

N.Sasi and Another Vs. Assistant Executive Engineer and Another

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Court : Kerala

Decided On : May-20-2015

Judge : Honourable Mr. Justice Anil K.Narendran

Appellant : N.Sasi and Another

Respondent : Assistant Executive Engineer and Another

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937 WP(C).No. 33006 of 2010 (A)

----- PETITIONER(S): ----- 1. N.SASI, MANCHAKUNNU PUTHEN VEEDU, PALKULANGARA, ANAVOOR PO.

2. REENA, MANCHAKUNNU PUTHEN VEEDU, PALKULANGARA, ANAVOOR PO. BY ADV. SRI.R.GOPAN RESPONDENT(S): ----- 1. ASSISTANT EXECUTIVE ENGINEER, K.S.E.B, ELECTRICAL SUB DIVISION, NEYYATTINKARA - 695 018.

2. THE ADDITIONAL DISTRICT MAGISTRATE, COLLECTORATE, KUDAPPANAKUNNU, THIRUVANANTHAPURAM - 695 001.

3. N.SHIBIN, KUZHIYODOMVILA PUTHEN VEEDU, PALKULANGARA, ALATHOOR, ANAVOOR PO - 695 022.

4. NELSON, KUZHIYODOMVILA PUTHEN VEEDU, PALKULANGARA, ALATHOOR ANAVOOR PO - 695 022. R1 BY ADV. SRI.SAJEEVKUMAR K.GOPAL,SC,KSEB R2 BY GOVERNMENT PLEADER SRI. P.V. ELIAS R3,R4 BY ADV. SRI.V.SUNIL KUMAR (PANACHAMOODU) THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 2005-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: www WP(C).No. 33006 of 2010 (A)

----- APPENDIX PETITIONER(S)' EXHIBITS -----
EXT. P-1: PHOTOCOPY OF THE COMPLAINT FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 21.11.2009. EXT. P-2: PHOTOCOPY OF THE TAX RECEIPT DATED 11.03.2009 ISSUED BY THE PERUMKADAVILA VILLAGE OFFICE. EXT. P-3: PHOTOCOPY OF THE PETITION FILED BY THE 1ST RESPONDENT BEFORE THE 2ND RESPONDENT DATED 10.02.2010. EXT. P-4: PHOTOCOPY OF NOTICE DATED 27.07.2010 ISSUED BY THE 2ND RESPONDENT TO THE 1ST PETITIONER. EXT. P-5: PHOTOCOPY OF THE OBJECTION FILED BY THE 1ST PETITIONER DATED 06.08.2010 BEFORE THE 2ND RESPONDENT. EXT. P-6: PHOTOCOPY OF THE REPORT OF THE VILLAGE OFFICER, PERUMKADAVILA DATED 30.08.2010. EXT. P-7: PHOTOCOPY OF THE

ORDER

NO. D.DIS.15519/10/ST DATED 25.09.2010 ISSUED BY THE 2ND RESPONDENT. EXT. P-8: PHOTOCOPY OF THE PLAINT IN O.S.NO. 880/2010 OF THE MUNSIF COURT, NEYYATTINKARA DATED 31.08.2010. EXT. P-9: PHOTOCOPY OF THE I.A. NO. 6544/2010 IN O.S.NO. 880/2010 OF THE MUNSIF COURT, NEYYATTINKARA DATED 31.08.2010. EXT. P-10: PHOTOCOPY OF THE WRITTEN STATEMENT IN O.S. NO. 880/2010 FILED BY THE 1ST RESPONDENT DATED 30.09.2010. EXT. P-11: PHOTOCOPY OF THE I.A. NO. 6545/2010 IN O.S. NO. 880/2010 FILED BY THE 1ST PETITIONER DATED 31.08.2010. EXT. P-12: PHOTOCOPY OF THE COMMISSION REPORT AND SKETCH IN O.S.NO. 880/2010 FILED BY THE COMMISSIONER DATED 08.09.2010. EXT. P-13: PHOTOCOPY OF THE SITE SKETCH PREPARED BY THE PETITIONER. RESPONDENT(S)' EXHIBITS -----
EXT. R-4 (a): A TRUE COPY OF THE IDENTITY CARD FOR PERSONS WITH DISABILITY DATED 10.10.2003 ISSUED TO THE 3RD

