

(2025) 08 KL CK 0837

In the High Court Of Kerala

Case No : Writ Petition (C) No.39841 Of 2024

T.M. Hariprasad

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 18-08-2025

Acts Referred:

Kerala Panchayat Raj Act, 1994 — Section 185B

Kerala Panchayat Building Rules, 2019 — Rule 8, 8(xi), 9, 13, 14

Citation : (2025) 08 KL CK 0837

Hon'ble Judges : C.S.Dias, J

Bench : Single Bench

Advocate : Meena.A., Vinod Ravindranath, K.C.Kiran, M.R.Mini, Anish Antony Anathazhath, Thareeq Anver, Nivedhitha Prem.V, C.Y.Vinod Kumar, K.A.Jaleel, T. Krishnanunni, Preetha K.K, Abu Siddik P.

Final Decision : Allowed

Judgement

C.S.Dias, J.

1. The petitioner is the Manager of Tharakkal A.U.P.School situated within the territorial limits of the 3rd respondent ? Tuvvur Grama Panchayat. The school and its properties were allotted to the petitioner's late father, T.Krishnanunni, as his share, by Ext.P1 decree by the Court of the Subordinate Judge, Ottappalam. During the pendency of the suit, the school and its properties were managed by an Advocate Receiver. On complaints raised by a few residents of the locality regarding the ownership of the school's property, the 6th respondent conducted an enquiry and found that the property belonged to the petitioner's father, who was permitted to remit the land tax for the property. During the pendency of the suit, a local sports club had instituted a suit for a decree of permanent prohibitory injunction to restrain the Advocate Receiver and the School from using the playground. Although the trial court and lower appellate court had decreed the suit and appeal, by Ext.P4 judgment, this Court reversed the concurrent judgments and dismissed the suit, specifically finding that the

playground belongs to the school. Later, a public interest litigation was filed before this Court alleging that the property in question was a 'puramboke land'. However, by Ext.P5 judgment, this court again affirmed that the property belonged to the school, but clarified that if any person had a rival claim over the property, his remedy was to approach the civil court. After that, the 9th respondent filed a writ petition alleging that the property was vested with the 3rd respondent – Panchayat, who was not taking any effective action to reclaim the land. This Court directed the Panchayat to decide the dispute. By Ext.P6 proceedings, the Panchayat reiterated that the property belonged to the school. The decision has attained finality. Later, when the petitioner attempted to construct a compound wall, a few persons, under the leadership of respondents 9 and 10, obstructed the work. Immediately, the petitioner approached this Court and, by Ext.P7 judgment, this Court directed the petitioner to approach the police for protection. Nonetheless, the police directed the petitioner to obtain permission from the Panchayat. Consequently, the petitioner applied for a building permit, which was allowed by the 4th respondent ? Secretary of the Panchayat ? who issued Ext.P10 building permit. Surprisingly, by Ext.P12 minutes, the Panchayat Committee suo motu cancelled Ext.P10 building permit. Even though an application to review the order was filed, it was also rejected by the Ext.P13 minutes. Exts.P12 and P13 decisions are illegal and arbitrary.

2. In the counter affidavit filed by the respondents 3 to 5, it is averred that the 4th respondent had issued Ext.P10 building permit. Nevertheless, upon the President of the Panchayat receiving several complaints that the compound wall was being constructed in a puramboke land, the Panchayat, after verifying the documents, resolved to cancel Ext.P10 building permit. Ext.R3(a) document shows that the property has vested with the Panchayat. The revenue authorities have assigned the property to the petitioner through a sub-division process, without affording the Panchayat an opportunity of being heard. The Panchayat is not a party to the proceedings before this Court and is, therefore, not bound by the judgments. The petitioner was issued with Ext.P10 building permit over a disputed property. Hence, the writ petition may be dismissed.

3. The 9th respondent in his counter affidavit has disputed the petitioner's relationship with the Kannanoor Puthen Madam Nair Family. He has asserted that, as per Annexure R9(e) information received from the Village Officer, the petitioner is not the owner of the property. The fact that neither the petitioner nor his father had remitted land tax for the property from 1999 to 2016 proves that they were not in possession or enjoyment of the property. The property is a public playground.

4. The petitioner has produced Ext.P14 order of the Department of Local Self Government dated 18.07.2025, wherein, after due enquiry, the Government has found that the property exclusively belongs to the petitioner.

5. I have heard Sri.T. Krishnanuni, the learned Senior Counsel for the petitioner, assisted by Smt. Meena A., Smt.Preetha K.K, the learned Senior

Government Pleader, Sri. Abu Siddik P., the learned Standing Counsel for the respondents 3 to 5 and Sri. C.Y.Vinod Kumar, the learned Counsel for the 9th respondent.

6. The question is whether the Village Panchayat can suo motu review/cancel a building permit validly granted by the Secretary of the Panchayat.

7. It is undisputed that the Secretary of the Panchayat, who is the statutory authority, had issued Ext.P10 building permit in favour of the petitioner after being satisfied of his ownership over the property. Yet, the Village Panchayat, acting on complaints purportedly received from the people of the locality that the petitioner was proposing to construct a compound wall in a puramboke land, without notice to the petitioner, passed Ext.P12 minutes, suo motu cancelling Ext.P10 building permit. The decision was reiterated in Ext.P13 minutes.

8. The petitioner's ownership over the property has been settled by Ext.P1 decree, Exts.P4 and P5 judgments of this Court and P14 decision of the Government. Although in Ext.P5 judgment, this Court had clarified that if any person with a rival claim over the property could approach the civil court, it is an admitted fact that no person has done so. As long as the above judgments and orders are in force, there cannot be any dispute regarding the petitioner's ownership over the property and the building. It is without considering any of these aspects that the Village Panchayat suo motu cancelled Ext.P10 building permit.

