
(2015) 01 KL CK 0147
In the High Court Of Kerala
Case No : Writ Petition(C) No. 19635 of 2013

Antony Jayan

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 15-01-2015

Acts Referred:

Citation : (2015) 1 ILR Ker 899 : (2015) 4 KLT 370

Hon'ble Judges : P.B. Suresh Kumar, J.;T.B. Radhakrishnan, J.

Bench : Division Bench

Advocate : Joby Jacob Pullickekudy, Anil George and K.S. Sumeesh, for the Appellant; K.A. Jaleel, Additional Advocate General, Advocates for the Respondent

Final Decision : Dismissed

Judgement

P.B. Suresh Kumar, J.—The petitioner seeks in this writ petition a declaration in public interest that the hospital and allied structures constructed by respondents 10 to 12 pursuant to Ext. R-2 (a) lay out approval granted by the Chief Town Planner are liable to be demolished.

2. Shorn of details, the facts relevant for the decision of the writ petition are the following: The sanctioned Town Planning Scheme of Kochi City authorises the Chief Town Planner to permit land use, notwithstanding the land use permitted as per the zoning regulations, for large scale development proposals involving an investment in excess of 50 Crores and providing employment to more than 500 employees, subject to the recommendation of the committee constituted by the Government for that purpose. A proposal was made by the tenth respondent before the committee constituted by the Government for the said purpose for the construction of a hospital and allied structures in an area of 36.96 acres in Cheranelloor Village with an estimated investment of 1350 crores. Going by the proposal, the project on its completion would generate employment opportunities for about 4500 persons. On 23-11-2010, on an evaluation of the project proposals and other details, the committee decided to recommend the proposal subject to certain conditions. Ext. P-1 is the recommendation of the committee.

Ext. P-1 indicates that the land proposed to be developed is a paddy field as per the revenue records and the tenth respondent represented before the committee that the same was a land used by the Cochin Corporation for dumping solid waste and thus, the land is full of waste materials mixed with sand and gravel, causing considerable pollution and environmental degradation in the area. Ext. P-1 also indicates that in the matter of accepting the proposals, the committee directed the seventh respondent Grama Panchayat to satisfy as to the correctness of the aforesaid representation made by the tenth respondent. Later, on 11-3-2011, based on Ext. P-1 recommendation, the second respondent, the Chief Town Planner granted the permission sought for by the tenth respondent and approved the lay out plan of the project. Ext. R-2 (a) is the proceedings issued by the second respondent in that connection. In the meanwhile, on 9-12-2010, in the light of Ext. P-1 recommendation, the seventh respondent Grama Panchayat appointed a subcommittee to submit their recommendations as to the project, after conducting a local inspection of the property and pursuant to the said decision, the subcommittee appointed by the Panchayat inspected the site of the project on 14-12-2010 and submitted a detailed report, recommending the Panchayat to extend all necessary help for the implementation of the project. The recommendations made by the subcommittee were examined and accepted by the seventh respondent Panchayat on 17-12-2010. Ext. R-10(i) (produced in I.A. No. 11874 of 2014) is the decision of the seventh respondent Panchayat on 17-12-2010. Ext. R-10(i) indicates that the subcommittee reported to the Panchayat that the land proposed to be developed is a land where the Corporation was dumping solid waste about 11 years back and that there was no agricultural activity on the said land thereafter. It seems that based on the recommendations of the subcommittee, the Panchayat issued Ext. P-4 development permit and Ext. P-5 building permit to respondents 10 to 12 for constructing a hospital building and allied structures, having a plinth area of 87627.27 square meters. It is seen that later on 9-3-2012, the Kerala Coastal Zone Management Authority has also informed the seventh respondent Panchayat that the proposed constructions of respondents 10 to 12 are outside the Coastal Regulation Zone and therefore, there is no impediment in constructing the proposed structures.

