

(2021) 06 KL CK 0206

In the High Court Of Kerala

Case No : Writ Petition (C) No. 26108 Of 2018

Sheena Shivaprasad

APPELLANT

Vs

Udayanapuram Grama Panchayath Represented By The
Secretary

RESPONDENT

Date of Decision : 11-06-2021

Acts Referred:

Kerala Panchayat Raj Act, 1994 — Section 233
Kerala Forest (Regulation of Sawmills and Other Wood-based Industrial Units) Rules,
2012 — Rule 4(a), 6(i), 6(r)

Citation : (2021) 06 KL CK 0206

Hon'ble Judges : P.B.Suresh Kumar, J

Bench : Single Bench

Advocate : Sheena Shivaprasad, Sandesh Raja, K.J.Manuraj, T.Naveen, George Sebastian, Amicus Curiae, S.Radhakrishnan, S.Rajmohan, R.Anjali, Aditya Thejus Krishnan

Final Decision : Disposed Of

Judgement

P.B.Suresh Kumar, J

1. Petitioner is a person residing within the limits of Udayanapuram Grama Panchayat (the Panchayat). The grievance of the petitioner in the writ

petition concerns the furniture manufacturing unit run by the sixth respondent in the property adjacent to the residential property of the petitioner.

2. The building in which the petitioner is residing is one constructed in 2006 in a property purchased by the husband of the petitioner during 1990. The

adjacent property, measuring 2.160 cents belongs to the sixth respondent. The sixth respondent purchased the above property during 1999. It is stated

by the petitioner that the sixth respondent was earlier running a furniture manufacturing unit in a premises bearing Door No.558A in Ward No.IV of

the Panchayat located about 500 meters away from the residential property of the petitioner, and after purchase of the property adjacent to the residential property of the petitioner, he constructed a shed therein and shifted the furniture manufacturing unit to that shed, without obtaining the requisite licences and permissions from the authorities concerned. In order to show that the sixth respondent owns the building bearing No.558A in Ward No.IV of the Panchayat also, the petitioner has produced as Ext.P1, a copy of the ownership certificate issued by the Panchayat to the sixth respondent in respect of the said building. It is also stated by the petitioner that the unit of the sixth respondent is situated about 10 meters away from the house of the petitioner and as it was producing intolerable sound during its operation, during 2014 she preferred Ext.P6 complaint before the Ombudsman for Local Self Government Institutions, Thiruvananthapuram. The said complaint was disposed of by the Ombudsman in terms of Ext.P9 order permitting the petitioner to prefer a complaint before the Secretary of the Panchayat, and directing the Secretary of the Panchayat to take appropriate decision thereon, after affording the petitioner and the sixth respondent an opportunity of hearing. Pursuant to Ext.P9 order, the petitioner preferred Ext.P10 complaint before the Secretary of the Panchayat. The Committee of the Panchayat considered Ext.P10 complaint and found that the sixth respondent is running the unit after obtaining all the requisite permissions and licences. Nevertheless, having regard to the grievance voiced by the petitioner, the Committee of the Panchayat disposed of Ext.P10 complaint directing the sixth respondent to limit the operation of the unit from 9 a.m. to 4 p.m. Ext.P11 is the decision taken by the Committee in this regard on 11.8.2016. The writ petition is filed almost two years thereafter, seeking a direction to the Panchayat and its Secretary to withdraw the licence issued to the sixth respondent for running the unit on the ground mainly that the operation of the unit in its present location is wholly unauthorised.

3. On 14.11.2018, a statement has been filed in the matter on behalf of the State Pollution Control Board, stating, among others that consent to operate the unit has been issued to the sixth respondent on 16.2.2012 with a validity upto 31.12.2013; that the sixth respondent later applied for renewal of the consent; that in the inspection conducted pursuant to the said application, certain defects were noticed, and the sixth respondent was accordingly

issued Ext.P5 communication imposing additional conditions; that the consent to operate the unit was later renewed for the period upto 31.12.2016,

having satisfied that the conditions imposed in terms of Ext.P5 communication have been complied with by the sixth respondent. It is also stated by the

State Pollution Control Board that the consent issued to the sixth respondent was later renewed on 6.1.2017 for the period upto 31.12.2019. It is

further stated by the State Pollution Control Board that the unit of the sixth respondent was inspected after the institution of the writ petition on

7.11.2018 and it was found that the pollution control measures provided by the sixth respondent are adequate.

