

Ramla vs the District Geologist

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Court : Kerala

Decided On : Jul-29-2021

Judge : Honourable Mr.Justice N.Nagaresh

Appeal No. : WP(C)/7563/2021

Appellant : RAMLA

Respondent : The District Geologist

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE N.NAGARESH
THURSDAY, THE 29TH DAY OF JULY 2021/7TH SRAVANA, 1943
WP(C) NO. 7563 OF 2021 PETITIONER: RAMLA, W/O.MOHAMMED
ALI, AGED 57 YEARS, RESIDING AT POTTAMMAL VAKAYIL HOUSE,
KAZHUTHALLUR P.O., KUTTIPURAM, MALAPPURAM DISTRICT. BY
ADV P.M.ZIRAJ RESPONDENTS:

1 THE DISTRICT GEOLOGIST, DEPARTMENT OF MINING AND
GEOLOGY, MANJERI, MALAPPURAM DISTRICT,PIN-676 121. 2 THE
DIRECTOR, MINING AND GEOLOGY, OFFICE OF THE MINING AND
GEOLOGY, KESAVADASAPURAM, PATTOM,

THIRUVANANTHAPURAM-695 001. 3 STATE OF KERALA REPRESENTED BY THE SECRETARY TO GOVERNMENT, INDUSTRIES DEPARTMENT, GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001. BY GOVERNMENT PLEADER SRI.MANU RAJ THIS WRIT PETITION (CIVIL) HAVING COME UP FOR

ADMISSION ON 29.07.2021, ALONG WITH WP(C).7588/2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: :2 :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE N.NAGARESH THURSDAY, THE 29TH DAY OF JULY 2021/7TH SRAVANA, 1943 WP(C) NO. 7588 OF 2021 PETITIONER: RUKHIYA,W/O.KUNHIMUHAMMED, AGED 60 YEARS, RESIDING AT POTTAMMAL THEKKEMPALLATH HOUSE, MECHERIPPARAMBU, IRIMBILIYAM P.O., AND VILLAGE, TIRUR TALUK, MALAPPURAM DISTRICT. BY ADV P.M.ZIRAJ RESPONDENTS:

1 THE DISTRICT GEOLOGIST, DEPARTMENT OF MINING AND GEOLOGY, MANJERI, MALAPPURAM DISTRICT. PIN 676 121. 2 THE DIRECTOR, MINING AND GEOLOGY, OFFICE OF THE MINING AND GEOLOGY, KESAVADASAPURAM, PATTAM, THIRUVANANTHAPURAM 695 001. 3 STATE OF KERALA REPRESENTED BY THE SECRETARY TO GOVERNMENT, INDUSTRIES DEPARTMENT, GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM 695 001. BY GOVERNMENT PLEADER SRI. MANU RAJ THIS WRIT PETITION (CIVIL) HAVING COME UP FOR

ADMISSION ON 29.07.2021, ALONG WITH WP(C).7563/2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: :3 : [CR]

JUDGMENT

Dated this the 29th day of July, 2021 [WP(C) No.7563 & 7588 of 2021] Petitioners in both these writ petitions seek identical reliefs in undifferentiated circumstance and hence the writ petitions are heard together and being disposed of by a common judgment.

2. The petitioners desired to construct buildings in the

properties owned by them. They obtained Building Permits and Development Permits from their respective Local Self Government Institutions. Ordinary earth has to be extracted and removed, for laying foundations for the buildings, for which permits were required from the Department of Mining and Geology. Both the petitioners entrusted the work of submission of applications before the Departmental Officers and of supervising extraction of soil from their land, to one :4 : Sri. Noorudheen, S/o. Kunhumammed.

3. The petitioners executed Powers of Attorney in

favour of the said Sri. Noorudheen, by which the said Noorudheen was entrusted with power to extract and remove soil from the land of the petitioners and to approach and do all acts before the Mining and Geology Department, Manjeri. The petitioners submitted separate applications before the District Geologist through the said Power of Attorney, seeking permit to remove ordinary earth. They submitted affidavits also in support of the Power of Attorney.

