

(2022) 03 KL CK 0225
In the High Court Of Kerala
Case No : Writ Appeal No. 185 Of 2022

Panjal Grama Panchayat

APPELLANT

Vs

Aneesh P

RESPONDENT

Date of Decision : 25-03-2022

Acts Referred:

High Court Act, 1958 — Section 5
Kerala Panchayat Building Rules 2019 — Rule 2(ad), 2(ae), 3(2), 4, 5, 31, 31(1), 31(13)

Citation : (2022) 03 KL CK 0225

Hon'ble Judges : S.Manikumar, CJ;Shaji P.Chaly, J

Bench : Single Bench

Advocate : P.C.Sasidharan, Lindons C.Davis, Swathy.A.P

Final Decision : Disposed Of

Judgement

Shaji P.Chaly, J

1. This appeal is preferred by the respondents in W.P.(C) No.27104 of 2021, challenging the judgement of the learned Single Judge dated 10.12.2021, whereby the learned Single Judge allowed the writ petition, quashed Exhibits P6 and P7 notices issued by the 2nd appellant i.e., the Secretary, Panjal Grama Panchayat, Thrissur District and directed the appellants to take up the applications submitted by the writ petitioner for building permit, and consider the same and pass orders within one month from the date of receipt of a copy of the judgement. The subject issue arises under the Kerala Panchayat Building Rules 2019, hereinafter called Rules 2019

2. Exhibit P6 is a notice issued by the 2nd appellant dated 12.7.2021, whereby the writ petitioner was informed that since the property for which the building permit sought for is deemed to be an area where plot sub-division is required under rule 31(1) of the Rules, 2019, however, the writ petitioner has not submitted the documents related to lay out approval under rule 31(13) of Rules, 2019. Therefore, the writ petitioner was directed to produce the plot layout in

accordance with rule 31(13) of Rules, 2019, within 7 days; whereas Exhibit P7 is a notice issued by the 2nd appellant dated 16.10.2021, informing the writ petitioner that the land development permit under rule 3(2) of the rules, 2019 for the land including the survey number in question is not available till date, and therefore, informed that the local body Secretary has only the power to regularise construction/land development activities, which have complied with rule 92 of the Rules, 2019, dealing with the power of the Secretary to regularise certain constructions.

3. The sum and substance of the case of the appellant Panchayat is that no land development permit was secured by the owner of the property to sub - divide the larger extent of property in his ownership and possession, from whom the writ petitioner has purchased an extent of 3.86 Ares in Panjal Village, Thrissur District as per Exhibit P1 sale deed dated 30.3.2021 .

4. The learned Single Judge, after taking into account the rival submissions and pleadings, has followed the proposition of law laid down by a learned Single Judge of this Court in Nafeesa v. Chavakkad Municipality [2018(3) KLT 1] and held that a purchaser of a small plot from a large extent of property is not liable to secure any land development permit in contemplation of the provisions of Rules, 2019. In fact, the judgement in Nafeesa (supra) rendered by the learned Single Judge, is on the basis of the Kerala Panchayat Building Rules, 2011, however, the rules were typical in nature.

5. Brief material facts for the disposal of the writ appeal are as follows; the writ petitioner and his wife purchased 3.86 Ares of land in Panjal Village, Thrissur District as per Exhibit P1 sale deed dated 30.3.2021. Petitioner has filed an application on 5.7.2021 for building permit before the Secretary of the aforesaid Grama Panchayat-the 2nd appellant, however, petitioner was served with Exhibits P6 & P7 notices demanding to produce the plot development permit for considering the building permit application. According to the writ petitioner, he has purchased a small extent of dry land for constructing a residential building and he does not intend to develop land further in contemplation of the provisions of Rules, 2019. Therefore, according to the writ petitioner, there is no requirement for plot development permit and hence, the directions contained in Exhibits P6 & P7 notices are not legally sustainable.

6. Appellants have filed a detailed counter affidavit basically stating that whenever, there is a subdivision of plot, a development permit has to be secured from the Secretary of the Grama Panchayat, as required under the provisions of Rules, 2019; relying upon rule 2(ae), rule 4, rule 5, and rule 31 of the Rules, 2019 it is submitted that since development permit is a mandatory requirement in order to subdivide a plot, the Secretary of the Panchayat is entitled as of right to insist a purchaser of a small plot to produce the development permit.

7. However, the learned Single Judge, after assimilating the legal and factual circumstances, has arrived at the conclusion that there is no such requirement

under Rules, 2019 so as to insist a purchaser of a small extent of property to produce development permit, especially following the proposition of law laid down by a learned Single Judge of this court in Nafeesa (supra). It is thus challenging the legality and correctness of the judgement of the learned Single Judge, the appeal is preferred by the Panchayat and its Secretary.