3. The writ petition is seen filed about two and half years after the Chief Town Planner accorded approval for the lay out plan of the project. By the time, the construction of the buildings was almost complete. The petitioner challenged in the writ petition, Ext. P-1 recommendation made by the committee constituted by the Government and Exts. P-4 and P-5 permits granted by the Panchayat pursuant to the lay out approval granted by the second respondent. He also sought directions to the respondents concerned to stop further constructions pursuant to the impugned permits. It is alleged in the writ petition that the petitioner is residing within the limits of the seventh respondent Panchayat and is aggrieved by the damage caused to Kuttysahib Road on account of the continuous heavy traffic caused by respondents 10 to 12 for the development

activities. It is also alleged in the writ petition that the petitioner is aggrieved by the reclamation of Paddy land and constructions carried out therein, violating Coastal Zone Regulations. The averments made in this connection in paragraphs 1 and 10 of the writ petition read thus:

"1. * * * * The petitioner is residing on the side of Kuttysahib Road and is using the said road. In this writ petition, the petitioner challenges the illegal proclamation of paddy land and construction of building in violation of CRZ restrictions on the basis of the permissions illegally granted by the 7th respondent in favour of 10th to 12th respondents for development and construction of hospital building and other allied facilities in 38 Acres of paddy land comprised in Survey Nos. 198/1, 2, 3, 4, 5, 6, 7, 8, 9, 199/1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 200/1, 2, 204/5, 6, 7, 8, 9, 10, 11, 12, 20, 205/4, 6, 8, 9, 211/15, 212/1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 213/1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 214/1, 2, 4, 6, 7, 215/1, 2, 3, 4, 5, 6, 7, 219/1, 2, 3, 220/7, 8, 9 in Cheranalloor Village, Kanayannoor Taluk, Ernakulam District. The petitioner is aggrieved by the damage caused to the road on account of the illegal development and consequent continuous heavy traffic by Respondents 10 to 12."

"10. * * * * The respondents 10 to 12 are using the said road for ingress and egress to their property also. Large number of vehicles are passing through the said road daily and now the condition of the road is very poor. The children in the said locality are finding it difficult to use the said road due to the poor condition and also due to the heavy vehicle traffic."

According to the petitioner, the entire land referred to in Ext. P-1 recommendation is paddy field as per the revenue records and the Cochin Corporation was dumping waste only in 8.63 acres of land. It is alleged in the writ petition that Ext. P-1 recommendation was obtained by respondents 10 to 12 on a false representation that the entire 36.96 acres of land proposed to be developed was being used by the Cochin Corporation for dumping waste. It is also alleged in the writ petition that though the committee which had issued Ext. P-1 recommendation directed the Panchayat to satisfy the claim of respondents 10 to 12 that the entire land was being used for dumping waste, the Panchayat had issued the development and building permits, without complying with the said direction of the committee. According to the petitioner, despite the specific condition in Ext. P-1 recommendation that all necessary approvals/clearances applicable for the project shall be obtained before issuing the building permit, the development and building permits were issued by the Panchayat before obtaining clearance from the Coastal Zone Management Authority. This is, in short, the case set up in the writ petition.

4. A counter-affidavit has been filed by the second respondent, contending that the writ petition is instituted without any bona fides as the orders under challenge were issued long before the institution of the writ petition and the constructions permitted as per the impugned orders are almost complete.

According to the second respondent, Ext. R-2 (a) lay out approval would not violate the provisions of any law.

5. A counter-affidavit has been filed by the seventh respondent Grama Panchayat. The seventh respondent had also contended that the writ petition is instituted without any bona fides as there is no explanation from the petitioner, who is a resident of the Panchayat as to why he waited for the constructions to be completed for instituting the writ petition. It is also stated in the counter-affidavit filed by the seventh respondent that the land developed by the contesting respondents was reclaimed long ago and that there has been no agricultural activities on the said land for the last so many years.

6. A counter-affidavit has been filed by respondents 10 to 12 also. In the counter-affidavit filed by respondents 10 to 12, it is stated that they are developing a world class hospital and ancillary facilities, including a Medical Convention Centre and that the first phase of the constructions proposed by them running to approximately 7 lakhs square feet has already been completed, investing approximately 600 crores. According to the said respondents, the petitioner is not a public spirited person and the writ petition is filed with oblique motives. It is stated in the counter-affidavit that the constructions had commenced in the year 2011 itself and the conduct of the petitioner in approaching the Court when the constructions are nearing completion is highly suspicious and shows the lack of bona fides in seeking the reliefs. Without prejudice to the aforesaid contentions, it was also contended in the counter-affidavit filed by respondents 10 to 12 that they have obtained all the necessary licences and permissions required under law for the project. A list of the various permissions and licences obtained by respondents 10 to 12 has also been furnished in the counter-affidavit.

