

(2021) 01 KL CK 0589

In the High Court Of Kerala

Case No : Writ Petition (C) No. 31324 Of 2016

Maimoonath And Ors

APPELLANT

Vs

State Of Kerala And Ors

RESPONDENT

Date of Decision : 27-01-2021

Acts Referred:

Citation : (2021) 01 KL CK 0589

Hon'ble Judges : Gopinath P, J

Bench : Single Bench

Advocate : Praveen K. Joy, T. Sethumadhavan, Preethi P.V, M.V. Balagopal, K J Mohamed

Final Decision : Disposed Of

Judgement

1. This writ petition has been filed challenging Ext.P9 order of the District Collector, Malappuram by which the petitioners's application for assignment of 0.40 Ares of land has been rejected.

2. The brief facts are that the petitioners are the owners of an extent of 4.46 ares of land in old survey No.366/6 of Tirurangadi Village in

Malappuram District. Petitioners obtained a building permit from the then Tirurangadi Panchayath on 20.04.2012. The erstwhile Tirurangadi

Panchayath is now a Municipality named Tirurangadi Municipality. The property belonging to the petitioners lies immediately behind the Tirurangadi

Village Office which is situated in R.S.No. 366/4, on the Parappanangadi - Kakkad Road. The petitioners claimed that they have access to the above

said road, directly from their property. It however, appears that the property through which the petitioners claim access to the aforesaid road on the

southern side belongs to the government and the Tirurangadi Village Office

situated on that property.

3. The petitioners therefore submitted an application for an assignment of 0.40 ares of land. The District Collector Malappuram, originally rejected the application for assignment. The petitioners filed an appeal before the Land Revenue Commissioner, who through Ext.P6 order found, in the facts and circumstances of the case, that the land in question could be assigned to the petitioners by fixing the land value at Rs.4,29,842/- per Are. The Land Revenue Commissioner also concluded that in the totality of the facts and circumstances of the case, the claim of the petitioners was genuine and ought to be considered favorably. The Land Revenue Commissioner also found that the petitioners could approach the Government for using the land in question as access to their property. The petitioners thereupon approached this Court through WP(C) No.3938/2016 and this Court disposed of the writ petition as under :

“In view of the fact that the land can be assigned for the beneficial enjoyment of the land of the person, this Court is of the view that the matter requires reconsideration. If there is no other impediment, the District Collector shall take appropriate steps to assign the land to the petitioners in terms of the Kerala Land Assignment Act and Rules. Needful shall be within two months. Till a decision is taken in this matter, status quo shall be maintained.”

4. The matter was again considered by the District Collector, who found through Ext.P9 that the land in question cannot be assigned as the area was being used as a parking space for those visiting the Village Office.

5. It is not disputed before me that Ext.P2 is a fairly accurate sketch of the land belonging to the petitioners and the land belonging to the Tirurangadi Village Office. It is also not disputed, if an area of 0.40 Ares is assigned to the petitioners, they will be able to have access to the Parappangadi - Kakkad Road.

6. The learned counsel for the petitioners also submits that this will be the only access as otherwise their land is completely landlocked. He relies on the provisions of the Kerala Land Assignment Act, 1960 and the Assignment of land within Municipal and Corporation Areas Rules 1995, to contend that in situations like this, the land in question could be assigned for beneficial use of property belonging to the petitioners. The learned Counsel would

specifically refer to Rule 3 of the assignment of land within Municipal and Corporation areas Rules 1995, and points out that one of the purposes for which land may be assigned is for beneficial enjoyment of adjoining registered holdings.

7. I have heard the learned Government Pleader for the respondents 1 to 5 and Sri. Sethumathavan, learned Senior Counsel appearing for the

Thirurangadi Municipality on basis of instructions of Smt. Preethi P.V., the Standing Counsel for the Municipality. The learned Senior Counsel for the

Municipality would submit that the Municipality has initiated action against the petitioners regarding the constructions put up by them on the ground

that there is lack of sufficient parking space and lack of access and that issue was now pending before the Tribunal for Local Self Government

Institutions, Thiruvananthapuram. He would also submit that according to the Municipality, the petitioners could also consider purchasing and providing

alternate land for the use of Village Office, in which case they could have direct access from the Parappangadi - Kakkad Road to this property.

8. The learned Government Pleader for respondents 1 to 5 would contend that the petitioners have no legal right to claim that land belonging to the

Government and now being used by the Tirurangadi Village Office should be assigned to them for the purpose of providing access to their property.

He would submit that the land which is sought to be assigned is presently being used as a parking area for persons visiting the Village Office, and that

any order of assignment would cause extreme prejudice to persons who may come to the Village Office for various purposes.

