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

Ratnamma vs State of Kerala

Ratnamma vs State of Kerala

SooperKanoon Citation : sooperkanoon.com/1616913

Court : Kerala

Decided On : Jun-30-2021

Judge : Honourable Mr.Justice N.Nagaresh

Appeal No. : WP(C)/6413/2021

Appellant : Ratnamma

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE N.NAGARESH WEDNESDAY, THE 30TH DAY OF JUNE 2021 / 9TH ASHADHA, 1943 WP(C) NO. 2592 OF 2021 PETITIONER: K.RAJENDRAN PILLAI AGED 55 YEARS S/O. KRISHNA PILLAI, AARAMAM, KARAVALOOR VILLAGE, PUNALOOR TALUK, KOLLAM DISTRICT. BY ADVS. P.HARIDAS SRI.BIJU HARIHARAN SRI.RENJI GEORGE CHERIAN SRI.P.C.SHIJIN SRI.RISHIKESH HARIDAS RESPONDENTS:

1 STATE OF KERALA REPRESENTED BY SECRETARY GOVERNEMNT OF KERALA, DEPARTMENT OF LOCAL SELF GOVERNMENT, THIRUVANANTHAPURAM, PIN-695001. 2 DEPUTY

DIRECTOR OF PANCHAYAT OFFICE OF THE DEPUTY DIRECTOR OF PANCHAYAT, KOLLAM DISTRICT, PIN-691 013. 3 KARAVALOOR GRAMA PANCHAYAT REPRESENTED BY ITS SECRETARY, KARVALOOR GRAMA PANCHAYATH OFFICE, MATHRA-PUNALUR ROAD, MATHRA P.O., PIN-691 333. 4 SECRETARY KARAVALOOR GRAMA PANCHAYAT, KARVALOOR GRAMA PANCHAYATH OFFICE, MATHRA-PUNALUR ROAD, MATHRA P.O., PIN-691 333. 5 ASSISTANT ENGINEER KARAVALOOR GRAMA PANCHAYAT, KARVALOOR GRAMA PANCHAYATH OFFICE, MATHRA-PUNALUR ROAD, MATHRA P.O., PIN-691 333. 6 SHO OF POLICE PUNALUR, POLICE STATION ROAD, NH744, CHEMMANTHOOR, PUNALUR, KERALA-691 305. :2 :

7 RATHNAMMA, RATHNALAYAM, KARAVALOOR P.O., KOLLAM DISTRICT, PIN-691 333. 8 SWAPNA RAJ D/O. RATHNAMMA, RATHNALAYAM, KARAVALOOR P.O., KOLLAM DISTRICT, PIN-691 333. BY ADVS. R1, 2, 6 GOVERNMENT PLEADER SMT.G.RANJITHA R3, 4 SRI.N.UNNIKRISHNAN R7, 8 SRI.K.SHAJ THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30.06.2021, ALONG WITH WP(C).6413/2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: :3 :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE N.NAGARESH WEDNESDAY, THE 30TH DAY OF JUNE 2021 / 9TH ASHADHA, 1943 WP(C) NO. 6413 OF 2021 PETITIONERS: 1 RATNAMMA AGED 76 YEARS W/O.RAJAN, RESIDING AT RATHNALAYAM, KARAVALORR P.O., KOLLAM 691 333 2 SWAPNA RAJ AGED 49 YEARS D/O.RATNAMMA, RESIDING AT RATHNALAYAM, KARAVALORR P.O., KOLLAM 691 333 BY ADVS. SRI.K.SHAJ SRI.RENJIT GEORGE SRI.C.IJLAL SMT.UMMUL FIDA SRI.ARUN CHAND SHRI.BHARAT VIJAY P. SHRI.MAJID MUHAMMED K. SMT.NEERAJA GOWRI A.S SMT.GAYATHRI SATHYAN RESPONDENTS:

