

P.Aboobacker Vs. The State of Kerala

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Court : Kerala

Decided On : Jul-22-2015

Judge : Honourable Mr. Justice a.V.Ramakrishna Pillai

Appellant : P.Aboobacker

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI WEDNESDAY, THE 22D DAY OF JULY 2015 31ST ASHADHA, 1937 WP(C).No. 31928 of 2014 (M) ----- PETITIONER : ----- P.ABOOBACKER S/O. MUHAMMED, PALAKKAL HOUSE, KURUPATHU KONDOTTY, MALAPPURAM DISTRICT. BY ADVS.SRI.BABU S. NAIR SMT.SMITHA BABU RESPONDENT(S) : ----- 1. THE STATE OF KERALA REPRESENTED BY THE SECRETARY TO THE GOVERNMENT DEPARTMENT OF LOCAL SELF GOVERNMENT GOVERNMENT SECRETARIAT, TRIVANDRUM.

2. THE NEDIYIRIPPU GRAMA PANCHAYATH REPRESENTED BY THE SECRETARY, KURUPATHU, KONDOTTY P.O. MALAPPURAM DISTRICT, PIN-673 638.

3. THE SECRETARY NEDIYIRIPPU GRAMA PANCHAYATH, KURUPATHU, KONDOTTY P.O. MALAPPURAM DISTRICT, PIN-673 638. R1 BY

GOVT.PLEADER SMT. ANITHA RAVINDRAN R2 & R3 BY ADV. SRI.K.DILIP
THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON0807-2015,
THE COURT ON2207-2015 DELIVERED THE FOLLOWING: Mn ...2/- WP(C).No.
31928 of 2014 (M) ----- APPENDIX PETITIONERS'
EXHIBITS : ----- EXT. P1 : COPY OF THE BUILDING
PERMIT ISSUED BY THE3D RESPONDENT TO THE PETITIONER DTD.
7.10.2003. EXT. P2 : COPY OF THE APPLICATION SUBMITTED BY THE
PETITIONER BEFORE THE3D RESPONDENT DTD.13.12.2004. EXT. P3 :
COPY OF THE COMMUNICATION ISSUED TO THE PETITIONER BY THE3D
RESPONDENT DTD.26.9.2013. EXT. P4 : COPY OF THE CONSENT GIVEN BY
ALAVI HAJI, S/O. MUHAMMED HAJI, DTD.15.11.2013. EXT. P5 : COPY OF THE
REPLY GIVEN BY THE PETITIONER TO THE3D RESPONDENT
DTD.19.11.2013. EXT. P6 : COPY OF THE REPRESENTATION SUBMITTED BY
THE PETITIONER BEFORE THE MINISTER FOR LOCAL SELF GOVERNMENT
INSTITUTIONS DTD.28.6.2014. EXT. P7 : COPY OF THE

ORDER

ISSUED BY THE FIRST RESPONDENT DTD. 31.10.2014 AS
NO.48984/RB3/14/LSGD. RESPONDENT(S)' EXHIBITS :
----- EXT. R3(A) COPY OF THE REPLY OF THE3D
RESPONDENT SENT TO THE LOCAL SELF GOVERNMENT (R.B.)
DEPARTMENT, TRIVANDRUM DATED258-2014. EXT. R3(B) COPY OF THE
COMMUNICATION OF THE DEPARTMENT OF LOCAL SELF GOVERNMENT
(R.B.),TRIVANDRUM TO THIS RESPONDENT DATED3110-2014. EXT. R3(C)
COPY OF THE COMMUNICATION SENT TO THE PETITIONER BY THE3D
RESPONDENT DATED1911-2014. //TRUE COPY// P.S. TO JUDGE Mn
A.V.RAMAKRISHNA PILLAI, J ----- WPC No.31928
of 2014 ----- Dated this the 22nd day of July, 2015

JUDGMENT

Aggrieved by the non-numbering of the petitioner's building which was constructed
as per Ext.P1 permit as early as in the year 2014, the petitioner has come up
before this Court.

