

(2009) 11 KL CK 0022

In the High Court Of Kerala

Case No : Writ Petition (C) No. 16771 of 2009

BBP Properties (P) Ltd.

APPELLANT

Vs

Chengamanadu Grama Panchayat and Another

RESPONDENT

Date of Decision : 20-11-2009

Acts Referred:

Kerala Panchayat Raj (Manner of Service of Notices) Rules, 1996 — Rule 3, 3(1)

Citation : (2009) 11 KL CK 0022

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : Rasheed C. Nooranad and S. Shanavas Khan, for the Appellant; C.M. Suresh Babu, Special Government Pleader, for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—The Petitioner seeks a declaration that it, a builder, is entitled to get building permit for constructing a multistoreyed apartment as sought for in Ext. P-3 application. A direction that the said application be considered in accordance with law within a time frame is also sought for.

2. In its counter-affidavit, the first Respondent Grama Panchayat, among other things, states that the application of the Petitioner for building permit was rejected as per Ext.R-1(e) order dated 16-1-2009.

3. The Petitioner contends through its learned Counsel that the Grama Panchayat has acted contrary to law in the matter of measuring the width of the approach road and also in relation to different other matters referable to the question whether the Petitioner is entitled to the permit in question.

4. Looking at the counter-affidavit, an order was issued by this Court on 7-10-2009 requiring the Grama Panchayat to show the material on the basis of which it stands to show that Ext.R-1(e) was communicated to the Petitioner. This was because, the date of communication of an order adverse to a party applying for a building permit is of great consequence as the law as it now stands includes

an inhibition from moving the Tribunal for LSGIs unless it is so done within a time frame.

5. Today, the learned Counsel for the Panchayat has brought a register that it maintains regarding service of notice. It contains the recording of the fact that the original of Ext. R-1(e) was sent from the Office of Grama Panchayat by ordinary post on 17-1-2009.

6. Going by the legitimate presumptions as to the legality and regularity of official acts that may be drawn in terms of the Evidence Act and other attendant presumptions available under the law relating to Postal Department, it may be inferable that the postal article despatched in ordinary post would have been carried to its addressee. But, that is insufficient. The consequences of the receipt of an order rejecting a building permit, including the fact that time to challenge it commences to run from that date, call for strict construction of rules of service of notice; by reading the rules as they stand.

7. The Kerala Panchayat Raj (Manner of Service of Notices) Rules, 1996 gain importance. They govern serving of notice. Rule 3, with four sub rules, directly applies. It reads as follows:

3. Serving of notice.--(1) In case the Act or Rules or bye-laws made thereunder requires the Panchayat to serve any notice or document to a person, such service or sending shall, unless otherwise provided in the Act or rules or bye-laws made thereunder, be done,--

(a) by service or sending of notice or document to such person; or

(b) if such person cannot be found out, by leaving such notice or document at his last known place of abode or business or by entrusting the same to some adult member or servant of his family and in the case of employees working in firms, factories, plants and workshops where admission to notice server is prohibited or where service of notice cannot be possible in the ordinary course, by entrusting the same to the head of the institution or to any authorised person; or

(c) if such person's address elsewhere is known to the Secretary, by sending the same to that address by registered post; or

(d) if none of the aforesaid means are available, by affixing the notice in some conspicuous part of his bode or work place.

(2) It shall not be necessary to name the owner or occupier in the notice, if such notice is regarding any building or land and in the case of joint owners and joint occupiers it shall be sufficient if the notice is served or sent to anyone of such person.

(3) Any bill, notice, order, form, summons, demand notice or other document served or sent under the Act or the rules made thereunder, if so provides that any fee or other sum shall be remitted or any work shall be executed, or anything shall be paid within such period fixed therein, then unless the Act or

rules or bye-laws provides to the contrary, such period shall be calculated from the date of such service or sending.

(4) In the case of refusal of a notice, the date of refusal shall be deemed to be the date of service.

8. Sub-rule 1 of Rule 3 gets classified into four clauses. Initially, In Clause (a), it provides for service of notice or sending of notice to the person to whom it is addressed. Clause (b) provides that if such person cannot be found out service or sending of notice shall be done by leaving such notice or document at his last known place of abode or business or by entrusting the same...where admission to notice server is prohibited or where service of notice cannot be possible in the ordinary course, by entrusting the same to the head of the institution or to any authorised person. A proper reading of Clause (b) of Sub-rule 1 of Rule 3 clearly shows that what it takes care of, is the contingency that may arise, owing to failure of personal service of notice. This is why, the prohibition for admission to the notice server and the concept of entrusting the notice in the event of the addressee being not found are particularly used in that clause. In that view, Clause (b) operates as the prescription as to the modality for service of notice in the event of the mode prescribed in Rule 3(1)(a) failing. Therefore, the prescription in Clause(a) of Rule 3(1) is personal service. This is what is treated as a service in the ordinary course. This conclusion is also fortified by the fact that Clause (c) of Rule 3(1) provides for sending the notice or document to the address of the person by registered post, if the person's address elsewhere is known. Clause (d) is the procedure to be adopted in the event of none of the other three modes being available or possible.

9. Therefore, the Panchayat or its Secretary may choose to serve notice in the ordinary course. If that procedure is taken recourse to, the mode to be adopted is personal service, the alternatives being those provided in Rule 3(1)(b). But, unless that entire exercise can be proved, the procedure that has to be safely and promptly adopted is service of notice by registered post. The learned Counsel for the Panchayat states that the LSGIs would be justifiably entitled to collect the soaring expenses for registration of postal articles from the addressee, at least, in appropriate cases. But, that principle may not apply when notices which may have a bearing on rights of parties, including those with penal consequences, or resulting in deprivation of rights by rejecting applications and claims, are being issued.

10. For the aforesaid reasons, it has necessarily to be held that the Petitioner can be imputed with notice of Ext. R-1(e) only upon delivery of the said notice by registered post or by other mode by which the original or an authenticated copy of Ext.R-1(b) is delivered to it. This is more so because, the Petitioner will be entitled to challenge that decision before the Tribunal for LSGIs only on the basis of the original or an authenticated copy of Ext.R-1(e).

11. In so far as the contentions on merits are concerned, adequate alternate and

efficacious remedies are available before the Tribunal for LSGIs, conceived by law for such purpose. Therefore, the writ court has to keep its hands off, as of now.

In the result, preserving all other contentions, the first Respondent is directed to forthwith serve on the Petitioner, the original or an authenticated copy of Ext. R-1(e) so that the Petitioner would stand enabled to challenge it before the Tribunal for LSGIs in accordance with law. The Writ Petition is ordered accordingly.