

(2010) 07 KL CK 0152

In the High Court Of Kerala

Case No : Writ Petition (C) No. 17398 of 2010 (Y)

K. Chamy

APPELLANT

Vs

The Thachampara Grama Panchayath, Radhakrishnan and
Annamma Joseph

RESPONDENT

Date of Decision : 22-07-2010

Acts Referred:

Citation : (2010) 07 KL CK 0152

Hon'ble Judges : T.R. Ramachandran Nair, J

Bench : Single Bench

Advocate : Jacob Sebastian, for the Appellant; C.E. Unnikrishnan, for the Respondent

Final Decision : Dismissed

Judgement

T.R. Ramachandran Nair, J.—The grievance raised by the Petitioner herein is against the communication issued by the Secretary of the Panchayat directing to stop the poultry business and to demolish the building used for the same, allegedly, for certain violation of the provisions of the Act and the Rules.

2. The case pleaded by the Petitioner is the following:

He possesses an extent of 26 cents of land in a hilly tract in Thachampara Panchayat. He decided to set up a small chicken farm therein and applied for issuance of a building permit as per application dated 23/11/2009. He had also applied for license to set up the chicken farm. He also has produced the consent of the neighbors. The Panchayat has acknowledged the receipt of the application which is evidenced by Ext.P3.

3. Ext.P4 is the copy of the building permit claimed to have been issued to him that is not signed by the Secretary and it does not bear any date also. After completing the construction of the building, he commenced the business in April, 2010.

4. The Petitioner contends that at the instance of the third Respondent, the Panchayat issued a stop memo as per Ext.P5 and subsequently, he received a communication as per Ext.P6 rejecting the application for building permit. Ext.P7 is the communication threatening prosecution for running the business without license and Ext.P8 is the notice directing the Petitioner to demolish the building. Ext.P9 is the reply given by him and finally the Panchayat repeated their instructions to stop the business and demolish the building by Ext.P10. It is mainly pleaded that there is no complaint from any quarters with regard to the running of the unit. It is his case that the construction of the building is in terms of the building permit itself and the orders communicated are arbitrary and illegal.

5. Heard the learned Counsel for the Petitioner and the learned Counsel appearing for the Respondents.

6. The Secretary of the Panchayat, in his counter affidavit has explained that Ext.P4 is not a building permit issued by the Secretary. It was obtained by the Petitioner with the assistance of a temporary employee of the Panchayat who is not now in service and it is clearly an act of manipulation. The consent letters alleged to have been given by the neighbors have not been furnished to the Panchayat. The application for license said to have been submitted on 11/11/2009 for running the unit was rejected as no building was constructed at that point of time. On the application for issuance of building permit also, by Ext.R1(b) communication, he was informed that the same has been rejected. On getting complaint from the third Respondent and other neighbours, the subsequent proceedings have been initiated.

7. It is contended that neither for the construction of the building nor for the conduct of the usiness, the Panchayat has given any permit or license. It is pointed out that there is no report showing no objection by the Medical Officer as well as the consent from the Pollution Control Board for starting the business.

8. The learned Counsel for the Petitioner submitted that the Petitioner has not received any communication rejecting the application for building permit and no reply was given by him with regard to the rejection of the application for license also. Therefore, the applicant is entitled for deemed license on expiry of the statutory period and reliance is placed on the decision of this Court in *Rajesh Ramachandran v. Corporation of Thiruvananthapuram* 2008 (3) KHC 175

9. Herein, some other aspects are also relevant for consideration. Evidently, the building permit, Ext.P4, produced by the Petitioner does not bear the date, and signature of the Secretary. He has not explained the source from which it was received. The Secretary has denied the involvement in the matter and has explained that the Petitioner has obtained the same with the assistance of the temporary employee, Shri Kuttikrishnan. Evidently, the Secretary is the competent authority to issue permit. Therefore, as the veracity of Ext.P4 has itself been denied, the contention that he had obtained a building permit validly

cannot be accepted. The Panchayat has taken a contention that since it is a paddy field, the application for building permit was rejected by Ext.R1(b). Of course, the learned Counsel for the Petitioner submits that the Petitioner has not received it and the site is not a paddy field.

10. The learned Counsel for the Panchayat invited my attention to Ext.R1(c) communication given by the Petitioner, dated 19/05/2010, to the Secretary, wherein it is stated that he has not started the chicken farm. Therefore, it is contended that the Petitioner had knowledge about these aspects. The Panchayat has obviously taken action in the light of the report submitted by the Health Inspector produced as Ext.R1(d) which shows that the Petitioner has not taken any steps to prevent pollution and for avoiding nuisance. Evidently, these are mandatory requirements. Herein, the contention of the learned counsel for the Petitioner is that it was upto the Secretary on receipt of his application for license to contact such statutory authorities including the District Medical Officer and Pollution Control Board to get the required clearance. This contention cannot be countenanced in the light of the fact that the Petitioner has not taken any efforts either through the Panchayat or by himself to get the statutory clearances from such authorities. The question is whether the Petitioner was entitled for deemed license on expiry of the statutory period prescribed u/s 236 (3) of the Act. Herein, evidently, no proper building permit has been issued to him and, therefore, the construction of the building itself is found to be against the rules. In that view of the matter, the Petitioner cannot bank upon the principles governing deemed license. Evidently, Ext.P7 notice issued by the Panchayat shows that the requisite permissions from the District Medical Officer and the Pollution Control Board have also not been obtained by the Petitioner. Admittedly, he has not taken any further steps in the matter. Therefore, the action taken by the Panchayat to close down the unit cannot be said to be illegal or arbitrary on that score also.

11. The learned Counsel for the Petitioner submitted that the Petitioner is having no other means and had to borrow money for starting the unit and the Panchayat ought to have shown some indulgence in the matter. It is alleged that the third Respondent's undue influence has resulted in the action taken by the Panchayat. Evidently, the Panchayat cannot be faulted for insisting compliance of statutory formalities for starting the business and for constructing the building.

12. The learned Counsel for the Petitioner, relying upon Ext.P12 photographs, argued that the property is not a paddy field but a dry land. Actually, the said aspect is not the main ground for the action now taken by the Secretary. The view taken by the Secretary in the light of the facts stated above cannot be said to be faulty. For all these reasons the writ petition is dismissed. This will not prevent the Petitioner from moving the Panchayat with proper applications for starting the business and to get a building permit after complying with all statutory formalities which will be duly considered by the first Respondent. No costs.