
(2022) 04 KL CK 0130

In the High Court Of Kerala

Case No : Writ Petition (C) Nos.12933, 25308 Of 2017

AW Hospitality Private Limited

APPELLANT

Vs

Kottukal Grama Panchayathu

RESPONDENT

Date of Decision : 22-04-2022

Acts Referred:

Citation : (2022) 04 KL CK 0130

Hon'ble Judges : N. Nagaresh, J

Bench : Single Bench

Advocate : S.Sreekumar, P.Martin Jose, P.Prijith, Thomas P.Kuruvilla, Anitha Ravindran, M.P.Prakash, A.R.Dileep, George Varghese Perumpallikuttiyl, P.J.Joe Paul, Manu Sebastian, B.S.Swathi Kumar, Vipin Narayanan

Final Decision : Disposed Of

Judgement

N. Nagaresh, J

1. W.P.(C) No.12933 of 2017 has been filed by a Company seeking to quash Ext.P11 communication of the 1st respondent-Panchayat cancelling the Building Permit issued to the petitioner. W.P.(C) No.25308 of 2017 is filed by a citizen seeking to quash Exts.P4, P9 and P11 and to direct the 2nd respondent-State Environment Impact Assessment Authority Kerala to revoke Ext.P4 EC in exercise of the powers under Clause 8(iv) of the EIA Notification dated 14.09.2006. The petitioner has sought for certain other incidental reliefs also.

2. The petitioner in W.P.(C) No.12933 of 2017 stated that the petitioner is absolute title holder in possession of land having an extent of 275.37 Ares equivalent to 680.163 Cents. The petitioner had purchased the land from M/s.Artech Realtors Ltd. who held a Building Permit for constructing Hotel-cum-Apartment project spread over 275.37 Ares of property. After the petitioner purchased the land, the Panchayat transferred the Building Permit in the name of the petitioner as per Ext.P4.

3. The petitioner states that certain portion of their property comes under the

purview of Coastal Regulation Zone. Therefore, the project proposal was sent to the State Environment Impact Assessment Authority. The Centre for Earth Science Studies conducted an investigation regarding the feasibility and impact of the proposed project. The Centre for Earth Science Studies reported that a part of the proposed site comes under the category CRZ-III and that the proposed construction is beyond 500 m. from HTL. The State Environment Impact Assessment Authority gave Environmental Clearance to the project, as per Ext.P6 dated 07.05.2014.

4. The petitioner states that the proposed project was scrutinised by the Chief Town Planner also and the Chief Town Planner gave layout approval for the building, as per Ext.P7. The Kerala State Pollution Control Board has given Ext.P8 Integrated Consent for the proposed project. The Department of Fire and Rescue Services issued Ext.P9 Clearance. The Airports Authority of India gave Ext.P10 No Objection Certificate for height clearance. On the basis of the licences/permits/consent given by various authorities, the petitioner started construction of the proposed building investing huge capital. To the surprise and predicament of the petitioner, the Secretary to the Panchayat issued Ext.P11 cancelling the Building Permit issued for the project.

5. The petitioner states and submits that Ext.P11 contains no reasons for cancellation of Building Permit. The project has undergone statutory verifications from different quarters. A part of the project is located within 500 m. from the seaside. The project does not have any sensitive ecosystems such as mangroves or breeding grounds which are eligible to be categorised as CRZ. The report given by Centre for Earth Science Studies is not under challenge from any quarters. It is based on the said report that the State Environment Impact Assessment Authority has issued Ext.P6 Environmental Clearance.

6. The Senior Counsel assisted by the learned counsel for the petitioner pointed out that Ext.P11 is a non-speaking order and in view of the settled proposition in *Mohinder Singh Gill v. CEC* [(1978) 1 SCC 405], a statutory order is to be judged by reasons mentioned therein and cannot be supplemented by fresh reasons. In *Alexander Machinery Dudley Ltd. v. Crabteen* [1974 ITR 120], the Hon'ble Apex Court has held that failure to give reasons amount to denial of justice. Ext.P11 order is therefore highly illegal and arbitrary and is liable to be set aside.