4. On 11.12.2018, a statement has been filed on behalf of the fourth respondent, the Divisional Forest Officer, Kottayam stating, among others, that

the unit of the sixth respondent has been issued licence on 10.8.2015 for a period of three years in terms of the Kerala Forest (Regulation of Sawmills

and Other Wood-based Industrial Units) Rules, 2012.

5. On 5.3.2019, a counter affidavit has been filed in the matter on behalf of the Panchayat stating, among others, that the unit of the sixth respondent is

functioning in premises bearing door Nos.496, 497 and 498 in Ward No.XIV of the Panchayat, after obtaining licence from the Panchayat; that the

unit of the sixth respondent started functioning in the said premises even before the petitioner started residing in the adjacent property bearing door

No.495 and that the licence issued to the sixth respondent by the Panchayat has been renewed upto 31.3.2019.

6. On 22.6.2020, the sixth respondent has produced three documents as Exts.R6(a), R6(b) and R6(c) respectively, along with I.A.No.3 of 2020, of

which, Ext.R6(a) is the consent to operate the unit issued by the Pollution Control Board on 29.1.2020 valid till 31.12.2024, Ext.R3(b) is the licence

issued to the unit by the Panchayat on 16.4.2019 valid till 31.3.2020 and Ext.R6(c) is the cash receipt issued by the Panchayat to the petitioner

evidencing receipt of application for renewal of the licence for the period upto 31.3.2021.

7. Later, on 8.2.2021, the sixth respondent has filed counter affidavit in the matter stating, among others, that the building where he is running the unit

was originally in Ward No.IV of the Panchayat with Door No.558A and the same is now in Ward No.XIV with Door No.496; that he has been issued

permission by the Panchayat to establish the unit on 21.8.1999 in terms of Ext.R6(h) order; that as early as on 13.1.1999, the Forest Department of the State Government has issued No-objection certificate to him for registering a small scale industrial unit for starting a furniture manufacturing unit in the Panchayat in terms of Ext.R6(i) communication and that the licence issued under Kerala Forest (Regulation of Sawmills and Other Wood-based Industrial Units) Rules, 2012, for the unit has been renewed upto 9.8.2023. It is also stated by the sixth respondent in the counter affidavit that he does not own any other land or building in the Panchayat; that Ext.P1 certificate is one issued in respect of the very same building referred to by the petitioner in the writ petition and that the allegations of pollution and health hazard made by the petitioner are baseless.

8. A reply affidavit has been filed by the petitioner to the counter affidavit filed by the sixth respondent stating, among others, that the various licences and permissions obtained by the sixth respondent as produced by him along with the counter affidavit are licences and permissions obtained by the sixth respondent in respect of the premises where he was running the unit earlier. The petitioner has produced along with the said reply affidavit copies of the licences issued by the Panchayat to the sixth respondent during 2011, 2013, 2015, 2016, 2018, 2019 and 2020 as Exts.P17(a), P17(b), P17(c), P17(d), P17(e), P17(f) and P17(g) respectively. It is also stated by the petitioner in the reply affidavit that in terms of the siting criteria prescribed by the Pollution Control Board on 01.07.2011, the sixth respondent is not entitled to run the unit in its present location and that the sixth respondent has not obtained permission of the Panchayat under Section 233 of the Kerala Panchayat Raj Act.

9. On 9.2.2021, this court passed the following interim order :

â??On hearing learned counsel for the parties on either side, it was felt that the materials on record are not sufficient to resolve the issues in dispute between the parties in this matter.