1 STATE OF KERALA REP.BY SECRETARY, DEPARTMENT OF LOCAL SELF GOVERNMENT, GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM 695 001. 2 THE DEPUTY DIRECTOR OF PANCHAYAT OFFICE OF THE DEPUTY DIRECTOR OF PANCHAYAT, KOLLAM DISTRICT 691 013 3 KARAVALOOR GRAMA PANCHAYAT REP.BY ITS SECRETARY, KARAVALOOR GRAMA PANCHAYAT OFFICE, MATHRA - PUNALUR ROAD, MATHRA P.O., KOLLAM 691 333 :4 : 4 THE SECRETARY KARAVALOOR GRAMA PANCHAYAT, KARAVALOOR GRAMA PANCHAYAT OFFICE, MATHRA-PUNALUR ROAD, MATHRA P.O., KOLLAM 691 333 5 THE ASSISTANT ENGINEER KARAVALOOR GRAMA PANCHAYAT, KARAVALOOR GRAMA PANCHAYAT OFFICE, MATHRA-PUNALUR ROAD, MATHRA PO, KOLLAM 691 333 6 K.REJENDRAN PILLAI AGED 55 YEARS S/O.KRISHNA PILLAI, AARAMAM, KARAVALOOR VILLAGE, KARAVALOOR P.O., PUNALUR TALUK, KOLLAM 691 333 BY ADVS. R3, 4 SRI.N.UNNIKRISHNAN R6 SRI.P.HARIDAS SRI.BIJU HARIHARAN SRI.P.C.SHIJIN SRI.RISHIKESH HARIDAS R1, 2 GOVT. PLEADER SMT.G.RANJITHA THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30.06.2021, ALONG WITH WP(C).2592/2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: :5 :

JUDGMENT

Dated this the 30th day of June, 2021 [W.P.(C) Nos.2592/2021 & 6413/2021] Both these writ petitions relate to construction of one building and hence are heard together and being disposed of by a common judgment. For convenience, parties and exhibits are indicated in this judgment as they are arrayed/marked in W.P.(C) No.2592/2021.

2. The petitioner in W.P.(C) No.2592/2021 states that

he has a residential property in Karavaloor Village, Kollam District. Respondents 7 and 8 are mother and daughter respectively and they own property on the south side of the petitioner's property. The land of the petitioner and the land of

respondents 7 and 8 are clearly demarcated and is separated by a compound wall. Respondents 7 and 8 started to reconstruct their building by adding an upper floor. The :6 : construction is in violation of the Kerala Panchayat Building Rules, 2019.

3. The petitioner would state that minimum setback

distance is not left by respondents 7 and 8. They have maintained only 30 cm. to 100 cm. from the compound wall. They have also made opening on the north wall of their building on both floors facing the petitioner's residence by fixing windows. That is also in violation of the mandate of the Panchayat Building Rules. The petitioner therefore submitted Ext.P2 complaint to the 4th respondent- Secretary to Panchayat.

4. The 4th respondent, after conducting a site

inspection, issued Ext.P3 notice requiring respondents 7 and 8 to stop the construction. However, respondents 7 and 8 proceeded to construct the sunshade of their building overhanging the property of the petitioner. The petitioner informed this fact to the 4th respondent. Thereupon, the 5th respondent-Assistant Engineer of the Grama Panchayat inspected the property and required respondents 7 and 8 to :7 : stop the illegal construction. However, later, on political pressure, the 5th respondent justified respondents 7 and 8.

5. The petitioner therefore made a complaint before

the 6th respondent-SHO of Police. Ext.P5 complaint was preferred to the 2nd respondent-Deputy Director of Panchayat also. It is the case of the petitioner that respondents 4 to 6 expressed their inability to proceed further because the son of the 7th respondent is PA to a Minister of the State Government. The petitioner has filed this writ petition stating that the construction is in violation of Rule 26 of the Kerala Panchayat Building Rules, 2019. It also violates Rule 26(10) of the Rules, 2019. Respondents 4 and 5 are bound to demolish the illegal construction invoking Rule 90.

6. Respondents 7 and 8 filed a counter affidavit and

contested the writ petition. Respondents 7 and 8 stated that the compound wall between their property and the property of the petitioner, is entirely situated in the property of the petitioner. They are not constructing the building in violation of any rules. The minimum setback prescribed under the :8 : rules, is maintained. The original building is 30 years old. The question of violation of Rule 26 does not arise since the renovation and addition is governed by Rule 72 of the Rules. Only a distance of 60 cm. need be maintained in the open space. In fact, respondents 7 and 8 have maintained 1 m. space. In the front portion of the building, the open space available is 1.25 m. Respondents 7 and 8 stated that they have not exerted any political pressure in the matter.

