

(2022) 12 KL CK 0152
In the High Court Of Kerala
Case No : Writ Petition (C) No. 28735 Of 2022

Elsy

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 13-12-2022

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Panchayat Building Rules, 2019 — Rule 75(2)(iv)

Citation : (2022) 12 KL CK 0152

Hon'ble Judges : N. Nagaresh, J

Bench : Single Bench

Advocate : G.Sreekumar, Venugopal M.R, Dhanya P.Ashokan, S. Muhammad Alikhan, Vidya Kuriakose

Final Decision : Dismissed

Judgement

N. Nagaresh, J.

1. The petitioner has filed the writ petition seeking to command the respondents 2 and 3 not to construct any public urinals or any comfort station adjacent to the property of the petitioner, as is proposed to be done now. The petitioner further seeks to command the 1st respondent to cause an enquiry to be made, if found necessary for the illegal act and proposal of respondents 2 and 3 in deserting an existing comfort station and proposing to have a new one.

2. The petitioner states that on eastern side of the property of the petitioner is the private bus stand run by the 2nd respondent-Mattathur Panchayat. Earlier, the Panchayat constructed urinal and latrine at a distant place within the bus stand premises. The said urinal and latrine building is in a neglected stage.

3. To the predicament of the petitioner, the Panchayat is now going to construct a new urinal and latrine building close to the compound of the petitioner. The petitioner states that the proposed building would breach the distance rule since construction is proposed by the side of a drinking water source. Respondents 2

and 3 are compellable to maintain the existing urinals and other washroom facilities and to abandon the new proposal.

4. The 3rd respondent-Secretary to Panchayat resisted the writ petition filing a counter affidavit. The 3rd respondent pointed out that the existing toilet has become obsolete and is going to be dismantled. A new toilet complex is necessary and hence it has been decided to construct one at the western portion of the Panchayat property. The new toilets would be differently-abled frontly.

5. The 3rd respondent further stated that the new building is going to be constructed strictly adhering to setback rules as provided under Rule 75(2)(iv) of the Kerala Panchayat Building Rules. The proposed site has a setback of 15 metres from the well and 2 metres from the plot boundary.

6. The 3rd respondent further stated that the petitioner has already approached the Munsiff's Court, Chalakudy filing OS No.70/2022 seeking relief of permanent prohibitory injunction against the construction of latrine and urinal. The writ petition is therefore liable to be dismissed.

7. Heard the learned counsel for the petitioner, the learned Government Pleader for the 1st respondent and the learned Standing Counsel representing respondents 2 and 3.

8. The argument advanced by the petitioner is that there is no reason for the Panchayat to abandon the existing urinal building and to construct a new one. The further argument is that the newly proposed urinal building / comfort station violates the building rules, especially the distance rule.

9. The construction or shifting of a urinal / comfort station is primarily a policy matter. Unless there are compelling reasons, interference with the decision of the Grama Panchayat in exercise of the powers of this Court under Article 226 of the Constitution of India would be unjustified.

10. The 3rd respondent-Secretary to Panchayat has stated that the old comfort station has become obsolete and hence the Panchayat decided to dismantle it and construct a new toilet building on the western side of the Panchayat property, which would be a differently-abled friendly building, beneficial to differently-abled passengers also. I do not find any illegality or arbitrariness in the said decision.

11. The further argument is that the proposed comfort station violates building rules. The specific allegation is that there is violation of distance rule and the construction is close to a drinking water source. The 3rd respondent has stated that the proposed site for the new toilet has a setback of 15 metres from the well and two metres from the plot boundary of the petitioner, and that the proposed construction is in compliance of the Panchayat Building Rules. There is no material on record to disbelieve the statement made by the 3rd respondent.

12. It is also evident from the pleadings that the petitioner has already

approached the Munsiff's Court, Chalakudy filing O.S. No.70/2022 seeking permanent prohibitory injunction against the construction of latrine and urinal and for other reliefs.

For the above reasons, the writ petition is without any merit and it is consequently dismissed..