2. The petitioner was issued with Ext.P1 building permit for the construction of a two storeyed commercial building on 7.10.2003 in 7.15 cents of properties, by the third respondent. The petitioner had completed the construction of both the floors of the building in the year 2004 itself and he applied for getting building numbers to the building. Along with Ext.P2 application, the petitioner also had submitted the completion plan of the building. No decision was taken on the application for numbering the building and ultimately, on 27.4.2006, numbers were given only to the ground floor of the building.

3. At the time of completion of the building, there WPC No.31928/2014 2 was slight variation from the approved plan in the construction of the first floor of the building. Instead of shop rooms, in the completion plan, two living apartments were provided in the first floor. Therefore, the petitioner had submitted a revised plan at the time of completion. Even after the submission of the revised plan, the numbers were not given. Ultimately on 26.9.2013, the petitioner was informed that he has to construct a rainwater harvesting unit and also to get consent from the owner of the property on the western side of the building. The petitioner alleges that rainwater harvesting unit cannot be insisted upon as the same was not a condition at the time of issue of building permit way back in 2003. Moreover, the land available with the petitioner is only 7.15 cents, and at this point of time, it is practically impossible for the construction of a rainwater harvesting unit. Ultimately, after finding that the request for numbering the building was falling in deaf ears, the petitioner had submitted Ext.P6 representation before the Minister of Local Self Government. Ext.P6 representation WPC No.31928/2014 3 was forwarded to the first respondent and the first respondent had passed Ext.P7 order pointing out the insufficiency of the width of the staircase and the absence of rainwater harvesting unit as envisaged by the Building Rules and the application for regularisation should be submitted before the Panchayat. The petitioner alleges that none of the conditions other than the conditions imposed in the building permit issued to the petitioner can be insisted upon either by the Panchayat or the first respondent for numbering the building, as the building was constructed as per the approved plan as early as in the year 2003. The petitioner points out that it is the Panchayat which delayed the numbering of the building for 10 years and it is not possible for the petitioner to provide for anything in addition to what was insisted by the rules

as stood in 2003. It is with this background, the petitioner has come up before this Court.

4. In the counter affidavit filed by the third respondent, it is contended as follows: Initially, the application was submitted by the WPC No.31928/2014 4 petitioner for constructing a commercial building with two floors in the year 2003-2004. It is submitted that when the construction of the ground floor of the building was over, the petitioner made an application with completion plan and completion certificate for getting the building numbered and the same was considered by the 2nd respondent Panchayat and has numbered the rooms as 10/58 A, B, C, D and E respectively, as only the ground floor was ready by that time. Later in the year 2010 the petitioner approached the 2nd respondent seeking permission for constructing the first floor. As the application was in order, permission was granted by the Panchayat. While the petitioner applied for permit for the construction of the first floor, the rain water harvesting plant was mandated as per Section 102 of the Kerala Panchayat Raj Act. Therefore, written and oral communications were given to the petitioner regarding the same by the second and third respondents at the time of giving permission for construction of first floor. It is contended that the petitioner constructed the WPC No.31928/2014 5 first floor in contradiction with the plan which was initially approved by the Panchayat. Out of the said shop rooms which were shown in the plan, two rooms were constructed as living rooms and the 2nd respondent has directed the petitioner to submit revised plan along with the permission of the owner of the building on the western side of the petitioner's property in order to conduct inspection. The petitioner submitted revised plan as per the said direction and an inspection was carried out. During the said inspection, it was found that there were some irregularities and illegalities in the construction. The measurements allowed for the construction of stairs were not correct and was in violation of the rules. Moreover, there were more violations in many parts of the building and also the rain water harvesting plant was not constructed. The same was communicated to the petitioner. However, the petitioner was not ready to comply with the directions; either to remove the violations pointed out or to construct the rain water harvesting plant. WPC No.31928/2014 6 It is contended that while the application for regularisation of the construction was pending before the 2nd respondent Panchayat for consideration,