7. On 12-3-2014, when the matter came up for hearing, this Court directed the second respondent to file an affidavit indicating whether the constructions made are in accordance with the requirements of law. Pursuant to the said order, an inspection has been conducted by the second respondent at the site of the constructions, with the officials of the Local Self Government Department, and an additional counter-affidavit has been filed by the second respondent stating that no material violation of any of the requirements of law has been noticed during the inspection. It is also stated in the additional counter-affidavit that apart from laying pavement through the Coastal Zone Regulation area, the constructions so far carried out are in compliance with Ext. R-2 (a) lay out approval, Ext. P-4 development permit and Ext. P-5 building permit.

8. On 27-10-2014, the petitioner was granted leave to amend the writ petition and accordingly, an amended writ petition was filed. It is in the amended writ petition, the petitioner had sought for a declaration that the constructions made by respondents 10 to 12 are liable to be demolished.

9. Heard Sri Joby Jacob Pulikkekudy, the learned counsel for the petitioner, the

learned Government Pleader for the second respondent, Sri T.K. Ajith Kumar, the learned counsel for the seventh respondent and Sri P. Gopinath Menon, the learned counsel for respondents 10 to 12.

10. The learned counsel for the petitioner strenuously contended that Ext. P-1 recommendation was obtained by respondents 10 to 12 misrepresenting before the committee that the land proposed to be developed by them is a land filled with solid waste by the Cochin Corporation, while a substantial portion of the land was still remaining as a paddy field and the said paddy fields were reclaimed later, on the strength of Ext. P-1 recommendation. According to the learned counsel, Ext. P-1 recommendation, Ext. P-4 development permit and Ext. P-5 building permit are issued, violating the provisions of the Kerala Land Utilisation Order and the Conservation of Paddy Land and Wetland Act. It was also contended by him that the contesting respondents did not secure all the permissions/licences for the project, when they were issued the development and building permits by the second respondent Panchayat, and therefore the same are illegal, for having issued in violation of the condition imposed in Ext. P-1 recommendation that the permits shall be issued only after they secure all the permissions/licences required for the project.

11. At the outset, the contention raised by the respondents as to the maintainability of the writ petition as a public interest litigation needs to be considered. Public interest litigation is a weapon in the armoury of law for delivering social justice to the citizens. It is intended for the redressal of genuine public wrong or public injury. As such, there must be real and genuine public interest in matters brought before the Court as public interest litigations. Only persons acting with utmost good faith will have the locus standi to approach the Court with a public interest litigation. A person approaching the Court with a public interest litigation should not only come to the Court with clean hands, but also with a clean heart, clean mind and clean objective. [See K.R. Srinivas Vs. R.M. Premchand and Others, . It is the duty of the Court to satisfy that behind the veil of public interest, a vested interest is not lurking and that the person approaching the Court is not acting for personal gain or private motive or other oblique consideration. It is also the duty of the Court to satisfy that the process of the Court is not abused by masked phantoms who monitor the litigation from outside for a good deal or to enrich themselves. Above all, the public interest litigation must inspire confidence in Courts and they must be above suspicion. As observed by the Apex Court in Dr. B. Singh Vs. Union of India (UOI) and Others, , a time has come to weed out the petitions, which, though titled as public interest litigations, are in essence something else. The facts of this case as narrated above have to be analysed in the light of the aforesaid principles.

12. The case of the contesting respondents in this connection is that the petitioner is not a public spirited person and he being a person residing within the vicinity of the project in the very same Panchayat, his conduct in approaching the Court seeking orders for demolition of the buildings, when the constructions