2. In the circumstances, the fourth respondent is directed to file a statement indicating whether the location of the industrial unit referred to in the writ petition has

been changed after Ext.R4(a) licence and if not, the reason for showing a different building number and ward number in Ext.R6(r) licence issued under the Kerala

Forest (Regulation of Sawmills and other Wood-based Industrial Units) Rules, 2012. Likewise, the second respondent is directed to file a statement indicating whether

the licence in respect of the industrial unit referred to in the writ petition has been issued consistently to one and the same premises and if so, the reason for showing

different building numbers and ward numbers in different licences issued to the sixth respondent. The second respondent shall also state in the statement the

particulars of the machineries used by the sixth respondent in the premises of the industrial unit and whether the sixth respondent has obtained permission under

Section 233 of the Kerala Panchayat Raj Act, 1994 for the purpose of establishing the industrial unit. Similarly, the third respondent is directed to cause an inspection

to be made in the industrial unit of the sixth respondent and file a report before this court as to whether the conditions stipulated in the consent issued to the sixth

respondent are being complied with. The third respondent shall also state in the report as to the reason why the siting criteria as regards the location of wood-based

industries brought into force with effect from 20.07.2011 has not been insisted while issuing consent to the industrial unit of the sixth respondent.

Post on 25.02.2021.â??

10. Pursuant to the said interim order, the Secretary of the Panchayat has filed a statement in the matter on 25.2.2021 stating, among others, that

licence was issued by the Panchayat to the sixth respondent right from 1999 to run the unit in the premises referred to by the petitioner in the writ

petition; that the said premises was one falling under Ward No.IV upto 2013 and the same now falls under Ward No.XIV; that in the licence issued to

the sixth respondent in the year 2012, the Ward Number of the building was shown by mistake as Ward No.II instead of Ward No.IV without

showing the building number; that the said mistake was repeated inadvertently in the licences issued in the year 2014 and 2015 also; that the correct

building number of the premises of the sixth respondent was 558A in Ward No.IV and the same was renumbered in the year 2013 as building No.496

in Ward No.XIV; that different building numbers have been shown in the licence issued to the sixth respondent on account of the mistakes committed

by the Panchayat and that the unit was being run by the sixth respondent in one and the same premises all along. It is also stated in the said statement

that the sixth respondent is using 5HP power in aggregate in his unit, and the records of the Panchayat do not indicate that the sixth respondent has

obtained permission under Section 233 of the Kerala Panchayat Raj Act.

11. Pursuant to the interim order dated 09.02.2021, a report has been filed on behalf of the State Pollution Control Board stating, among others, that an

inspection was conducted on 26.02.2021 in the premises of the unit as directed in the interim order; that the ambient sound levels at two different

places of the house of the petitioner were measured on that day; that the ambient sound level at the residence of the petitioner were found to be

71.1dB and 61.1dB respectively when the unit was not functioning and the ambient sound level at the residence of the petitioner were found to be

74.9dB and 62.8 dB respectively when the unit was functioning; that since the unit of the sixth respondent was one established prior to the revision of

the siting criteria introduced with effect from 01.07.2011, the same does not apply to the said unit; that the unit of the sixth respondent is one that falls

under orange category; that such units were permitted to function prior to 01.07.2011 at a distance of 10 meters from residential premises; that the

distance between the residence of the petitioner and the unit of the sixth respondent is 15 meters and that the unit is functioning in compliance of the

various conditions imposed by the State Pollution Control Board from time to time.

12. On 16.03.2021, the court heard the petitioner who appeared in person, the amicus curiae appointed in the matter, the counsel for the Panchayat,

the counsel for the sixth respondent as also the learned Standing Counsel for the State Pollution Control Board.

13. The petitioner who appeared in person has asserted that the sixth respondent has established industrial unit elsewhere in the Panchayat and shifted

the same to its present location. It was pointed out by the petitioner that the sixth respondent has not obtained any licence or permission to run the unit

in its present location. In order to bring home the point, the petitioner relied on Ext.P1 ownership certificate issued by the Panchayat to the sixth

respondent as also Ext.R6(i) letter issued by the Divisional Forest Officer, Kottayam to the sixth respondent on 13.01.1999. The petitioner has also

relied on Exts.P17 series licences issued by the Panchayat to the sixth respondent in support of the point. It was also pointed out by the petitioner that in the light of the siting criteria prescribed by the Pollution Control Board on 01.07.2011, the sixth respondent is not entitled to operate the unit in the present location. It was further pointed out by the petitioner that on account of the sound pollution caused by the unit, the life in the locality has become miserable.