7. In W.P.(C) No.25308 of 2017, the petitioner argued that the 11th respondent (the petitioner in W.P.(C) No.12933 of 2017) has no right, title or interest over the properties. It is the petitioner and other legal heirs of Damian Lewis who are entitled to possess and enjoy the property. The father of the petitioner has instituted OS No.177/2011 in the Sub Court for declaring the sale deeds in favour of the predecessor-in-interest of the 11th respondent as void and fraudulent. The father of the petitioner also filed OS No.359/2009 in the Munsiff's Court seeking prohibitory injunction restraining trespass and committal of waste by one Shaji Thomas in the properties. The said Shaji Thomas has filed OS No.396/2009 in the Munsiff's Court seeking injunction against the petitioner's

father. Admittedly, civil litigations are pending over the title to the property.

8. When the predecessor-in-interest of the petitioner started construction activities, local residents formed Theera Desa Samrakshana Samiti and submitted representation to the Chief Town Planner requesting not to grant permission for construction activities in the area. The petitioner has obtained Environmental Clearance suppressing material facts. The project in question falls within CRZ area and hence the State Environment Impact Assessment Authority ought to have approved the project only after getting recommendations from the concerned Coastal Zone Management Authority.

9. The Chief Town Planner has issued approval of layout of the construction ignoring material facts. The layout approval and the Building Permit granted to the petitioner are therefore liable to be cancelled. The 11th respondent is brazenly carrying out quarrying of earth and piling works in the cliff area, in violation of the terms and conditions of Ext.P4 Environmental Clearance. If the unauthorised and unchecked construction activity is carried out by the 11th respondent, it would cause irreparable injury and harm to the petitioner, contended the learned counsel for the petitioner in W.P.(C) No.25308/2017.

10. The 1st respondent-Panchayat in W.P.(C) No.12933 of 2017 contested the writ petition filing counter affidavit. The 1st respondent submitted that Ext.P11 has been issued on the basis of a direction issued by the Director of Panchayats. In the communication of the Director of Panchayats, it has been stated that the specific condition that construction should not be made in the area where provisions of Coastal Regulation Zone notification applies, has been flouted by the petitioner.

11. The 1st respondent further pointed out that at the time of considering the application for Building Permit, the validity of the certificate issued by PCB had expired. There were widespread allegations regarding issuance of Building Permit and the Vigilance and Anti Corruption Bureau has conducted a quick verification and submitted a report to the effect that immediate steps should be taken to cancel the Building Permit.

12. The 1st respondent further submitted that on a site inspection by the Assistant Engineer, massive scale excavation was detected, which activity was carried out without obtaining permit from the Mining and Geology Department. The excavated earth was seen deposited on a cliff. In the facts and circumstances of the case, the petitioner cannot be permitted to proceed with the construction without first obtaining clearance from the Coastal Zone Management Authority and without satisfying other statutory requirements.

13. The 5th respondent-District Geologist in W.P.(C) No. 25308 of 2017 filed counter affidavit. The 5th respondent stated that the 3rd respondent submitted an application before the 5th respondent seeking permission to excavate ordinary earth from the land. The petitioner in W.P.(C) No.25308 of 2017 filed a complaint relating to title to the property. No permission was granted to the 3rd

respondent for extraction of ordinary earth. When the 12th respondent started digging ordinary earth, a show-cause notice was issued. The 12th respondent replied that he has only levelled the ground. Thereafter, an application for Quarrying Permit was submitted for extraction of ordinary earth. The 5th respondent sought clarification on pending civil suits. The 11th and 12th respondents did not provide any clarification.

14. The learned Standing Counsel representing the Kerala Coastal Zone Management Authority argued that if the construction is in any area falling under CRZ, it is not open to the Panchayat to grant any kind of permission without the concurrence of the Kerala State Coastal Zone Management Authority, in view of the CRZ Notification, 1991. The Panchayat has to forward such applications for Building Permit and obtain concurrence/permission from the State Coastal Zone Management Authority. It is wholly impermissible to permit construction within any prohibited area.

15. I have heard the counsel for the petitioners and the Government Pleader and the Standing Counsel representing the respondents.

16. The petitioner in W.P.(C) No.12933 of 2017 is the owner of 275.37 Ares of property. The predecessor-in-interest of the property had obtained a Building Permit for constructing Hotel-cum-Apartment project in the land. The Panchayat transferred the Building Permit in favour of the petitioner on 30.08.2016. The State Environment Impact Assessment Authority has granted Environment Clearance to the project on 07.05.2014. In the order issued by the State Environment Impact Assessment Authority, it has been stated that the proposed construction is outside the 500 metre line from HTL and therefore, it is a no regulation zone. The State Environment Impact Assessment Authority, however, granted Environmental Clearance subject to strict compliance of the following conditions:

(1) Constructions should not be made in areas where provisions of CRZ Notification 2011 applies. In case of any dispute, decisions of KCZMA shall prevail.

