

(2022) 03 KL CK 0187

In the High Court Of Kerala

Case No : Writ Petition (C) No. 29518 Of 2021

Western Ghats Protection Council

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 23-03-2022

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2022) 03 KL CK 0187

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

Bench : Division Bench

Advocate : K.C.Santhoshkumar, K.K.Chandralekha, Anupama Johny, P.Maya, K.S.Sudha, Manu S., Jaisankar V. Nair, T.Naveen Sc, , Jayasree K.P., Jacob Sebastian, John Joseph, K.V.Winston, Anu Jacob, K.P.Harish

Final Decision : Dismissed

Judgement

Shaji P. Chaly, J.

1. This is a public interest litigation filed by Western Ghats Protection Council, which is a Society said to be registered under the provisions of the Societies Registration Act, seeking the following reliefs:-

“(i) Issue a writ of mandamus or any other appropriate writ, order or direction to the 5th respondent to investigate into the illegal involvement of public authorities and their calculated failure in initiating strict preventive actions against the respondents Nos. 23 to 25 and financial dealings of the said respondents with the Non Resident Indians and others under the guise of a villa project and later disguised as KENZA Wellness Hospital Project of five star facility and the money laundering or the tax evasion if any involved in the financial dealings of the respondents No. 23 to 25 in respect of the said projects;

(ii) Issue a writ of mandamus or any other appropriate writ, order or direction to the respondents No. 23 to 25 to stop forthwith all the ongoing construction in respect of the project under the name and style 'KENZA Royal Meadows' later

disguised as 'KENZA Wellness Hospital Project';

(iii) Issue a writ of mandamus or any other appropriate writ, order or direction to the respondents No. 7, 8 and 10 to take immediate steps to demolish the existing structures constructed for the project under the name and style KENZA Wellness Hospital Project and to restore the original nature of the land;

(iv) Issue a writ of mandamus or any other appropriate writ, order or direction to the 21st respondent to issue a stop memo in respect of the construction in respect of Royal Meadows KENZA Holdings later disguised as KENZA Wellness Hospital Project;

(v) Issue a direction to the 2nd respondent to initiate disciplinary proceedings against the 21st respondent and keep him under suspension pending such disciplinary enquiry of the competent authority;

(vi) Issue a writ of mandamus or any other appropriate writ, order or direction to the respondents No. 23 to 25 not to proceed with any promotional activities in respect of the project under the name and style 'KENZA Royal Meadows' later disguised as 'KENZA Wellness Hospital Project'."

2. The primary relief sought for in the writ petition is a direction to the Central Bureau of Investigation, the 5th respondent, to investigate into the illegal involvement of public authorities and their calculated failure in initiating strict preventive actions against respondents 23 to 25, namely M/s KENZA Wellness Hospital LLP, Thodayad Bypass Road, Kozhikode, Proprietor, KENZA Holdings, Thrissur, and Shihab Shah, Kunnamkulangara Village, Thrissur, and the financial dealings of the said respondents with the Non-Resident Indians and others under the guise of a Villa Project, and the money laundering for tax evasion, if any involved, in the financial dealings.

3. The subject issue relates to certain constructions carried out by respondents 23 to 25 within the limits of the Thariode Grama Panchayat, Wayanad District, the 20th respondent. The 21st respondent is the Secretary of the said Grama Panchayat. The Union of India, various Departments of the State, the State Disaster Management Authority, the District Disaster Management Authority, the Revenue Divisional Officer, Vigilance and Anti Corruption Bureau, Station House Officer, Padinjara Thara Police Station, Kerala State Pollution Control Board, Geological Survey of India, District Tourism Promotion Council, Real Estate Regulatory Authority and several other officials of the State Government and other authorities are made as respondents in the writ petition.

4. The case projected by the petitioner is that respondents 23 to 25 have carried out construction of Villas and other buildings in violation of the provisions of the Kerala Panchayat Raj Act, 1994 and the Kerala Panchayat Building Rules, 2011. It is the prime submission of the petitioner that in spite of earnest efforts made by the petitioner, no action was initiated by any of the respondents, even to make an enquiry as to whether the constructions are carried out by respondents 23 to

25, in accordance with law.

5. Even though petitioner has approached this Court by filing W. P. (C) No. 18503 of 2021, the said writ petition was permitted to be withdrawn with liberty to file a fresh one, with all supporting documents. It was accordingly that the present writ petition was filed.

6. Petitioner has a case that in the guise of construction, money laundering as well as tax evasion is involved in the dealings of the 25th respondent and his establishment, and that the 25th respondent has made it clear that the project is not supported by any bank or any financial institution. That apart it is contended that the constructions are carried out by the party respondents in an area where all types of constructions are banned by the District Disaster Management Authority, Wayanad District, however it is submitted that the 25th respondent is capable of manipulating things and has violated mandatory and statutory requirements.