4. The District Geologist issued a communication to

the Power of Attorney stating that the said Power of Attorney had obtained permit from Geologists office to remove earth earlier also and therefore he cannot be again issued with permits to remove earth. The Geologist further informed that if the real land owners submit applications with supporting documents, steps will be taken in accordance with the rules.

5. It is aggrieved by the said communication issued by the 1st respondent-District Geologist to their Attorney that the :5 :

petitioners are before this Court. The petitioners challenge the said communication on the ground that it is a non-speaking order passed without hearing the petitioners. The petitioners are Pardanasheen ladies and have restrictions to appear in public offices directly as per the custom of their community. Due to medical reasons arising from the Covid-19 pandemic also, the petitioners are handicapped.

6. There is no bar on Power of Attorneys under the

Mines and Minerals (Development and Regulation) of Act and the Kerala Minor Mineral Concession Rules, to submit applications for Mineral Transit Passes. Power is given to the said Noorudheen due to his experience in handling such work, contended the petitioners. The fact that the Power of Attorney holder had earlier also submitted applications for removal of ordinary earth is not a reason enough to reject the application of the petitioner, urged the petitioners.

7. The learned Government Pleader, on the other hand, pointed out that on verification, it was found that the same Power of Attorney holder had submitted applications for :6 : extraction of ordinary earth twice before and obtained mineral transit passes from the office of the District Geologist. The

SHO, Valanchery on 20.11.2020 seized a vehicle TN-24AL-4353 for illegal extraction of ordinary earth from the land in respect of which the same Power of Attorney holder

held the land as Power of Attorney of another person. The

offence was admitted by the owner of the vehicle and was compounded. The Power of Attorney holder also admitted the offence on 29.01.2021 as per a letter.

8. The respondents argued that in view of Rule 14(2)

of the Kerala Minor Mineral Concession Rules, the petitioners themselves have to make applications for Transit Passes. The Power of Attorney is being misused for illegal mining of ordinary earth. Hence, he cannot be issued with permits or passes.

9. Heard the learned counsel for the petitioners and the learned counsel for the respondents.

10. One issue arising for consideration in these writ petitions is whether the petitioners who claim to be :7 :

Pardanasheen ladies can be compelled to personally appear before the authorities under the Kerala Minor Mineral Concession Rules in order to obtain permits issuable under

the Rules. The petitioners contend that they are Pardanasheen ladies and hence cannot be so compelled. Considering the privileges extended to Pardanasheen women in India, Lord Sumner in *Farid-Un-Nisa v. Mukhtar Ahmad* [AIR 1925 PC 204] observed that the Rule of Pardanasheen has only given special development, which Indian social usage make necessary, to the general rules of English Law, which protects persons, whose disabilities make them dependent upon or subject them to the influence of others.

11. In *Smt. Sonia Parshini v. Sheikh Moula Baksha*

[AIR 1955 Calcutta 17], the Honble High Court of Judicature of Calcutta examined the reasons behind the rule protecting transactions in which Pardanasheen women are concerned and held that the inhibitions imposed by social conditions upon women of a certain well-defined class bring in their train disabilities which have compelled reversal of the rule that

:8 :

ordinarily a person is to be held to his contract. These disabilities are due largely to illiteracy and ignorance which super added to restrictions on free movement and contact with the world outside induce a condition of helplessness requiring the utmost vigilance to prevent unfairness in a deal in which she is concerned.

12. In *Sonia Pershini* (supra), it was further held that

such protection cannot plainly be the exclusive privilege of the class commonly known as Pardanasheen. The real reason behind the rule is lack of understanding

and appreciation of what an illiterate woman without independent advice, is about. Where ignorance and illiteracy are proved exposing the woman concerned to the danger and the risk of an unfair deal it would be a perversion of the rule to deny in such case the protection, despite the helplessness of her state.

