building by demolishing the existing buildings. The petitioner submitted Ext.P2 building plan for construction of a new residential building having a plinth area of 180.66 square metres. The combined plinth area of the old

:3 : buildings was 180.66 square metres.

3. The Overseer of the 2nd respondent-Grama Panchayat conducted a site inspection and found that the plan submitted by the petitioner does not violate any of the

provisions of the Kerala Panchayat Building Rules. The property falls within the Coastal Regulation Zone. Since the petitioner is constructing the building by demolishing the old building and since the plinth area is also the same, the 4th respondent-Secretary decided to issue Building Permit to the petitioner. Thus, Ext.P4 Building Permit dated 25.01.2011 was issued to the petitioner.

4. The building permit was extended from time to time and was valid up to 23.01.2020. The petitioner completed the building in 2019 and submitted a completion plan on

30.10.2019, for obtaining Occupancy Certificate. The Panchayat Officials conducted further inspection and found that the building has been constructed in accordance with the KPBR, 2011. The 4th respondent noted three defects in the completion plan. It was noted that the distance from river is :4 : not mentioned in the plan; that the details of neighbouring properties and street are not shown in the site plan and the distance to rain water harvesting tank from the PWD road does not maintain the stipulated 3 metre distance.

5. The petitioner states that he is ready to cure all the

three defects and hence submitted Ext.P7 application under the Coastal Regulation Zone Notification. The 4th respondent forwarded Ext.P7 to the 1st respondent-Kerala Coastal Zone Management Authority. The matter was placed before the 2 nd

respondent-District Collector. The 2nd respondent, as per Ext.P10, rejected the application stating that the proposal is for regularisation of existing building, that the petitioner belongs to traditional/ coastal community, that the distance from HPL to building is less than the width of the river, reconstruction has been made after demolishing existing building constructed in 1980 having 90.66 square metres, that it is included in the list of unauthorised buildings submitted to the Government and that the plinth area of the new building is

more than that of old building. On the basis of the said :5 : Ext.P10 decision, the 4th respondent rejected the application for Occupancy Certificate as per Ext.P11.

The petitioner challenges Exts.P10 and P11.

6. The petitioner would contend that he has only

demolished two existing buildings on the same platform to construct a new one in its place. The combined plinth area of the old buildings was 180.066 square metres. The building permit was also for 180.66 square metres. But, after construction, the plinth area has come down to 178.61 square metres. The petitioner further contended that his land comes under CRZ-III and the construction/alteration of existing buildings are permitted.

7. The petitioner further pointed out that he had constructed the building after obtaining Building Permit. The Overseer has reported that the plan does not violate the

provisions of the Building Rules. The petitioner cannot be found fault with for not having obtained concurrence from CZM Authorities. Therefore, Exts.P10 and P11 are unsustainable. :6 :

8. The 4th respondent filed a counter affidavit. The 4th

respondent stated that the Overseer had reported that the land wherein the building is to be constructed is coming under the CRZ area and it was also reported that the petitioner is constructing a single building after demolishing two existing buildings, without exceeding the total plinth area.

9. The 4th respondent further submitted that the petitioner was required to rectify the defects pointed out in Ext.P6. He was further required to get the Clearance Certificate of the 1st respondent. The Deputy Director of Panchayats informed the 4th respondent that the matter may

be placed before the 1st respondent. Accordingly, the application and connected documents were sent to the 1 st respondent as per Ext.P8. The District Level Committee of KCZMA, Thrissur considered the issue and decided to reject the application, as per Ext.P10.

10. The 1st respondent filed a statement in the writ petition. The 1st respondent stated that the 4th respondent informed that the applicant does not belong to the traditional :7 :

coastal community. However, subsequently, the Ward Member of the 3rd respondent-Panchayat sent a letter dated 16.10.2020 to the 1st respondent stating that the petitioner is a local inhabitant. Thereafter, the 4th respondent reported that the petitioner belongs to traditional fisher folk community.

11. The 1st respondent stated that the building has

been constructed without obtaining prior clearance from KCZMA. The KCZMA considered the review petition filed by the petitioner and decided to direct the 4th respondent- Secretary to furnish explanation for the delay in submitting the application for CRZ clearance after duly vetted by the District Level Committee.