8. The paramount contention advanced is that the learned Single Judge has not properly comprehended the ambit and scope of the statutory rules and the facts of the case. It is further submitted that merely because a developer, who subdivided the property and sold it, has not secured a development permit before the sale of the plot, that will not disable the Panchayat to insist for the development permit for grant of building permit from a person, who applies for building permit. It is further contended that the Rules, 2019 applies to all lands, which are proposed to be developed or redeveloped for construction of buildings. Other contentions are also raised, relying upon rule 3(2), rule 4, rule 5 and rule 31 of the Rules, 2019, which would be dealt with hereunder .

9. We have heard Sri.P.C.Sasidharan for the appellants, Sri.Lindons C.Davis and Smt.Swathy.A.P. for the respondent/writ petitioner, and perused the pleadings and material on record.

10. Learned counsel for appellants advanced arguments based on the deliberations made above. The Kerala Panchayat Building Rules, 2019 has come into force on and w.e.f. 8.11.2019. Section 2(ad) defines 'developer' to mean, any individual or group of individuals or any firm (by whatever name called) who undertakes any building activity including construction, reconstruction, repairs, additions or alterations of buildings or development or redevelopment of land on behalf of the owner or by himself who has obtained permit under the provisions of these rule, through an agreement executed between them. 'Development of land' is defined under section 2(ae) to mean, any material change on the use of land other than for agricultural purpose brought about or intended to be brought about by filling up of the land or changing from the existing former use of the land, layout of streets and foot paths, provision of water supply, sewerage, drainage, electrification, landscaping, subdivision of land for residential plots or for other uses including layout of internal streets, developing parks, playgrounds and social amenities of the like, but does not include legal partitioning of family property among heirs.

11. Therefore, on a reading of the definitions of 'developer' and 'development of land', it is clear that it contemplates a situation wherein a developer is developing a land and carrying out constructions, as stipulated under the definition of development of land. Here is a case where the writ petitioner is a purchaser of a small extent of property from a larger area and he intends to carry out construction of a small building for his residential use.

12. Learned counsel for appellants Sri.P.C.Sasidharan has made heavy reliance upon rule 3(2) of Rules, 2019 dealing with any public or private building to which

the Rules, 2019 applies. Sub-rule 2 of rule 3 specifies that the Rules, 2019 shall apply to all lands which are proposed to be developed or redeveloped for construction of buildings. Rule 4 deals with essentiality of permit and sub-rule (1) thereto stipulates that no person shall develop or redevelop any parcel of land by subdividing into plots or cause the same to be done without first obtaining a permit for each such development or redevelopment from the Secretary.

13. In our view, the development and redevelopment of land and sub-division of plots referred to in the aforesaid rules will have to be read together with rule 2(ad), rule 2(ae), defining developer and development of land. Therefore, on a conjoint reading of the aforesaid provisions, it is clear that the development permit in contemplation of the rules is required when the activities as envisaged under the definitions of "developer and development of land" takes place. Learned counsel has relied upon rule 5 of Rules, 2019 and submitted that even a person other than a Central or State Government department, who intends to develop or redevelop any parcel of land by subdividing into plots, shall apply in writing to the Secretary in the form in Appendix A3. This would also clearly exemplify that development or redevelopment of any parcel of land by subdividing into plots is an integrated activity by the developer in contemplation of the development of land as defined under Rules, 2019.

14. The learned counsel has also relied upon rule 31 dealing with land subdivision and plot developments wherein it is stipulated that all new land subdivisions and plot developments shall be subject to, (i) the area of any newly subdivided plot, reconstituted plot or building plot shall be not less than 125 sq. metres with an average width of 6 metres.

15. In our considered opinion, that only deals with a situation where a specified area is required for a divided plot in order to carrying out construction of any residential building and the rest of the provisions under rule 31 would show that the requirements contained thereunder are required when the plot is developed in accordance with the 'development of land' as prescribed under rule 2(ae) of Rules, 2019.

16. Therefore, on a reading of the rules discussed above conjointly, we have no hesitation to hold that it contemplates an entirely different situation from the purchase of a small plot of land by an individual from a larger area, whether the owner of the property has divided the same into various plots and sold it or not. Learned counsel for appellants in that regard submitted that, if that is the situation, any owner of a larger area can easily dilute the provisions of the Rules, 2019. However, in our considered opinion, no such contingency arises in the context for the reason that, the purchaser of a small plot viz., the writ petitioner, has filed an application seeking building permit to carry out construction of a residential building in his plot, since he is not conferred with any other rights by the owner of the larger extent of property. Thus to say otherwise, the case projected by the appellants definitely would have had much force if the individual purchasers of the plots made a joint application for development of the plots. But

there is no case for the appellants that any such joint effort is made by the different plot owners .