7. It is further submitted that in spite of complaints filed before the District Disaster Management Authority, the Panchayat, the Police and the Revenue, no action is initiated, and it was under the said compelled circumstances, the petitioner had to approach this Court by filing this writ petition.

8. According to the petitioner, the following aspects in respect of the construction carried out by the party respondents in the name and style of 'Royal Meadows' and 'KENZA Wellness Hospital' in Vythiri Taluk, Wayanad District, shall be enquired into with the help of an impartial agency:-

“(i) The details of the project named Royal Meadows later disguised as KENZA Wellness Hospital project being carried out in the land in R.Sy.No. 254/14 254/19, 254/21, 254/22, 254/31, 254/43, 254/44, 254/2, 254/3, 254/4, 254/18, 254/20, 254/25, 254/26, 254/35, 254/38, 254/41, 166/1, 99/3 of Kavumannam Village in Vythiri Taluk in Wynad District including its incorporation, rising of funds/shares and the acquisition of property and the offer made by the company to its shareholders/depositors;

(ii) The construction of multi storied building in Thariode Grama Panchayath undertaken by 25th respondent in the land situated in R.Sy.No. 254/14, 254/19, 254/21, 254/22, 254/31, 254/43, 254/44 R. Sy.No. 254/2, 254/3, 254/4, 254/18, 254/20, 254/25, 254/26, 254/35, 254/38, 254/41, 166/1, 99/3 of Kavumannam Village in Vythiri Taluk in Wayanad District under the scheme styled as KENZA Wellness Hospital without obtaining registration and approval of RERA, the development and building permit from the Grama Panchayat and the approval from Pollution Control Board and Health department that too when the ban imposed by the Disaster Management Authority was in force;

(iii) The financial sources of the project under the name and style KENZA Wellness Hospital, a project the cost of which is estimated to be 400 crores by the 25th respondent himself. The 25th Respondent himself claimed that the

source of the fund was not by any bank loan but by investments raised by the various sources which was not revealed and majorly it was raised outside the country;

(iv) The possibility of large scale Tax evasion or money laundering by the respondents No.23 to 25 since a large amount of money was raised from outside the country for this project;

(v) The inaction on the part of Disaster Management District authority in taking remedial action from preventing/barring the construction of a multi storey building in the ecologically fragile and sensitive area and its subsequent inaction in ordering demolition of the building even after finding that the said construction was undertaken in flagrant violation of the orders then in force and issued by the District Disaster Management Authority and the District Collector in his capacity as the District Magistrate;

(vi) The refusal on the part of police authorities in registering crime against Mohammed Shihab, 25th respondent herein in spite of receipt of complaints disclosing cognizable offence;

(vii) The monetary transaction involved in the scheme styled as 'Royal Meadows' project later disguised as KENZA Wellness Hospital project including the illegal gratification received or the personal gain made by the Secretary and President of Thariyode Grama Panchayath, the Village Officer of Kavumannam village, the S.H.O., Padinjarathara Police Station and the Chairman of Disaster Management District Authority, Wayanad District."

9. On the other hand, the Panchayat, the Secretary and the President have filed a joint counter affidavit, refuting the allegations raised in the writ petition.

10. Among other contentions it is submitted that the 25th respondent along with one Rajan, submitted an application for construction of A1 and A2 category residential buildings as per the provisions of the Kerala Panchayat Building Rules, 2011.

11. After considering the application and complying with the prescribed procedure as per the Rules, 2011, the then Secretary of the Grama Panchayat issued a building permit on 29.06.2019. As per the building permit so issued, permission was granted for construction of an A1 category residential building having an area of 1780.23 sq.m., and also for construction of a special residential building having an area of 1201.9 sq.m. evident from Ext. R21(a).

12. Anyhow it is submitted that as per the proceedings dated 30.06.2015 of the Chairman of the District Disaster Management Authority, the 7th respondent, there is a ban on construction of buildings beyond 10 meters and above 3 stories within 500m radius of landslide prone area and the building constructed by the 25th respondent comes within the area of ban imposed by the District Disaster Management Authority.

13. It is also pointed out that after completion of construction, the 25th respondent applied for occupancy certificate and on inspection it was found that the building exceeds 10 meters and accordingly the application for issuance of occupancy certificate was rejected on 03.02.2021 evident from Ext. R21(b).

14. Simultaneously, the Secretary issued Ext. P28 letter to the District Disaster Management Authority seeking an opinion as to whether any exemption can be granted to the construction of the 25th respondent in view of the exemption granted to a building constructed by Banasura Sagar Hotel and Resorts India Ltd., where the height of the building was 18.70 meters and having 4 stories evident from Ext. R21(c), however no reply was given by the 7th respondent.