12. Heard the learned counsel for the petitioner, the

learned Standing Counsel for the 1st respondent, the learned Government Pleader for the 2nd respondent and the learned Standing Counsel for respondents 3 and 4.

13. There is no dispute regarding the fact that there were two old buildings existing in the plot of the petitioner. It is also not seriously disputed that the petitioner has :8 :

constructed the new building in the old platform. The total plinth area of the earlier buildings was 180.66 square metres. The petitioner would state that after the construction, the plinth area of the new building is less than 180.66 square metres. In such situation, if the petitioner belongs to traditional coastal community, he would be eligible to construct/reconstruct the building.

14. However, it is seen that a prior application was not

made to the 1st respondent seeking clearance. An application in that regard was made as per Ext.P7, presumably after the construction. Therefore, the 1st respondent cannot be found fault with.

15. While rejecting Ext.P7 application, one reason

advanced by the 1st respondent is that the Secretary had informed that the petitioner does not belong to traditional coastal community. However, it is an admitted position that subsequently the 4th respondent has informed that the petitioner does actually belong to traditional coastal community. In such circumstances, this Court is of the :9 : considered opinion that the 1st respondent should reconsider the application submitted for clearance of the building of the petitioner, treating the petitioner as belonging to traditional coastal community. The writ petition is therefore disposed of directing the 1st respondent to reconsider the application for clearance of the petitioner's building forwarded by the 4th respondent.

The 4th respondent shall forward all necessary application/documents to the 1st respondent within a period of two weeks. The 1st respondent shall consider such application and pass orders thereon within a further period of four weeks. It is made clear that the 1st respondent shall consider the application untrammelled by any observations or findings contained in Ext.P10.

Sd/- N. NAGARESH, JUDGE aks/31.08.2021 : 10 : APPENDIX OF WP(C) 4894/2021 PETITIONER'S EXHIBITS: EXHIBIT P1 TRUE COPY OF THE SALE DEED NO.992/2009 DATED 28.04.2009 OF MULLASSERY SUB REGISTRAR OFFICE. EXHIBIT P2 TRUE COPY OF THE PLAN SUBMITTED BY THE PETITIONER. EXHIBIT P3 TRUE COPY OF THE REPORT OF THE 4TH RESPONDENT. EXHIBIT P4 TRUE COPY OF THE BUILDING PERMIT DATED 25.01.2021. EXHIBIT P5 TRUE COPY OF THE COMPLETION PLAN DATED NIL SUBMITTED BY THE PETITIONER. EXHIBIT P6 TRUE COPY OF THE COMMUNICATION DATED 08.11.2019 OF THE 4TH RESPONDENT. EXHIBIT P7 TRUE COPY OF THE APPLICATION DATED 02.12.2019 SUBMITTED BY THE PETITIONER. EXHIBIT P8 TRUE COPY OF THE COMMUNICATION DATED 02.12.2019 OF THE 4TH RESPONDENT TO THE FIRST RESPONDENT. EXHIBIT P9 TRUE COPY OF THE COMMUNICATION DATED 21.12.2019 OF THE UNDER SECRETARY OF THE 1ST RESPONDENT. EXHIBIT P10 TRUE COPY OF THE MINUTES OF THE MEETING OF THE 4TH

RESPONDENT DATED 27.07.2020 ALONG WITH APPENDIX. EXHIBIT P11 TRUE COPY OF THE LETTER DATED 18.08.2020 OF THE 4TH RESPONDENT. Exhibit P12 TRUE COPY OF THE LETTER DATED TO DISTRICT TOWN PLANNER, THRISSUR. RESPONDENTS' EXHIBITS: Exhibit R4(A) TRUE COPY OF THE LETTER VIDE NO.C3- 4TH RESPONDENT PANCHAYATH TO THE PETITIONER : 11 : Exhibit R4(B) TRUE COPY OF THE LETTER DATED 27.11.2019 ISSUED BY THE PANCHAYATH DEPUTY DIRECTOR TO THE 4TH RESPONDENT Exhibit R4(C) TRUE COPY OF THE LETTER VIDE NO.C3- 4TH RESPONDENT TO THE 1ST RESPONDENT Exhibit R4(D) TRUE COPY OF THE ORDER VIDE NO.2665/A1/2019/KCZMA DATED 18.03.2020 ISSUED BY THE 1ST RESPONDENT SR

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