9. The learned counsel for the petitioners would rely on a judgment of a Division Bench of this Court in Baiju K. v. Government of India and another

[2011 (4) KLT SN 115] where, in respect of certain land lying between the building in question in that case and a canal behind that building, this Court

directed as follows:

8. So far as W.P.(C) Nos.17074/2010, 34130/2010, 3422/2011, 6847/2011 and W.A. No.1251/2011 are concerned, the reliefs sought in effect are

for declaration that there is no encroachment or violation of the Building Rules and in the alternative, for assignment of 2.5 cents of land and for

regularisation of the unauthorised construction for the petitioners to apply for classification of the hotel with the Indian Tourism Department and for

commencement of business in the Star Hotel after applying for and obtaining FL-3 Licence for the Bar. We have already found that if the partial demolition is done of the pillars of the building constructed partly in the 2.5 cents of land, the same will affect the structure leading to complete loss and destruction to the building. We also found that there is no corresponding benefit either to the Panchayat or to the Revenue authorities or to the public at large by causing this massive destruction to petitioners' building. From the proceedings issued by the Government, Government also does not oppose regularisation of the partial construction made on roof top by the petitioners, probably on terms. We are amazed to note the destructive approach of the Panchayat because petitioners' hotel, if starts functioning, will bring regular revenue to the Panchayat by way of taxes and will certainly provide employment to minimum 50 people in the area. Further, the Panchayat and the Revenue authorities are not going to be benefited by the partial demolition of petitioners' hotel and restoration of a little land on the side of a public canal. Above all, we notice that there is mistake on the side of the Panchayat as well as Revenue authorities in as much as Panchayat approved the building plan vide Ext.P2 way back in 1998 without noticing the alleged encroachment and the Revenue authorities have stated that the mistake in Re-survey led to the inclusion of 2.5 cents of puramboke land in the control of private persons. In fact, it is seen from the previous documents that even the previous owner obtained the property including 2.5 cents by document of 1969. Considering the interest of the hotel owners, the Panchayat and the Revenue authorities and the public at large, we allow the above W.P.(C)s and the Writ Appeal filed by the hotel owners by directing the District Collector, Kollam to assign 2.5 cents of land found as encroached vide Ext.P20 and the Government to approve the unauthorised construction on petitioners depositing Rs.50 lakhs to the District Collector, Kollam, and producing receipt for the same. The amount so paid shall be treated as consolidated amount payable by the petitioners for the value of 2.5 cents of puramboke land assigned to the petitioners and the compounding fee payable for the regularisation of the alleged unauthorised construction by the petitioners. The District Collector, Kollam will keep Rs.50 lakhs in a separate account for construction of Hospital Ward Building in the Kottarakkara Taluk Government Hospital in accordance with the directions separately issued by this court. Since the amount

involved is substantial, the petitioners are granted time till 30th November to deposit the amount with the District Collector. However, assignment will be made and unauthorised construction will be regularised only after payment and production of receipt. If amount is not deposited as above, the relief granted above will stand vacated and the W.P.(C)s. except W.P.(C) Nos.33960/2010 and 6384/2011 and Writ Appeal will stand dismissed. The assignment of land and regularisation of unauthorised construction should be done within thirty days from date of deposit of the amount and on production of orders on assignment and regularisation, the Panchayat shall number the building, make assessment of property tax and regularise the provisional licence issued for running the restaurant. The Classification and Approval Committee of the Tourism Department will consider petitioners' application thereafter. Petitioners are free to apply for FL-3 Licence in accordance with the Rules.â??

10. The learned Counsel for the petitioners contends that the issue in this case is to be considered in the light of the observations of the Division Bench

in Baiju (supra). He also submits that a special leave petition filed against the judgment in Baiju (supra) has been dismissed by this Court.

11. In the totality of the facts and circumstances of the case, I think that this is a matter which is to be reconsidered by the District Collector.

12. The learned counsel for the petitioners has submitted that, if the land having an extent of 0.40 Ares is assigned to them, they will not put up any boundary wall or gate or any other sort of construction on the said land, and it will be used only as an access to their property. He also states that the petitioners are willing to undertake that the public will be permitted to use of that land without affecting their ingress and egress to their property.

13. I am of the opinion that, if there is no other impediment, the land having an extent of 0.40 Ares can be assigned to the petitioners, on the petitioners depositing the land value as on date as assessed by the District Collector, and subject to the condition that the petitioners will not put up any boundary wall, gate or any construction, and it shall be used only as an access to their property. The assignment will also be subject to the condition that the public in general will not be denied access to the property assigned, however, that the ingress and egress of the petitioners shall not be interfered with in any manner.

14. I, therefore, set aside Ext.P9 order and direct the District Collector, Malappuram, to consider the petitioners application for assignment, in the light of the above observations and subject to the conditions, which are indicated herein above. I make it clear that this judgment does not consider any issue between the petitioners and the Municipality regarding violation of the Building Rules, and that matter shall be adjudicated by the Tribunal for Local Self Government Institutions untrammelled by any observations in this judgment.

15. Pending consideration of the matter by the District Collector, Malappuram, status quo as on today shall be maintained. The District Collector, Malappuram, shall endeavour to dispose of the matter, after hearing the petitioners as well as the Municipality, within a period of three months from the date of receipt of a copy of this judgment.

This writ petition will stand disposed of accordingly.