9. To resolve the question at hand, it is necessary to refer to Rules 9, 13 and 14 of the Kerala Panchyat Building Rules, which read as follows:

"Rule 9: Approval of site and plans and issue of permit.--

(1) On receipt of the application with the supporting documents attached thereto, the Secretary or the officer duly authorised by the Secretary shall issue an acknowledgement to the applicant on the same day and inform the applicant whether any No Objection certificate required from other authorities is/are not attached with the application.

(2) The Secretary shall, after inspection of the site and verification of the site plan and documents, if convinced of the bonafides of the ownership of the site, and that the site plan, drawings and specifications conform to the site and the provisions of these rules or bylaws made under the Act and any other law, approve the site and site plan and record a certificate to that effect in the site plan as given in Appendix J2. The online inspection report shall be submitted within 48 hours of receipt of application for building permit.

(3) The Secretary shall, after approving the site and site plan, verify whether the building plan, elevation and sectional elevation of the building and specifications of the work conform to the site and site plan, and is in accordance with these rules and bye laws made under the Act or any other law, approve the plan and issue permit to execute the work.

(4) Approval of site and plans shall be intimated to the applicant in writing and the permit as in Appendix B2 shall be issued on remittance of the permit fee at the rates specified in Schedule II and submission of revised or modified plans, if approved with modifications or conditions.

(5) If after inspection of the site and verification of the plans and documents, Secretary decides to refuse approval, the same shall be communicated in writing specifying the reasons.

(6) Secretary shall, if modification to any plan, drawing or specification is required or any further document or plan or information is required or fresh plan is required under these rules for taking a decision, intimate the same to the applicant in writing within ten days from the date of receipt of such application or plan or document or information.

(7) Approval of site and plan shall take effect from the date of submission of the application and rules at the time of issue of permit shall be applicable.

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Rule 13: Period within which Secretary is to grant or refuse permission to execute work.--

The Secretary shall within 1[fifteen days] from the date of receipt of an application for permission to execute any work or any information or document or further information or further document required under these rules or bye laws made under the Act, by written order either grant or refuse to grant such permission on any of the grounds mentioned in Rule 11 and intimate the same to the applicant:

Rule 14: Reference to Village Panchayat where the Secretary delays to grant or refuse or approve permit.--

(1) The Village Panchayat shall, if the Secretary, neither approves nor disapproves a building site, neither gives nor refuses permission to execute any work within 1[fifteen days] from the date of receipt of the application, on the written request of the applicant, be bound to determine whether such approval or permission should be given or not.

(2) Where the Village Panchayat does not, within thirty days from the date of receipt of such written request, determine whether such approval or permission should be given or not, such approval or permission shall be deemed to have been given, and the applicant may proceed to execute work, but not so as to contravene any provision of the Act or these rules or bye-laws made there under:

Provided that such execution of work shall be considered as duly permitted and not one for regularization and permit shall be issued as per rules even if the work has been commenced, being carried on or completed if it otherwise complies with rule provisions.

(3) On the expiry of 2[forty five days] from the date of valid applications the applicant shall submit a letter stating that he is commencing the work of the building/structure/ 3[x x x x] applied for as provided in the original applications as per Rules, specifying the date of commencement. All Secretaries of Local Self Government Institutions shall acknowledge the receipt of the letter stated in the above paragraph with stamp and date on the same day on the duplicate copy of the letter. This shall be a deemed permission along with the acknowledgment of original application submitted.”

10. A co-joint reading of the above provisions makes it abundantly clear that the jurisdiction to decide an application for a building permit rests solely with the Secretary. It is only when the Secretary does not approve or disapprove an application within 15 days that the Village Panchayat gets jurisdiction to decide the application, provided the applicant submits a written request.

11. It is also pertinent to refer to Section 185B of the Kerala Panchayat Raj Act, 1994, which reads thus:

“185B. Exercise of statutory functions by the officers.-- Where any officer of the Panchayat is conferred with any statutory powers and functions to be exercised independently and solely, the Panchayat, the Panchayat President, Chairman of the Standing Committee or any member shall not interfere or influence in the exercise of such powers and functions by that officer.”

12. The legislation statute bars the Panchayat, its President or members from interfering with the statutory powers entrusted exclusively to its officers, and there is a clear separation/bifurcation of powers between the Village Panchayat and its Secretary.

13. It is without considering the above framework of the Act and Rules that the Village Panchayat has suo-motu cancelled Ext.P10 building permit. Thus, I am satisfied that Exts.P12 and P13 minutes are ex facie erroneous.

14. The learned Senior counsel is right in his submission that the petitioner was not obliged to have applied for a building permit to construct the compound wall because the property does not abut a public street. This is unambiguous from Rule 8 (xi) of the Kerala Panchayat Building Rules, 2019, which reads thus:

“Rule 8 Permit not necessary for certain works:

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(xi) Compound wall not abutting a public street.”

15. On a comprehensive consideration of the facts, the materials on record, the statutory scheme of the Act and the Rules, and the discussions made above, I am convinced that the writ petition is to be allowed by quashing Exts.P11 to P13 decisions and resurrecting Ext.P10 building permit.

In the circumstances mentioned above, I allow the writ petition in the following

manner:

- (1) Exts.P11 to P13 decisions of the Village Panchayat are quashed.
- (2) Ext.P10 building permit is revived.
- (3) The petitioner would be at liberty to construct a compound wall as per Ext.P10 building permit.
- (4) The 8th respondent is directed to afford adequate police protection to the petitioner to carry out the work as per Ext.P10 building permit.