7. Respondents 7 and 8 in W.P.(C) No.2592/2021,

have filed W.P.(C) No.6413/2021. It is seen that pursuant to the complaints made by the petitioner in W.P.(C) No.2592/2021, the Secretary to Grama Panchayat has issued Exts.P3 and P6 (in W.P.(C) No.6413/2021) requiring respondents 7 and 8 to desist from proceeding with constructions in violation of the Rules. According to respondents 7 and 8, the petitioner in W.P.(C) No.2592/2021 has made unsustainable complaints only to vex and harass respondents 7 and 8. The notices have been issued ignoring Rule 72 of the Kerala Panchayat Building Rules, 2019. The :9 : question of violation of Rule 26 does not arise as the renovation/addition is governed by Rule 72.

8. Respondents 7 and 8 further contended that they

have not violated any Rule under the Kerala Panchayat Building Rules and Exts.P3 and P6 notices and Ext.P5 Report (in W.P.(C) No.6413/2021) filed by the 5th respondent are malafide. The 7th respondents is a senior citizen. The notices have been issued by the Panchayat authorities under ignorance of law and are liable to be set aside.

9. I have heard the learned counsel for the petitioner,

the learned Government Pleader representing respondents 1, 2 and 6, the learned Standing Counsel for respondents 3 to 5 and the learned counsel for respondents

7 and 8, who are the petitioners in W.P.(C) No.6413/2021.

10. It is evident from the counter affidavit filed by

respondents 3 and 4 that the Panchayat authorities have conducted inspection of the site where the disputed construction activity is carried out and it was found that the construction was not in accordance with Rule 26(4) of the : 10 : Kerala Panchayat Building Rules, 2019. The construction was found to be too close to the building of the petitioner and had given opening on the northern side, without leaving requisite setback.

11. It is also evident that on receipt of notice,

respondents 7 and 8 informed the Panchayat authorities that the excessive construction is temporary and the ventilation would be removed. This is evident from Ext.R4(D) reply submitted by the 8th respondent. Respondents 4 and 5 have stated that such illegal construction has not been removed by respondents 7 and 8.

12. Rule 26(3) of the Kerala Panchayat Building Rules

stipulates that required minimum setback shall be provided at the ground level itself for the whole building. No door or window shall be permitted if the open space at that place is less than one metre. The Panchayat authorities found violation of building rules and have issued Exts.P3 and P6 notices marked in W.P.(C) No.6413/2021. As long as the said notices stand, the Panchayat authorities are bound to proceed : 11 : in accordance with the said notices.

13. Respondents 7 and 8 have filed W.P.(C)

No.6413/2021 challenging the notices issued by the Panchayat Authorities. Against Exts.P3 and P6 notices in W.P.(C) No.6413/2021 issued by the Panchayat Authorities, respondents 7 and 8 have an efficacious remedy of filing an appeal before the Tribunal for Local Self Government Institutions. When such a remedy is available to respondents 7 and 8, they have to invoke the said statutory remedy first. Without exhausting the statutory remedy, they cannot invoke the writ

jurisdiction of this Court. In the circumstances, W.P.(C) No.6413/2021 is disposed of permitting the petitioners therein to avail the statutory appellate remedy. If the petitioners in W.P.(C) No.6413/2021 file appeal against Ext.P3 or/and Ext.P6 in W.P.