13. It is quite conceivable that a woman belonging to

the Pardanasheen class may be, in spite of the restraints of the purdah, have sufficient understanding and appreciation of the acts and transactions she is involved in. In such cases, :9 : there can be no question of the protective cloak being thrown around her and she cannot be heard to plead her purdah in avoidance of the transaction. The criterion cannot be the social status implied in the purdah class but the ability to comprehend the transactions in question and the means or opportunities of such comprehension. It has been so held by the Honble Calcutta High Court.

14. The contention of the petitioners is that they are Pardanasheen ladies and hence have limitations and restrictions to appear in public offices directly as per the

custom in their community. In the social milieu of Kerala which is one of the most literate places in the world, where Female Literacy is more than 95 percent and women are literate and educated, enjoying constitutional rights and freedom, the Rule of Pardanasheen cannot be put forth, neither as a right nor as defence. The petitioners have no case that they are illiterates. They have no claim that they are not in a position to comprehend the consequences of their

actions. The argument is that their custom restrains them : 10 : from appearing in public offices. In the facts of this case, the said contention cannot be accepted.

15. However, the petitioners have a further claim that

they have a right to get represented before the authorities through a Power of Attorney duly appointed and the respondents cannot curtail that right by refusing to recognise the Attorney chosen by the petitioners. The law relating to power of attorney is governed by the provisions of the Power of Attorney Act, 1882. Section

2 of the Power of Attorney Act, 1882 reads as follows:

2. Execution under power-of-attorney - The donee of a power-of-attorney may, if he thinks fit, execute or do any instrument or thing in and with his own name and signature, and his own seal, where sealing is required, by the authority of the donor of the power; and every instrument and thing so executed and done, shall be as effectual in law as if it had been executed or done by the donee of the power in the name, and with the signature and seal, of the donor thereof. This section applies to powers-of-attorney created by instruments executed either before or after this Act comes into force.

Execution of Power of Attorney thus has statutory recognition in India. : 11 :

16. It is well settled that an agent acting under a Power

of Attorney always acts, as a general rule, in the name of his principal. Any document executed or thing done by an agent on the strength of power of attorney is as effective as if executed or done in the name of principal, i.e., by the principal himself. An agent, therefore, always acts on behalf of the principal and exercises only those powers, which are given to him in the Power of Attorney by the principal.

17. Any act or thing done by the agent on the strength

of Power of Attorney is, therefore, never construed or/and treated to have been done by the agent in his personal capacity so as to create any right in his favour but is always construed as having done by the principal himself. An agent, therefore, never gets any personal benefit of any nature.

18. Applying the aforesaid principle, the Honble Apex Court in Suraj Lamp and Industries Private Limited v. State of Haryana and another [(2012) 1 SCC 656] held as under:

20. A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation : 12 :

of an agency whereby the grantor authorises the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see Section 1-A and Section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee.

In *State of Rajasthan v. Basant Nahata* [(2005) 12 SCC 77], this Court held:

13. A grant of power of attorney is essentially governed by Chapter X of the Contract Act. By reason of a deed of power of attorney, an agent is formally appointed to act for the principal in one transaction or a series of transactions or to manage the affairs of the principal generally conferring necessary authority upon another person. A deed of power of attorney is executed by the principal in favour of the agent. The agent derives a right to use his name and all acts, deeds and things done by him and subject to the limitations contained in the said deed, the same shall be read as if done by the donor. A power of attorney is, as is well known, a document of convenience.

19. Execution of a Power of Attorney in terms of the

provisions of the Contract Act as also the Power of Attorney Act, is valid. A Power of Attorney is executed by the donor so as to enable the donee to act on his behalf. The donee in exercise of his power under such Power of Attorney only acts in place of the donor subject of course to the powers granted : 13 : to him by reason thereof.

