
(2014) 10 KL CK 0321
In the High Court Of Kerala
Case No : W.P. (C). No. 13315 of 2010 (L)

P.C. Mathai

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 16-10-2014

Acts Referred:

Citation : (2014) 10 KL CK 0321

Hon'ble Judges : A.K. Jayasankaran Nambiar, J

Bench : Single Bench

Advocate : Raju Joseph, (SR.) and C.N. Midhun, Advocate for the Appellant; Babu Karukapadath, M.A. Vaheeda Babu, Jagan George, Abdul Samad, K.M. Faizal, K.A. Noushad, P.G. Pramod, Kandampully Rahul, Advocates and Noushad Thottathil, Government Pleader, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—The challenge in the writ petition is against Ext. P8 order passed by the 1st respondent whereby the 1st respondent considered the issue of granting sanction to the 4th respondent to maintain a burial ground, in a property that is stated to be near to that of the petitioner, and accorded sanction for the same. The sequence of events that led to the passing of Ext. P8 order is that, on an application filed by the 4th respondent in terms of Rule 6(3) of the Kerala Panchayat Raj (Burial and Burning Grounds) Rules, 1998, hereinafter referred to as the "Rules", the District Collector had initially passed Ext. P1 order dated 24.03.2006, rejecting the same. The 4th respondent, therefore, preferred another application before the District Collector, after changing the location of the proposed burial ground. This application by the 4th respondent also came to be rejected by the District Collector by Ext. P5 order dated 16.5.2008. Aggrieved by the said order, the 4th respondent filed an appeal under Rule 6(1) of the aforementioned Rules before the 1st respondent Government. While the said appeal was pending, the petitioner moved this Court through W.P. (C). No. 23429/2009 for implementing Ext. P5 order of the District Collector. Taking note of the fact that the appeal preferred by the 4th respondent was pending consideration before the 1st respondent, this Court by Ext. P7

judgment directed the 1st respondent to consider and dispose the appeal, preferred by the 4th respondent, after hearing the petitioner as well. Ext. P8 order dated 27.3.2010 of the 1st respondent was passed pursuant to the directions of this Court. In Ext. P8 order, the 1st respondent notices a report of the Deputy Superintendent of Police, District Special Branch, Ernakulam Rural, Aluva, that stated that local people had protested over the construction of the cemetery and that there was a possibility of a law and order problem in the area and then considers a later report of the District Collector, Ernakulam which stated in unequivocal terms that there is no possibility of any law and order problem consequent to the sanctioning of the cemetery. In Ext. P8, the objections with regard to the possible health hazards that could arise consequent to the sanctioning of the cemetery were also considered, by examining the report submitted by a team of Doctors and technical assistants headed by the District Medical Officer which revealed that there was no possibility of health hazards due to the construction of the cemetery on the proposed site, and also that the distance limits from the dwelling houses and water sources as contemplated under the Rules had been fully met. The 1st respondent thereafter issued directions to the District Collector, Ernakulam to give permission to the applicant to construct a vault type cemetery strictly adhering to the specifications prescribed by the District Medical Officer.

2. I have heard Sri. Raju Joseph, the learned Senior counsel appearing on behalf of the petitioner, Sri. Babu Karukapadath, the learned counsel appearing on behalf of the 4th respondent and also Sri. Rafeek. V.K., the learned Government Pleader appearing on behalf of respondents 1 and 2.

3. The main contention of the learned Senior counsel Sri. Raju Joseph, appearing on behalf of the petitioner, while impugning Ext. P8 order passed by the 1st respondent is that, although by Ext. P7 judgment it was made clear that the 1st respondent should pass an order only after providing the petitioner an opportunity of hearing, the said opportunity of hearing was never extended to the petitioner. It is his specific case that, although a notice was issued to the petitioner by the 1st respondent informing him that the appeal was posted for hearing on 25.02.2010 before the 1st respondent and the petitioner's representative together with his advocate had appeared before the 1st respondent on that date, there was no representation on behalf of the appellant and hence, no hearing took place on that date. It is further submitted that while the representatives of the petitioner waited in the office of the 1st respondent for some more time, the 4th respondent never reached there and it was therefore that the hearing that was scheduled did not go ahead on that date. This contention of the Senior counsel is vehemently denied by the 4th respondent as also by the learned Government Pleader appearing on behalf of respondents 1 and 2. It is pointed out that the hearing was scheduled on 25.02.2010 before the 1st respondent and due notice of that fact had been given to the petitioner and the petitioners representatives were in fact heard by the 1st respondent on that date.

4. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I note, at the outset, that there is a dispute with regard to the fact as to whether the petitioner was actually heard prior to the passing of Ext. P8 order. By Ext. P7 judgment of this Court there was a specific direction to the 1st respondent to pass orders only after hearing the petitioner. While the petitioner would maintain that he was not heard in the matter prior to the passing of Ext. P8 order, the respondent would contend otherwise. A reading of Ext. P8 order itself, however, would indicate that the persons deputed by the petitioner for the hearing on 25.02.2010 were not heard. In paragraph 7 of Ext. P8 order, what is recorded is that the petitioner Sri. P.C. Mathai was heard in person by the 1st respondent on 25.02.2010 and that, no new grounds were put forth by the parties during the hearing. This obviously could not have been the case since, admittedly, the petitioner was never in the office of the 1st respondent on 25.02.2010 as he had only deputed his representatives for the hearing and further, Ext. P8 does not indicate that the said representatives were heard or, if in fact they were heard, what their contentions were at the time of hearing. In this view of the matter I feel that, without expressing any view on the merits of Ext. P8 order, it would be necessary for the 1st respondent to pass a fresh order in the matter, after hearing the petitioner as well as the 4th respondent, or their representatives, and after considering the reports from the District Administration/Police Authorities and District Medical Officer with regard to the issues that are raised by the parties. To enable the 1st respondent to have a fresh look into the matter, I quash Ext. P8 order passed by him and direct him to pass fresh orders, as directed above, within a period of one month from the date of receipt of a copy of the judgment. The petitioner and the 4th respondent will appear, either in person or through their representatives, before the 1st respondent on 29.10.2014 at 11 a.m., for a hearing in the matter. The 1st respondent shall record the submissions made on behalf of the petitioner and the 4th respondent on that date and the said submissions shall be reflected in the order to be passed by the 1st respondent within the time frame mentioned in this judgment.

With these directions, the writ petition is disposed.