14. Per contra, the learned counsel for the sixth respondent submitted that the sixth respondent has established the industrial unit at the premises

where the unit is presently functioning and there has been no change of location at all. It was also submitted that all the permissions and licences

obtained by the sixth respondent and produced in the proceedings have been obtained by the sixth respondent in respect of the very same premises. It

was also submitted by the learned counsel that insofar as the sixth respondent has obtained all the requisite licences and permissions for running the

unit, the petitioner is not entitled to any relief in the writ petition.

15. The learned counsel for the Panchayat as also the Standing Counsel for the State Pollution Control Board have reiterated the assertions made by

the said parties in their respective pleadings.

16. Since it was asserted by the petitioner in the course of hearing that the sixth respondent has established the unit elsewhere in the Panchayat and

subsequently shifted the unit to its present location, this court ascertained from the petitioner as to whether she could file an affidavit indicating the

particulars of the premises where the sixth respondent was earlier running the unit. In response to the said query, the petitioner has filed an affidavit

on 22.03.2021 stating that the premises where the sixth respondent was earlier running the unit was sold by him to one Surendran, Peedikaparambil,

Koller Junction, Odayanipuram and that said premises is now being leased out by its owner for running an Akshaya Centre.

17. When this court directed the Secretary of the Panchayat to ascertain and report the correctness of the statement made by the petitioner in the

affidavit filed by her on 22.03.2021, the Secretary of the Panchayat has filed an affidavit on 24.03.2021 stating, among others, that the premises where

the Akshaya Centre is functioning is a premises in Ward No.XIV itself with Door No.424, previously Door No.533 in Ward No.IV and that no

document is available in the Panchayat indicating that the sixth respondent was running any industrial unit in the said premises at any point of time.

18. I have gone through the pleadings of the parties and perused the documents produced by them. I have also examined the arguments advanced by the parties.

19. The main ground on which the petitioner seeks relief in the writ petition is that the sixth respondent was running the furniture manufacturing unit at

a different place and that the same was shifted and continued in its present location without obtaining the licences and permissions required for the

same. In other words, the ground of the petitioner is that the various licences and permissions obtained by the sixth respondent for the industrial unit

are licences and permissions obtained by him in respect of the premises where the industrial unit was run by him earlier, and not in respect of the

present location of the unit. The first and foremost question to be examined therefore is as to whether the case set out by the petitioner that the sixth

respondent was running the furniture manufacturing unit at a different place prior to 1999 is correct.

20. The specific case pleaded by the petitioner in this regard is that the sixth respondent was running the industrial unit earlier in the premises owned

by him bearing Door No.558A in Ward No.IV of the Panchayat and the premises where the unit is presently run is the premises bearing Door No.496

in Ward No.XIV. She relies on Annexure R4(a) licence issued to the sixth respondent under the Kerala Forest (Regulation of Sawmills and Other

Wood-based Industrial Units) Rules, 2012 and Exts.P17(a), P17(b) and P17(c) licences issued to the sixth respondent by the panchayat, to show that

the said licences were issued not in respect of the present premises where the unit is run, but in respect of premises bearing Door No.558A in Ward

No.IV of the Panchayat. True, the premises referred to in Annexure R4(a) licence is Door No.558A in Ward No.IV. Similarly, the premises referred

to in Ext.P17(a) licence is Door No.558A in Ward No.IV. Likewise, the premises referred to in Exts.P17(b) and P17(c) licences is also Door

No.558A, though ward number is shown in the said licences as Ward No.II. In the counter affidavit filed by the Panchayat on 05.03.2019, it is

categorically stated that the building where the unit is functioning was one falling under Ward No.IV upto 2013 and the same now falls under Ward