(2) Constructions are not allowed in any area other than that described as purayidam in revenue records.

(3) Height should be restricted as per NOC from Airport Authority of India and Fire and Rescue Services.

(4) The cliff area should be kept undisturbed, protected and a setback distance of 50 m. should be made from it.

(5) Bore well should not be constructed.

(6) Disposal of sewage should not be made to CRZ areas.

Therefore, it is evident that construction should not be made in areas where provisions of CRZ Notification 2011 applies and that in case of any dispute,

decision of KCZMA shall prevail.

17. The petitioner has been given layout approval for the building, by the Chief Town Planner. The Pollution Control Board has issued Integrated Consent. Department of Fire and Rescue Services has given Safety Clearance Certificate to the petitioner. The Airports Authority of India also issued NOC for height clearance. While the construction was in progress, the Panchayat has issued Ext.P11 communication (in W.P.(C) No.12933 of 2017) cancelling the Building Permit.

18. The said Ext.P11 communication does not disclose any reason for cancellation. The communication, however, refers to a letter dated 28.03.2017 of the Director of Panchayats. The petitioner was not heard before cancelling the Building Permit. Therefore, obviously there is violation of the principles of natural justice. In the circumstances, Ext.P11 communication dated 30.03.2017, is ordinarily liable to be set aside. But, it is seen that there is a dispute as regards applicability of CRZ regulations on the project. Therefore, the Panchayat authorities ought to have referred the matter to KCZMA for concurrence, before issuing Building Permit. The Panchayat failed to do so. Therefore, Ext.P11 communication is liable to be sustained.

19. As regards the issue of clearance by the Kerala Coastal Zone Management Authority, the petitioner would contend that the construction is not within CRZ area. It is beyond 500 m. from the HTL. Therefore, no clearance from the Kerala Coastal Zone Management Authority is necessary. The respondents will controvert the same. According to the petitioner in W.P.(C) No.25308 of 2017, the property is included within the Coastal Regulation Zone and a portion is admittedly within 200 m. from the High Tide Line which is a No Development Zone. Only constructions of building units and that too having a maximum height of 9 m., is permissible in the area beyond 200 m. from the HTL. In the said plot, the petitioner is attempting to construct a multistoried building having about 23 floors and a basement floor.

20. It is discernible from the pleadings that there is a cliff area within the property where certain activities related to construction is going on. The Environmental Clearance given by the State Environment Impact Assessment Authority Kerala on 07.05.2014, though would state that the proposed building is outside the CRZ area, the State Environment Impact Assessment Authority has put a condition in the EC that construction should not be made in areas where provisions of CRZ Notification 2011 apply and further that the cliff area should be kept undisturbed, protected and a setback distance of 50 m. should be made from it. The State Environment Impact Assessment Authority has also stated that in case of any dispute, decision of KCZMA shall prevail.

21. From the pleadings available, it is evident that there is a dispute as regards construction of building in CRZ area. This being a factual dispute, the matter should be left to the competent authority, namely KCZMA.

22. In the facts and circumstances of the case, W.P. (C) No.12933 of 2017 is disposed of directing the 1st respondent to forward the relevant records to the Kerala Coastal Zone Management Authority for taking a decision on the applicability of CRZ Regulations to the proposed building construction by the petitioner and to consider grant of clearance for the project proposed by the petitioner in accordance with law and as per the CRZ Regulations. The 1st respondent-Panchayat shall forward the request along with necessary records/documents to the KCZMA within a period of one month and KCZMA shall take a decision on the issue within a further period of two months.

23. In W.P.(C) No.25308 of 2017, the petitioner is challenging Exts.P4, P9 and P11 orders. Ext.P4 is the Environmental Clearance granted to the project. Since this Court has directed KCZMA to consider the issue of the alleged CRZ violation, it would be sufficient to declare that the Environmental Clearance granted to the project on 07.05.2014, would be subject to the decision/clearance of the KCZMA. Ext.P9 proceedings of the Chief Town Planner giving layout approval and Ext.P11 Building Permit will also be subject to the decision that may be taken by the KCZMA. As regards the civil suits pending in respect of the title to the land, the issue is left open to be decided by competent courts. W.P.(C) No.25308 of 2017 is disposed of as above.