
(2014) 08 KL CK 0091
In the High Court Of Kerala
Case No : Writ Appeal No. 1061 of 2014

Thomas Varghese

APPELLANT

Vs

District Collector

RESPONDENT

Date of Decision : 05-08-2014

Acts Referred:

Citation : (2014) 3 KHC 725 : (2014) 3 KLT 675

Hon'ble Judges : Ashok Bhushan, Acting C.J.;V. Chitambaresh, J

Bench : Division Bench

Advocate : S. Vinod Bhat and Legith T. Kottakkal, Advocate for the Appellant; P. Martin Jose, Pirappancode V.S. Sudhir, K. Rajesh Kannan and G. Sreekumar (Chelur), Advocate for the Respondent

Judgement

Ashok Bhushan, Actg. C.J.

1. Heard the learned counsel for the appellants. This Writ Appeal has been filed by the appellants against the judgment dated 19th June, 2014 in Writ Petition No. 3391/2014 by which order the Writ Petition filed by the appellants has been dismissed. The appellants, who are the petitioners in the Writ Petition, have filed the Writ Petition seeking the following reliefs:

- i) to issue a writ of certiorari quashing Ext. P4 order of the 1st respondent;
- ii) to issue a writ of mandamus or direction directing the 5th respondent to stop the 6th respondent from developing the site having area of 36.27 cents comprised in Re-Sy. No. 166/2 and 3 of Mulanthuruthy Village;
- iii) Such other order or direction as this Hon"ble Court may be pleased to issue or pass in the interest of justice."

2. Ext. P4 which was sought to be quashed was the proceedings of the District Collector dated 27th July 2013, by which in reference to the letter written by Grama Panchayat as well as the District Police Chief and the Revenue Divisional Officer, he accorded permission for re-construction of the place of worship by

name Malankara Orthodox Syrian Church Orthodox Center. The said order was challenged in the Writ Petition.

3. The learned Single Judge, by a detailed order, after considering the submissions made by the parties, dismissed the Writ Petition. The submissions which were pressed before the learned Single Judge was that by construction of the Church normalcy which is prevailing in the locality will be disturbed, and the respondent No. 1 has failed to assess the ground realities and the fractional disputes between two groups. It was contended that unless the permission is not revoked, there shall be every possibility of further disturbance in the area. The learned Single Judge examined the submission and after considering the relevant materials on the report recorded a finding that no materials have been produced to indicate that any communal issues may develop if the Church is constructed.

4. The learned counsel appearing for the appellant raised one submission in support of the Writ Appeal. It is submitted that the order Ext. P4 passed by the first respondent granting permission does not satisfy adherence to sub-rule (8) of R. 7 of the Kerala Panchayat Building Rules, 2011. It is contended that the said provision has neither been adverted to nor answered by the learned Single Judge.

5. We have considered the submission of the learned counsel for the appellant. R. 7, sub-rule (8) of the Kerala Panchayat Building Rules, 2011 on which reliance has been placed by the learned counsel for the appellant is to the following effect:-

"(8) In the case of an application to construct or reconstruct a building or make alteration or addition or extension within any Security Zone, the Secretary shall consult the District Collector concerned before permission is granted. The District Collector, after getting the specific recommendations from the Director General of Police, shall furnish his reply. The objection if any raised and/or restriction and/or regulation if any suggested by the District Collector shall be complied by the Secretary while issuing the permit.

Provided, in the case of construction of new building or reconstruction or alteration or addition or extension of existing building for religious purpose or worship, prior approval or clearance or permission and concurrence as the case may be, of the District Collector concerned shall be obtained and the conditions stipulated in the "Manual of Guidelines to Prevent and Control Communal Disturbances and to Promote Communal Harmony" which is in force have to be complied with. Applications for renovation without involving additional built-up area or structural alterations of existing buildings for religious purpose or places of worship can be considered by the Secretary after informing the District Collector in form in Appendix - N duly filled by the applicant and verified by the Secretary. The permit shall be issued only after the receipt of the concurrence of the District Collector".

6. A perusal of the sub-rule indicate that the said Rule applies in a case where an

application is to construct or re-construct a building or make alteration or addition or extension within any Security Zone. The "Security Zone" is defined in R. 2(cg) which is quoted as follows:

"Security Zone" means any area, identified and delineated by the Home Department of the State Government as Security Zone from time to time and notified and published in the Government Gazette by the Local Self Government Department. For the purpose of these rules, any area around compounds or sites which accommodate vital or strategic installations, offices, residences, institutions, landmarks, jail compounds, monuments, ports, shipyards, scientific and advanced research centres and the like, which in the opinion of the Government, needs special security and necessitates regulations and/or restrictions for constructions and land developments around, can be delineated as security zone".

7. The submissions raised by learned counsel for the appellant pre-supposes that building which is sought to be constructed is in "Security Zone". In the Writ Petition neither there is any foundation nor any pleading that the building sought to be constructed is in "Security Zone". In the correspondence which took place between the District Police Chief and the District Collector also does not indicate that the building is in the "Security Zone". Ext. P3 is the copy of the letter dated 4th July 2013 of the District Police Chief. A perusal of the same does not indicate that the said report was sent in context of any building in the "Security Zone". The proceedings of the District Collector (Ext. P4) itself has noted that the request has been enquired into for complying of the guidelines prescribed in the "Manual of Guidelines to Prevent and Control Communal Disturbances and to Promote Communal Harmony" issued by the Government, Vide Government Order dated 20th July, 2005. Thus, in the exercise undertaken by the Panchayat, the District Police Chief and the Collector, no steps have been taken in the context of R. 7 sub-rule (8) because there was no applicability of the said Rule. Thus, the submissions which have been raised by the learned counsel for the appellants is without any basis. Learned counsel for the appellants further submits that Proviso to sub-rule (8) of R. 7 refers to construction of new building or re-construction or alteration or addition or extension of an existing building for religious purpose or worship, hence under the proviso Panchayat sought permission from the Collector. That submission also does not commend us. The proviso shall operate in the field in which sub-rule (8) operates. Proviso cannot operate beyond the main section which is a settled principle of statutory interpretation. Thus proviso shall also be applicable only in cases where application is submitted where construction of building is in Security Zone.

There is no material to indicate that the building is constructed in "Security Zone". There is no merit in the appeal, which is accordingly dismissed.