are nearing completion, is highly suspicious and shows the lack of bona fides. As rightly contended by the contesting respondents, no material whatsoever is placed on record to indicate that the petitioner is a public spirited person, who is involved in any activity intended for the benefit of the general public. There is also no material on record to indicate that the petitioner had ever taken up similar issues before the authorities concerned or before the Court, for the benefit of the general public. There are not even formal averments in the writ petition concerning the involvement, if any, of the petitioner in the activities intended for the benefit of the general public. That apart, as noticed above, the averments in the writ petitions would only indicate that the petitioner is challenging the development activities of the contesting respondents for the reason that the said activity results in damage to a road used by him and others. The case of respondents 10 to 12 that they are developing a world class hospital and ancillary facilities, including a Medical Convention Centre at the disputed site investing crores of rupees is not disputed by the petitioner. The decision taken by the seventh respondent Panchayat on 17-12-2010 as referred to above indicates that the Panchayat was convinced of the various benefits to the general public on account of the project, including the development and the economic stability of the Panchayat, the employment opportunity for about 3200 people, the development of the various roads in the Panchayat at the cost of the contesting respondents, the free treatment for the people in the Panchayat below the poverty line etc. In the counter-affidavit filed by the contesting respondents, it is pointed out that the contesting respondents have already made an undertaking that they will provide free medical care to the families identified as falling below the poverty line in the Panchayat. In the additional counter-affidavit filed by the contesting respondents on 26-8-2014, it is also stated by them that in view of the said undertaking, the tenth respondent is taking a comprehensive medical insurance policy for the benefit of the aforesaid people every year incurring an annual premium of Rs. 30 lakhs. It is further stated in the said affidavit that the said scheme would benefit almost 2000 families in the Panchayat, who are below the poverty line. These facts are also not in dispute. As pointed out earlier, the public interest sought to be redressed in the writ petition, namely that on account of the deterioration of the condition of the road caused by the contesting respondents, the general public in the locality are put to difficulties. If said public interest is examined in the light of the undisputed facts referred to above, it can be seen that there is substance in the contention raised by the contesting respondents that the public interest highlighted in the writ petition is only a camouflage and the writ petition is filed with some ulterior motives. It has been all the more so since the petitioner who is a person residing within the vicinity of the project in the very same Panchayat, has approached the Court seeking the extreme relief of demolition of the buildings only when the constructions were nearing completion. It is not disputed that the petitioner was residing in an area where there has been considerable pollution and environmental degradation on account of dumping of waste materials. It is hard to believe that the priority of the general public in an area of that nature would be the condition of the road

and not the various factors taken note of by the Panchayat as beneficial to the general public. On an appraisal of the materials on record, we are not convinced that this writ petition is one filed for the benefit of the general public. In such circumstances, we hold that this writ petition is not maintainable as a public interest litigation.

13. Despite our finding that the writ petition is not maintainable as a public interest litigation, we have considered the merits of the contentions raised by the petitioner as well. As noticed above, the main contention of the petitioner is that Ext. P-1 recommendation was obtained by the contesting respondents, falsely representing to the committee that the land proposed to be developed by them is the land used by the Cochin Corporation for dumping solid waste and the said land which is though shown in the revenue records as paddy field, the same is lying filled and is not fit for any agricultural activities. True, a reading of Ext. P-1 recommendation would indicate that the committee had recommended for approving the lay out of the project on the assumption that the land proposed to be developed by the tenth respondent was a land used by the Cochin Corporation for dumping solid waste. Obviously, it is on account of the said reason, the committee had observed in Ext. P-1 that the correctness of the aforesaid facts will have to be satisfied by the Panchayat. As noticed above, it is due to the said reason, the seventh respondent had constituted a subcommittee to make recommendations as to the project Ext. R10(i) decision of the seventh respondent Panchayat would indicate that the Panchayat was satisfied based on the report of the subcommittee that the land proposed to be developed by the tenth respondent is lying reclaimed and that there has been no agricultural operations on the said land for more than 11 years and further that the land is not fit for any agricultural activity. It is thus evident that the contention of the petitioner that only a portion of the land proposed to be developed by tenth respondent was lying reclaimed and that the rest of the land was remaining as paddy field, when Ext. P-1 recommendation was made, does not appear to be correct. The learned counsel for the petitioner contended that Ext. P-3 report of the Advocate Commissioner appointed in O.S. No. 84 of 2003 before the Sub Court, Ernakulam would show that the Cochin Corporation had dumped solid waste only over 8.87 acres of land and that the remaining land was lying as paddy field. Ext. P-3 report indicates that the suit O.S. No. 84/2003 was one filed by one of the predecessors of the tenth respondent viz. Ambadi Krishna Menon. 8.87 acres of property referred to in the report is the plaint schedule property in that suit. Ext. P-3 report was submitted by the Advocate Commissioner in respect of the plaint schedule property in that suit. Ext. P-3 report does not indicate that the properties lying adjoining to the said property were not used at all for dumping waste by Cochin Corporation. The lie and nature of the properties adjoining to the plaint schedule property in O.S. No. 84/2003 have not been reported by the Advocate Commissioner in Ext. P-3 report. As stated above, the writ petition has been filed long after the development of the land. No other material is also placed before us to show that the properties lying adjacent to the