the petitioner started sending queries under the Right to Information Act one after another. Then the third respondent on behalf of the 2nd respondent Panchayat informed the petitioner that there are some irregularities in the construction already effected and also pointing out the necessity of constructing the rain water harvesting plant. The 2nd respondent informed the petitioner that if he makes such changes, the rooms can be numbered. The petitioner without understanding the limitations of the 2nd respondent Panchayat under the relevant provisions of the Kerala Panchayat Raj Act in numbering the same without clearing the irregularities and illegalities, submitted a complaint to the Minister for Local Self Government. The complaint of the petitioner was processed by the Minister's office and referred the same to the Local Self Government(R.B.)Department, Trivandrum which was forwarded to the District Town WPC No.31928/2014 7 Planner, Malappuram District, Panchayat Deputy Director and also to respondents 2 and 3. The Town Planner, Malappuram District and the Panchayat Deputy Director, Malappuram also called for a report regarding the same from the respondents 2 and 3. Respondents 2 and 3 sent a detailed reply to the Local Self Government (R.B.) Department, Trivandrum stating the above said facts. A copy of the same was sent to the Panchayat Deputy Director, Malappuram and the Town Planner, Malappuram District. A true copy of the reply of the third respondent sent to the Local Self Government (R.B.) Department, Trivandrum dated 25.8.2014 is produced and marked as Ext.R3(a). The Department of Local Self Government (R.B.), Trivandrum then made a communication to the petitioner as well as respondents 2 and 3 stating that if the petitioner removes the illegalities of the construction which is already effected and construct the rain water harvesting Plant as per Section 102 of the Kerala Panchayat Raj Act which is mandatory and submits an WPC No.31928/2014 8 application for regularisation before the 2nd respondent Panchayat on or before 31.10.2014, the same shall be regularised. Moreover, there was a specific direction to respondents 2 and 3 that if the petitioner has not done the same in accordance with law, legal measures should have to be initiated against the petitioner. A true copy of the communication of the Department of Local Self Government (R.B.), Trivandrum to respondents 2 and 3 dated 31.10.2014 is produced and marked as Ext.R3(B). Respondents 2 and 3 then communicated the same to the petitioner. A true copy of the communication

sent to the petitioner by the third respondent dated 19.11.2014 is produced and marked as Ext.R3(c).

5. Arguments have been heard.

6. The permit was granted to the petitioner to construct the building in the year 2003. The land available with the petitioner is only 7.15 cents. According to the learned counsel for the petitioner, the petitioner need to abide by the conditions contained in Ext.P1 building permit at the time of construction of the building. WPC No.31928/2014 9 The only change that has been brought after the issue of building permit and before the completion of the building is the alteration of the shop rooms in two apartments without deviating from the approved plan and structural plan. On the basis of the permit issued in the year 2003, the petitioner had constructed the building in the year 2004.

7. It is crucial to note that though the building permit was issued to the petitioner in the year 2003, there was no condition that there should be a provision for rain water harvesting. On the basis of the permit so issued, he has completed the construction and at present, it may not be possible for the petitioner to provide rain water harvesting facility as major portion of the property is occupied by the construction. The respondent has no case that the petitioner has deviated from the plan or that the measurement shown by the petitioner is not as that of the construction effected by him.

8. As the reasons stated by the respondent Panchayat in not numbering the building are WPC No.31928/2014 10 unsustainable, this Court is of the view that the petitioner is entitled to get the relief as prayed for. In the result, this writ petition is allowed. Ext.P7 is quashed. Respondents 2 and 3 are directed to number the first floor of the building without insisting for facility for rain water harvesting. This shall be done within a period of two weeks from the date of receipt of a copy of this judgment. sd/- A.V.RAMAKRISHNA PILLAI JUDGE css/ true copy P.S.TO JUDGE