RESPONDENT. ww ...2 WP(C).No. 33006 of 2010 (A)
----- EXT. R-4 (b): A TRUE COPY OF THE PLAN
SUBMITTED BY THE ADVOCATE COMMISSIONER IN O.S.880/2010 SHOWING
THE EXISTING PATHWAY ON THE WESTERN SIDE OF THE PROPERTY OF
THE PETITIONERS AND THE EXISTING POSTS AND PROPOSED ROUTE.
EXT. R-4 (c): A TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE4H
RESPONDENT IN O.S.880/2010. ww ANIL K. NARENDRAN, J.

----- W.P.(C) No.33006 of 2010
----- Dated this the 20th day of May, 2015

JUDGMENT

The petitioners have filed this writ petition seeking a writ of certiorari to quash Ext.P7 order dated 25.09.2010 of the Additional District Magistrate, Thiruvananthapuram, the 2nd respondent herein, by which permission has been granted under Section 16(1) of the Indian Telegraph Act, 1885 to draw electric line to the residential house of respondents 3 and 4 through the route proposed by the Assistant Executive Engineer, Electrical Sub-Division, Neyyattinkara, the 1st respondent herein.

2. Ext.P7 order passed by the 2nd respondent in exercise of his powers under Section 16(1) of the Act read thus: "Parties were present. After perusing the report and records, and also considering the submission made by the parties, permission is granted to the Petitioner to draw the line as proposed by him. The case is disposed of accordingly." 3. In Valsamma Thomas v. Additional District Magistrate [1997 (2) KLT979, a Division Bench of this Court W.P.(C) No.33006/2010 2 has categorically held that while exercising the jurisdiction under Section 16(1) of the Act, the District Magistrate has to exercise his discretion judicially and that the order should be a speaking order and it should reflect the objections raised by the parties and the reasons given by the District Magistrate for accepting or rejecting the same and that the order should also reflect the materials relied on by the District Magistrate for arriving at such the conclusion. Paragraphs 11 and 12 of the judgment reads thus:

"1. It is also clear from the authorities and judicial decisions that judicial review is directed not against the decision, but is confined to the examination of the decision making process. The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches, on a matter which it is authorised by law to decide for itself, a conclusion which is correct in the eyes of the court. Judicial review is not an appeal from a decision, but a review of the manner in which the decision was made.

12. Thus, on a review of the authorities of this question, we come to the following conclusions: (1) The District Magistrate has to exercise his discretion judicially. (2) He has to pass the order under S.16(1) of the W.P.(C) No.33006/2010 3 Telegraph Act, after hearing the parties and after taking such evidence as is required with regard to the objections raised. (3) The order passed by the Court should be a speaking order. (4) The order should reflect the objections raised by the parties and reasons given by the Magistrate for accepting or rejecting the same. (5) The order should also reflect the materials relied on by the District Magistrate for arriving at the conclusion. If the discretion is exercised by the District Magistrate as above, then unless it is shown that the findings are perverse or that the proceedings are vitiated by malafides this Court will not be justified in interfering with such orders. This Court will not be justified in substituting its own opinion. It is also worth bearing in mind that this Court has not got technical expertise and will be slow to interfere with such matters." 4. In the case on hand, Ext.P7 order passed by the 2nd respondent in exercise of his powers under Section 16(1) of the Act is not a speaking order and it does not reflect the objections raised by the parties and the reasons given by the District Magistrate for accepting or rejecting the same.

5. In such circumstances, without expressing anything on the merit of the rival contentions raised on both sides, I set aside W.P.(C) No.33006/2010 4 Ext.P7 order passed by the 2nd respondent and direct the 2nd respondent to consider the matter afresh and pass reasoned order, as expeditiously as possible, at any rate, within a period of one month from the date of receipt of a copy of this judgment. Needless to say, the 2nd respondent shall take such a decision with notice to the

petitioners and also to respondents 3 and 4 and after conducting a local inspection with notice to the parties. The parties shall appear before the 2nd respondent on 29.05.2015 at 11.00 am., on which date the 2nd respondent shall fix a convenient date for hearing/local inspection. The writ petition is disposed of as above. sd/-
ANIL K. NARENDRAN, JV JUDGE

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