20. When the petitioners have executed Powers of Attorney in favour of a person in exercise of their statutory rights, the respondents can not decline to recognise the Attorney without valid reasons. The KMMC Rules do not

specifically prohibit submission of applications for permits/Transit Passes through Power of Attorney, expressly or by implication. Yet the respondents have refused to deliver Transit Passes to the Power of Attorney as per Ext.P16 for the reason that the said Attorney had earlier also applied for Transit Passes. The said reason is not sufficient to refuse issuance of Transit Passes to the Attorney.

21. The learned Government Pleader submitted that

the Power of Attorney appointed by the petitioners, on 29.01.2020, has admitted to have committed an offence of illegal extraction of ordinary earth and the said person being an offender under the provisions of KMMC Rules, the 1st respondent can exercise discretion and refuse to issue Transit Passes to him. The counsel for the petitioners denied the said

: 14 :

allegation against the Power of Attorney holder. There is no document available on record to show that the said Power of Attorney Holder has admitted to have committed any offence. Therefore, the said defence by the respondents cannot be sustained. The offence, if any, committed by the Power of Attorney holder will have to be dealt with under the general law of the land.

22. For the afore reason, the petitioners are entitled to succeed in these writ petitions. Ext.P16 communication in

WP(C) No.7563/2021 is set aside. The 1st respondent is directed to consider and dispose of the applications submitted by the petitioners for Mineral Transit Passes through their Power of Attorney holders within one month.

The writ petitions are disposed of as above. Sd/- N. NAGARESH, JUDGE
aks/24.08.2021 : 15 : APPENDIX OF WP(C) 7563/2021 PETITIONER'S EXHIBITS
EXHIBIT P1 TRUE COPY OF THE POSSESSION CERTIFICATE IN
CONNECTION WITH THE PROPERTY OF PETITIONER DATED 30.9.2020
EXHIBIT P2 TRUE COPY OF THE SITE APPROVAL AND BUILDING PERMIT
DATED 11.11.2020 ISSUED BY THE SECRETARY,EDAYUR GRAMA
PANCHAYATH EXHIBIT P3 TRUE COPY OF THE DEVELOPMENT PERMIT

DATED

4.12.2020 IN CONNECTION WITH CONSTRUCTION OF SECOND HOUSE OF PETITIONER ISSUED BY THE SECRETARY, EDAYUR GRAMA PANCHAYATH EXHIBIT P4 TRUE COPY OF THE SITE APPROVAL AND BUILDING PERMIT DATED 4.12.2020 ISSUED BY THE SECRETARY,EDAYUR GRAMA PANCHAYATH EXHIBIT P5 TRUE COPY OF THE DEVELOPMENT PERMIT DATED 4.12.2020 IN CONNECTION WITH CONSTRUCTION OF SECOND HOUSE OF PETITIONER ISSUED BY THE SECRETARY,EDAYUR GRAMA PANCHAYATH

EXHIBIT P6 TRUE COPY OF THE CERTIFICATE DATED 4.12.2020 ISSUED BY THE SECRETARY,EDAYUR GRAMA PANCHAYATH EXHIBIT P7 TRUE COPY OF THE POWER OF ATTORNEY DATED 19.11.2020 EXECUTED BY THE PETITIONER EXHIBIT P8 TRUE COPY OF THE DISABILITY CERTIFICATE DATED 22.8.2001 ISSUED BY THE BOARD OF MEMBERS OF HEALTH SERVICE OF GOVERNMENT OF KERALA : 16 : EXHIBIT P9 TRUE COPY OF THE APPLICATION DATED 2.12.2020

ISSUED BY THE PETITIONER REGARDING EXHIBIT P1 BUILDING PERMIT BEFORE THE FIRST RESPONDENT THROUGH HER POWER OF ATTORNEY HOLDER EXHIBIT P10 TRUE COPY OF THE COUNTERFOIL OF CHELAN DATED 18.12.2020 REGARDING THE APPLICATION FEE IN CONNECTION EXHIBIT P9 APPLICATION EXHIBIT P11 TRUE COPY OF THE AFFIDAVIT DATED 20.11.2020 SUBMITTED BY THE PETITIONER IN CONNECTION WITH EXHIBIT P9 APPLICATION EXHIBIT P12 TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER DATED 28.12.2020 BEFORE THE FIRST RESPONDENT THROUGH HER POWER OF ATTORNEY HOLDER REGARDING EXHIBIT P4 BUILDING PERMIT