plaint schedule property in O.S. No. 84/2003 were lying as paddy field all along. The only material before us to ascertain the nature of the properties proposed to be developed prior to Ext. P-1 recommendation is Ext. R-10(i) decision of the Panchayat. We have already indicated that the said decision of the Panchayat categorically recites that the entire land sought to be developed was lying reclaimed. The learned counsel for the petitioner has placed reliance on Ext. P-6 report of the Village Officer also to contend that the tenth respondent had reclaimed paddy fields on the strength of Ext. P-1 recommendation. A meticulous reading of Ext. P-6 report of the Village Officer indicates that the statement in the report that only 8.87 acres of land alone was remaining reclaimed at the time when the tenth respondent obtained the permits from the Panchayat was based on the report of the Advocate Commissioner appointed in O.S. No. 84/2003. Exts. P-3 and P-6 reports would not therefore, help the petitioner in any way in contending that a substantial part of the property sought to be developed was lying as paddy field when Ext. P-1 recommendation was made. At any rate, the petitioner cannot be heard to contend that a substantial portion of the land sought to be developed was lying as paddy field at the time when Ext. P-1 recommendation was made, for, if he had approached this Court then, he would have been able to establish that fact by taking out a Commission. The delay on the part of the petitioner in approaching the Court is the reason for his inability to establish the lie and the nature of the property at the time when Ext. P-1 recommendation was made and the petitioner cannot take advantage of the same to prejudice the respondents.

14. Coming to the contention raised by the petitioner as to the violation of the provisions contained in the Kerala Land Utilisation Order, it has to be mentioned that in *Praveen Vs. Land Revenue Commissioner*, , it was held by this Court that as regards paddy land and wetland are concerned, the provisions in the Kerala Land Utilization Order have no application with effect from 12-8-2008, the date on which the Conservation of Paddy Land and Wetland Act came into force. Even otherwise, the provisions of the Kerala Land Utilization Order may not have any application to a case like this. We have found that the challenge raised to Ext. P-1 recommendation on the ground that the same is vitiated by misrepresentation is unsustainable and the said recommendation is valid in the eye of law. In *Reliance Industries Ltd. and Another Vs. Commissioner of Land Revenue and Others-->* , this Court held that when an activity is permitted in accordance with the provisions of a scheme prepared under the Town Planning Act, the owners of such land can put the land to use as specified, without there being any obligation to obtain any further permission under the *Shahanaz Shukkoor Vs. Chelannur Grama Panchayat*, , this Court held that the Conservation of Paddy Land and Wetland Act operates on the basis of the facts as they exist on the ground realities and not on its description in the revenue records. We have found on the facts that at the time when Ext. P-1 recommendation was made by the committee, the property sought to be developed by the tenth respondent was lying filled. As such, it cannot be

contended that the development activities permitted as per Ext. P-1 recommendation violates the provisions of the Conservation of Paddy Land and Wetland Act.

15. As regards the contention that the Panchayat had acted illegally in issuing permits before the tenth respondent had obtained all the statutory approvals/clearances, it has to be noticed that except the statement that the contesting respondents should have obtained clearance from the Coastal Zone Management Authority before commencement of construction, there is no other pleading in the writ petition as to the statutory approval/clearance which should have been secured by the contesting respondents. True, in the light of the specific condition in Ext. P-1 recommendation, the contesting respondents were required to obtain all the statutory approvals/clearances before commencing the construction. Even though it is pleaded by the petitioner that the land sought to be developed by the contesting respondents is a land coming within Coastal Zone Regulation-3 area, Ext. R-(10)(f) communication issued by the Kerala Coastal Zone Management Authority indicates that the construction proposed by the contesting respondents was beyond the restricted zones. In other words, no clearances whatsoever were required for the project. The said fact is affirmed by the Kerala Coastal Zone Management Authority in the said communication. In so far as the construction proposed by the contesting respondents was beyond the restricted zones, the second respondent cannot be found fault with for having issued the building permit, and the submission made by the learned counsel for the petitioner that the Panchayat has acted illegally in granting the building permit cannot be accepted. There is no challenge to the communication issued by the Kerala Coastal Zone Management Authority referred to above. In the said circumstances, we do not find any merit in the said contention as well.

In the circumstances, there is no merit in the writ petition and the same is, accordingly, dismissed.