
(2014) 06 KL CK 0012
In the High Court Of Kerala
Case No : W. P. (C) No. 20456 of 2012

Govindarajan

APPELLANT

Vs

Pattambi Grama Panchayat, Palakkad

RESPONDENT

Date of Decision : 12-06-2014

Acts Referred:

Citation : (2014) 3 KHC 532

Hon'ble Judges : Mr. A. V. Ramakrishna Pillai, J.

Bench : Single Bench

Advocate : Santheep Ankarath and Arun Mathew Vadakkan, Advocates, for the Petitioner; S. Mohammed AI Rafi and V. Ambujakshan Nair, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Mr. A. V. Ramakrishna Pillai, J. - Ext. P5 order passed by the Tribunal for the Local Self Government Institutions is under challenge in this petition.

2. The petitioner alleges that he, who is the owner of 8.5 cents of property purchased in the year 2006, made some additional constructions on the existing foundation wall of the old building. The same was objected to by the second respondent who, according to the petitioner, had an axe to grind against the petitioner since he failed in his attempt to purchase the property from the previous owner. The petitioner applied for regularisation of the construction which was regularised after a detailed enquiry and inspection by the Secretary of the respondent Panchayat. This order of regularisation was challenged by the second respondent before the Tribunal for Local Self Government Institutions.

3. The grievance of the petitioner is that the Tribunal, without proper appreciation of facts and on improper understanding of the report filed by the Commissioner, allowed the appeal setting aside the order of regularisation. According to the petitioner, the Tribunal mistook the old foundation wall of the petitioner's old building situated in the properties purchased by him which

stands at a higher level than the compound wall of the properties of the second respondent. Resultantly the learned Tribunal directed initiation of action against the illegal construction after setting aside the regularisation order. It is in this background the petitioner has approached this Court.

4. The second respondent filed a counter - affidavit wherein he has admitted the ownership of the petitioner over 8.5 cents of land. It is alleged that already there was a commercial building in the property of the petitioner and he started construction on the south-eastern portion of the commercial building to expand the existing building and to renovate the same. According to the petitioner, the construction was completed in such a way that the new construction abuts the respondent's property touching the boundary wall. According to him, the said construction was effected without getting the required permit and it violates Rule 27(5) of the Kerala Panchayat Building Rules. According to him, he made complaints against the same before the first respondent. However, there was inaction. Therefore, he made a complaint before the Chief Minister's Public Grievances Cell. Thereupon the first respondent inspected the site and found that the construction made by the petitioner is without valid permit. Therefore, proceedings under Section 235W(3) was commenced and a confirmation order was issued. As it was issued without complying with the procedural formalities, the petitioner took the matter before the Tribunal for Local Self Government Institutions which set aside the order.

5. The Tribunal had directed the first respondent to initiate proper proceedings. As this was not being complied with by the first respondent, the second respondent approached the learned Ombudsman for Local Self Government who directed the first respondent to appear on 18/06/2011. However, before the learned Ombudsman the first respondent submitted that the construction has been regularised as per Ext. PI. The second respondent alleged that there was collusion between the petitioner and the first respondent. It was further contended that in the proceedings before the Tribunal, a Commissioner was deputed who filed Ext. P2 report and it was evident from the said report that the southern wall of the newly constructed building of the petitioner is within a distance of 20 cms. from the property of the first respondent. Therefore, according to the second respondent, the construction was in violation of the building rules and therefore, the regularisation of the same was interfered with by the learned Tribunal by the impugned order. According to the second respondent, the same does not call for an interference.

6. Arguments have been heard.

7. The learned counsel for the petitioner submitted that the Tribunal has exercised the jurisdiction, which is not vested in it, in a totally improper manner and in total neglect of the true facts.

8. The observations made by the Tribunal in paragraph 13 of the order were based on the photographs which according to the petitioner is totally incorrect

and made on total misunderstanding of the facts.

9. In support of the argument, the learned counsel for the petitioner has produced certain photographs. The Tribunal has mistaken the old foundation as compound wall of the second respondent and came to the conclusion that the building of the petitioner is constructed on the compound wall. Such a construction is impossible.

10. The definite case of the petitioner is that it is the old wall of the pre-existing building atop which the present construction is effected and it is not a boundary wall. The consistent case of the petitioner through out was that he has not violated the provisions of the Kerala Panchayat Building Rules. The first respondent, who is the local authority vested with powers under the Act and Rules, has regularised the construction of the petitioner. Now, the Tribunal, on the basis of an observation made by the Commissioner, finds that the petitioner's building is constructed on the compound wall of the first respondent.

11. It is relevant to note that the Commissioner deputed by the Tribunal has measured out the property on the basis of the title deeds and approved survey plan. Without any such measurement, the Tribunal cannot say that the construction of the petitioner was in violation of the building rules.

12. It is also relevant to note that even the first respondent did not have a case that the petitioner is the encroacher upon his land.

13. His only case was that sufficient space has not been left by the petitioner while making the construction. By making the observations in the impugned order, the learned Tribunal has exceeded his authority vested in it. If the second respondent has a case that the petitioner has encroached upon his property or his compound wall, it shall be open to him to approach a competent Civil Court to get his grievances redressed.

14. If ultimately it is found on the basis of a proper measurement that the building constructed by the petitioner is within the prohibited distance, then the first respondent can annul the regularisation on the basis of such a verdict. Till that time, the order of regularisation issued by the first respondent, who is the competent authority, has to be allowed to stand.

Therefore, the writ petition is allowed. Ext. P5 is quashed. Ext. P1 dated 19/05/2011 issued by the first respondent shall stand.

However, it is hereby made clear that it shall be open to the second respondent to approach a competent Civil Court, if he has the genuine grievance that the petitioner has constructed the building encroaching upon his property or compound wall. If it is ultimately found in the said suit that there is encroachment or that the petitioner's building is within the prohibited distance, it shall be open to the petitioner to bring it to the notice of the first respondent Panchayat with a copy of the judgment and decree of the said Civil Court on the basis of which the first respondent can proceed against the petitioner in

accordance with law.