(C) No.6413/2021 within a period of two weeks, the Tribunal

for Local Self Government Institutions shall consider the appeal on merits, condoning the delay, if any, in filing the appeal. W.P.(C) No.2592/2021 is disposed of directing : 12 : respondents 3 and 4 to take further proceedings in pursuance of Ext.P3 in accordance with law, if the said Ext.P3 is not stayed or reversed by any higher authority/Tribunal/Court within the said period of two weeks. Sd/- N. NAGARESH, JUDGE aks/01.07.2021 : 13 : APPENDIX OF WP(C) 2592/2021 PETITIONER'S EXHIBITS: EXHIBIT P1 TRUE COPY OF THE TAX RECEIPT OF THE PETITIONER DATED 11.5.2020. EXHIBIT P2 TRUE COPY OF THE COMPLAINT SUBMITTED BY PETITIONER BEFORE 4TH RESPONDENT DATED 28.1.2021. EXHIBIT P3 TRUE COPY OF THE NOTICE OF 4TH RESPONDENT ADDRESSED TO RESPONDENTS 7 & 8 DATED 28.1.2021. EXHIBIT P4 TRUE COPY OF THE RECEIPT OF THE COMPLAINT MADE BY PETITIONER BEFORE 6TH RESPONDENT DATED 29.1.2021. EXHIBIT P5 TRUE COPY OF THE COMPLAINT SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 29.1.2021. EXHIBIT P6 TRUE COPY OF THE BUILDING PERMIT NO.A5- BA(14746)/2021 DATED 21/01/2021. EXHIBIT P7 TRUE COPY OF THE UNDERTAKING OF THE 8TH RESPONDENT DATED 30/01/2021. EXHIBIT P8 TRUE COPY OF THE ORDER OF THE SECRETARY, PANCHAYATH DATED 15/02/2021. RESPONDENT'S EXHIBITS: R4(A) TRUE COPY OF BUILDING PERMIT BEARING NO.A5.B.A. (14746)/2021 DT 21.1.2021 R4(B) TRUE COPY OF COMPLAINT DT 28.1.2021 FILED BY THE PETITIONER. R4(C) TRUE COPY OF NOTICE NO.A6.775/2021 DT 28.1.2021 ISSUED TO THE 7TH AND 8TH RESPONDENTS. R4(D) TRUE COPY OF REPLY DT 30.1.2021 SUBMITTED BY THE 8TH RESPONDENT. R4(E) TRUE COPY OF REPORT DT 12.2.2021 OF THE 5TH RESPONDENT. R4(F) TRUE COPY OF LETTER NO.A5.775/2021(1) DT 15.2.2021. R4(G) TRUE COPY OF RULE 26 OF THE KPBR, 2021. R7(A) TRUE COPY OF THE CERTIFICATE NO.A9-1394/2021 DT :

14 : 17.2.2021 ISSUED BY THE 4TH RESPONDENT SECRETARY, KARAVALOOR GRAMA PANCHAYATH.

R7(B) THE PHOTOGRAPHS OF THE EXISTING BUILDING FACING THE PROPERTY OF THE PETITIONER WHERE THE PROPOSED RENOVATION WAS INTENDED. R7(C) TRUE COPY OF PHOTOGRAPH SHOWING THE RENOVATION WORKS. R7(D) THE PHOTOGRAPH OF THE PORTION WHEREFROM THE OPENING IN THE 1ST FLOOR OF THE HOUSE OF THE RESPONDENTS 7 AND 8 IS REMOVED. : 15 : APPENDIX OF WP(C) 6413/2021 PETITIONER'S EXHIBITS: EXHIBIT P1 THE TRUE COPY OF CERTIFICATE NO.A9- 4TH RESPONDENT SECRETARY, KARAVALOOR GRAMA PANCHAYAT EXHIBIT P2 THE TRUE COPY OF SITE APPROVAL AND BUILDING PERMIT NO.A5-BA (14746)/2021 DATED 21/1/2021 ISSUED BY THE FOURTH RESPONDENT TO THE PETITIONERS.

EXHIBIT P3 THE TRUE COPY OF NOTICE NO.A6/775/2021 DATED 28/1/2021 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONERS EXHIBIT P4 THE TRUE COPY OF EXPLANATION DATED PETITIONER TO THE 4TH RESPONDENT. EXHIBIT P5 THE TRUE COPY OF REPORT DATED 12/2/2021 SUBMITTED BY THE 5TH RESPONDENT TO THE 3RD RESPONDENT. EXHIBIT P6 THE TRUE COPY OF NOTICE NO.A5.775/2021(1) DATED 15/2/2021 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONERS. EXHIBIT P7 THE TRUE COPY OF COUNTER AFFIDAVIT

FILED BY THE RESPONDENTS 3 AND 4 IN W.P.(C) NO.2592/2021 BEFORE THIS HON'BLE COURT (WITHOUT EXHIBITS)

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