17. Therefore, the writ petitioner, an owner of a small extent of property not having the power or authority to seek a development permit for the entire property belonging to some other persons, cannot be compelled to secure a development permit for carrying out construction of a residential building in his property . Moreover, merely because a larger area is divided into 56 plots and provided roads for ingress and egress to the purchasers, the Secretary of the Panchayat is not empowered under the Rules, 2019 to insist for a development permit. In our view this was exactly the question considered by a learned Single Judge in Nafeesa (supra), which was relied upon by the learned Single Judge to allow the writ petition. It is better to extract relevant portion of the judgement in Nafeesa supra, which reads as follows:

"5. The question that essentially arises for consideration is whether the petitioners, who have purchased small parcels of land from the vendors, who had larger parcels of land, from which a smaller portion was sold to the petitioners, are required to produce a development permit in respect of the lands purchased by them as a pre-condition for effecting the constructions proposed, through the building permit sought by them. It is relevant in this connection to notice the definition of 'development' as obtaining under the Kerala Municipality Building Rules, 1999/Kerala Panchayat Building Rules, 2011. The definition of 'development of land' in Rule 2(v) reads as under:

"(v). 'development of land' means any material change on the use of land other than for agricultural purpose brought about or intended to be brought about by filling up of the land and/or water bodies or changing from the existing former use of the land, layout of streets and foot paths, sub-division of land for residential plots or for other uses including layout of internal streets, conversion of wet land, and developing parks, playgrounds and social amenities of the like, but does not include legal partitioning of family property among heirs." ...

The definition is similar under the Kerala Panchayat Building Rules also. An analysis of the said definition of 'development of land' would clearly indicate that, in the context of sub-division of land, a mere subdivision of land per se, without anything more, would not attract the definition of 'development of land' for the purposes of the Rules. The definition is unambiguous, when it states that the sub-division of land for residential plots or for other uses including layout of internal streets, must be such as brings about or is intended to bring about any material change on the use of the land. The reference to 'land' here must necessarily be to the land in the hands of the person who resorts to the sub-division of the land. In my view, the sub-division of land, so as to amount to a development of land, must be in the hands of the owner of the larger parcel of land, and the land so sub-divided, together with the layout of internal streets, must result in the development of the entire parcel of land. The position is the same even in the case of the Kerala Panchayat Building Rules, save that in the said Rules, a layout

of internal streets is not contemplated. In any event, inasmuch as in the instant cases, it is not established that the vendors of the property had resorted to a sub-division of the entire plot owned by them with a view to developing the said plot in their hands, prior to a sale of a small portion of that property to the petitioners herein, I am of the view that a sale simpliciter, of a smaller portion of property, from out of a larger extent of property owned by the vendor, will not attract the definition of 'development of land' for the purposes of the Rules, thereby necessitating the obtaining of a development permit. I note in this connection that by the judgment dated 10.4.2013 of this Court in W.P.(C) No.20204/2012 and connected cases, a similar view, albeit without specific reference to the provisions, has been taken by another learned Single Judge while deciding an issue as to whether or not a development permit was required when garden lands were sub-divided by the vendor into small plots for sale to different individuals. I am of the view that unless in the hands of the purchaser of the smaller portion of land, an activity which attracts the definition of 'development of land', as noticed above, is involved, there would be no requirement for a person purchasing a plot of land for putting up a construction therein, to obtain a development permit prior to applying for a building permit for the said construction. I therefore allow these Writ Petitions, by quashing the orders impugned, and directing the respondent Municipality/Panchayat to consider the application for building permit submitted by the petitioners without insisting on a development permit. The Municipality/Panchayat shall consider and pass orders on the application for building permit, on merits, and in accordance with law, within a period of three weeks from the date of receipt of a copy of this judgment, after hearing the petitioners."

18. That apart a similar view was taken by learned Single Judges prior to Nafeesa (supra) in the judgments in W.P.(C) No.23281 of 2011 dated 20th October, 2011, W.P.(C) No.20204 of 2012 dated 10th April, 2013 and W.P.(C) No.4853 of 2016 dated 18th July 2016, interpreting the typical provisions of the Kerala Panchayat Building Rules 2011 .

Taking into account the factual and legal circumstances discussed above, we have no hesitation to hold that the learned Single Judge was right in following the judgement in Nafeesa supra. We are also in respectful agreement with the proposition of law laid down in Nafeesa by the learned Single Judge. Taking into account the aforesaid circumstances, we do not think the appellants have made out a case of jurisdictional error or other legal infirmities, justifying our interference in the judgement of the learned Single Judge in an intra court appeal filed under section 5 of the High Court Act, 1958.

Needless to say, the writ appeal fails, accordingly, it is dismissed. However, since the time period granted by the learned Single Judge for consideration of the application has already expired, it would stand extended for a period of three weeks from today.