EXHIBIT P13 TRUE COPY OF THE COUNTERFOIL OF CHELAN DATED 4.1.2021 REGARDING APPLICATION FEE IN CONNECTION WITH EXHIBIT P12 APPLICATION EXHIBIT P14 TRUE COPY OF THE AFFIDAVIT DATED 21.12.2020 SUBMITTED BY THE PETITIONER IN CONNECTION WITH EXHIBIT P12 APPLICATION EXHIBIT P15 TRUE COPY OF THE APPLICATION DATED

29.1.2021 SUBMITTED BY THE POWER OF ATTORNEY HOLDER OF PETITIONER BEFORE THE FIRST RESPONDENT EXHIBIT P16 TRUE COPY OF THE COMMUNICATION DATED 29.1.2021 ISSUED BY THE FIRST RESPONDENT TO THE POWER OF ATTORNEY HOLDER OF PETITIONER. : 17 : APPENDIX OF WP(C) 7588/2021 PETITIONER'S EXHIBITS EXHIBIT P1 TRUE COPY OF THE GENERAL BUILDING PERMIT DATED 26.6.2018 ISSUED BY THE SECRETARY, IRIMBILIYAM GRAMA PANCHAYATH. EXHIBIT P2 TRUE COPY OF THE DEVELOPMENT PERMIT DATED 27.2.2020 ISSUED BY THE SECRETARY, IRIMBILIYAM GRAMA PANCHAYATH. EXHIBIT P3 TRUE COPY OF THE CERTIFICATE DATED 27.2.2020 ISSUED BY THE SECRETARY, IRIMBILIYAM GRAMA PANCHAYATH. EXHIBIT P4 TRUE COPY OF THE POWER OF ATTORNEY DATED

29.2.2020 EXECUTED BY THE PETITIONER AND HER DAUGHTERS SAJITHA, SAHIRA, SAMEERA T.P., SHAHIDA AND HER SON MUHAMMED SHAFI AUTHORIZING MR. NOORUDHEEN TO DO ACTIVITIES ON BEHALF OF THEM. EXHIBIT P5 TRUE COPY OF THE POWER OF ATTORNEY DATED 17.3.2020 EXECUTED BY THE SON OF PETITIONER MR. IBRAHIM AUTHORIZING MR. NOORUDHEEN TO DO ACTIVITIES ON BEHALF OF HIM. EXHIBIT P6 TRUE COPY OF THE DISABILITY CERTIFICATE DATED 22.8.2001 ISSUED BY THE BOARD OF MEMBERS OF HEALTH SERVICE OF GOVERNMENT OF KERALA. EXHIBIT P7 TRUE COPY OF THE ORDER DATED 13.11.2020 ISSUED TO THE POWER OF ATTORNEY HOLDER OF PETITIONER BY THE FIRST RESPONDENT TO TRANSPORT ORDINARY EARTH. EXHIBIT P8 TRUE COPY OF THE ORDER DATED 20.11.2020 ISSUED BY THE FIRST RESPONDENT. EXHIBIT P9 TRUE COPY OF THE SEIZURE MAHASAR DATED 23.11.2020 PREPARED BY THE STATION HOUSE OFFICER, VALANCHERY POLICE STATION. EXHIBIT P10 TRUE COPY OF THE APPLICATION DATED 23.11.2020 SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPONDENT THROUGH HER POWER OF ATTORNEY HOLDER. EXHIBIT P11 TRUE COPY OF THE COUNTERFOIL OF CHELAN DATED 19.11.2020 REGARDING THE APPLICATION FEE. ncd