No.XIV. It is also stated by the Panchayat that ward number has been shown mistakenly as Ward No.II instead of Ward No.IV in the licence issued to the sixth respondent during 2012 and the said ward number was shown inadvertently in the licences issued to the sixth respondent during 2015 and 2016 also. It is also stated by the Panchayat in the said counter affidavit that the old door number of the premises was 558A in Ward No.IV and the corresponding new door number is 496 in Ward No.XIV. In the affidavit filed by the Secretary of the Panchayat on 24.03.2021, it is asserted that no licence whatsoever has been issued to the sixth respondent for running the unit in any other premises. In respect of the assertion made by the petitioner in the affidavit filed by her on 22.03.2021 that the premises where the sixth respondent was earlier running the industrial unit has been sold by her to one Surendran, it is stated by the Secretary of the Panchayat in the affidavit dated 24.03.2021 that no licence whatsoever has been issued by the Panchayat to the sixth respondent in respect of the said premises. I do not find any reason to disbelieve the stand of the Panchayat in the matter.

21. Ext.R6(i) is a letter addressed by the Divisional Forest Officer, Kottayam to the Assistant District Industries Officer, Vikom dated 13.1.1999 stating that the Forest Department has no objection in granting SSI registration to the sixth respondent for starting a furniture manufacturing unit in building No.IV in the Panchayat. Placing reliance on the said communication, it was argued by the petitioner that the said communication being one issued long prior to the purchase of the property by the sixth respondent where the unit is presently located, it can be inferred that the industrial unit of the sixth respondent is not one established in its present location. I am not impressed by this argument also. Ext.R6(i) is only a No Objection Certificate of the Forest Department so as to enable the sixth respondent to obtain SSI registration for a furniture manufacturing unit. The said communication itself shows that the sixth respondent has not started the unit. If the sixth respondent had not started the unit at the time when the said communication was issued, there cannot be any inference at all based on the said document as submitted by the petitioner. In the circumstances, I have no hesitation to hold that the premises bearing Door No.558A in Ward No.IV and the premises bearing Door No.496 in Ward No.XIV are one and the same. In other words, the petitioner is not entitled to any relief on that premise.

22. As noted, it was also argued by the petitioner that in terms of the siting criteria prescribed by the State Pollution Control Board with effect from 01.07.2011, insofar as the distance between the house of the petitioner and the unit of the sixth respondent is less than 50 meters, the sixth respondent ought not have been granted consent to operate the unit. In the report filed by the State Pollution Control Board pursuant to the interim order dated 09.02.2021, it was explained that the unit of the sixth respondent being one established prior to 1.7.2011, the revised siting criteria brought into force with effect from 01.07.2011 does not apply to the said unit in terms of Ext.R3(f) circular issued by the Board. The petitioner has no case that the industrial unit of the sixth respondent is not one established prior to 01.07.2011. It is the specific case of the petitioner that the unit is one established in the present location during 1999. The petitioner does not challenge Ext.R3(f). In the circumstances, the contention aforesaid of the petitioner is only to be rejected.

23. True, permission of the Panchayat is required for industrial units in which it is proposed to employ electric power, and the said requirement is exempted only for industrial units with machinery having capacity of less than 5 HP. Ext.R6(h) proceedings of the Panchayat shows that the sixth respondent has been granted permission only to install machinery having capacity of 3HP. In other words, the sixth respondent is not entitled to use machinery having capacity of 5 HP in his industrial unit. The materials on record indicate that the sixth respondent is using machinery having capacity of 5HP in his industrial unit. The Panchayat, in the circumstances is obliged to ensure that the sixth respondent does not use machinery having capacity of 5HP, without obtaining permission of the Panchayat under Section 233 of the Panchayat Raj Act.

24. As noted, in terms of Ext.P11 order passed by the committee of the Panchayat, the sixth respondent is entitled to run the unit only between 9am and 4 pm. The petitioner has pleaded that the sixth respondent is operating the unit throughout the day. Insofar as Ext.P11 is an order that binds the sixth respondent, the Panchayat is obliged to ensure compliance of Ext.P11 order also.

In the result, the writ petition is disposed of directing the second respondent to ensure, by appropriate means, that the sixth respondent complies with

Ext.P11 order, and does not use machinery having capacity of 5HP in his industrial unit, without obtaining permission of the Panchayat.