15. While so, the 25th respondent filed W. P. (C) No. 25558 of 2021 seeking a direction to the Secretary of the Grama Panchayat to issue occupancy certificate and building number.

16. In the meanwhile, the building was inspected by the Assistant Engineer, Local Self Government Department, and a completion certificate was also submitted by the 25th respondent before the Secretary of the Grama Panchayat. In the completion certificate as well as in the inspection report of the Assistant Engineer, Local Self Government Department, the height of the building was found to be not exceeding 10 meters.

17. It seems the Assistant Engineer has reported that on inspection conducted on 10.09.2021 and 15.09.2021, it was found that the ground floor of the building was filled up and the total height of the building on measurement was found to be 9.60 meters. Therefore the said writ petition was disposed of directing the Secretary to take action on the application submitted by the 25th respondent in the light of the report dated 01.11.2021 of the Assistant Engineer produced as Ext. R21(d).

18. It is evident that the Secretary was given the liberty to conduct due inspection before considering the applications. Accordingly the Secretary conducted inspection of the buildings and the Assistant Engineer, LSGD also conducted a further inspection on 27.12.2021. It was again reported by the Assistant Engineer, LSGD that the building constructed by the 25th respondent is having a height of 9.90 meters only after the ground floor was filled up.

19. In fact, certain irregularities were found in the constructions carried out and thereby the 25th respondent was directed to rectify the same and the application would only be processed after the irregularities are rectified.

20. It is further pointed out that the Panchayat has not received any application for permit from the 23rd and 24th respondents, as alleged in the writ petition. The contention advanced by the petitioner that the Villa Complex is later converted as a Hospital are all denied by the Panchayat.

21. That apart it is submitted that on receipt of the complaint, the Panchayat has taken appropriate action to ensure that the constructions are carried out in

accordance with the approved plan, building permit and in accordance with the Kerala Panchayat Building Rules, 2011. In fact it is also submitted that the area where the building is constructed by the 25th respondent is not an ecologically fragile and sensitive area as alleged.

22. Above all, it is pointed out that the Secretary has issued Ext. P28 communication to the District Disaster Management Authority on receipt of the complaints and it is for the Disaster Management Authority to carry out necessary inspections and find out whether the orders issued by the said authority are violated or not.

23. The Disaster Management Authority has filed a statement as well as an additional statement basically submitting that necessary enquiry is being undertaken by the Disaster Management Authority as to whether the order passed by it to maintain the height and number of floors of the building is violated by the 25th respondent.

24. Respondent Nos. 24 and 25 have filed a joint counter affidavit refuting the allegations made against them in the writ petition and also submitting that the 25th respondent is a NRI businessman hailing from Thrissur doing business in hospitality sector and wellness in the Middle East for the past 15 years. According to him, the constructions were carried out after securing building permits from the Secretary of the Grama Panchayat.

25. According to the said respondents, the Secretary of the Grama Panchayat has issued development permits. It is also submitted that persons who have invested money in the project were transferred with proportionate share of land by registered sale deeds and thereafter building permits were obtained in the name of the investors before commencement of the construction. Such building permits are produced as Exts. R25(A) to P25(I).

26. The sum and substance of the contention is that the construction of the buildings are complete in all respects and the attempt of the petitioner in the guise of public interest litigation is only to wreak vengeance. That apart it is submitted that the constructions are completed in accordance with the building permits, approved plan and in accordance with the Kerala Panchayat Building Rules, 2011.

27. Anyhow it is admitted that there arose some dispute by and between the investors and the 25th respondent and consequently, O. S. Nos. 5 of 2021, 15 of 2021, 16 of 2021 and 37 of 2021 are filed by the investors, which are pending before the Subordinate Judges Court, Sulthanbathery, Wayanad District .

28. According to the 25th respondent, the present writ petition is filed in the guise of a public interest writ petition at the instance of the investors, and in fact, apart from filing the suit, the investors have filed criminal complaint against the 25th respondent and others.

29. Anyhow it is submitted that the measurement of the building has to be taken

in accordance with the Kerala Panchayat Building Rules, 2011, which was in force when the permit was secured by the 25th respondent and the measurement carried out by the Secretary on the basis of the Kerala Panchayat Building Rules, 2019, introduced after the permit was issued, cannot be sustained.

30. Therefore according to the party respondents, the attempt of the petitioner is to complicate the issues so as to secure reliefs in the suits filed by the investors and there are no bonafides in the writ petition.

31. It is further submitted that the District Disaster Management Authority has not carried out any inspection with notice to the party respondents. Accordingly it is submitted that the writ petition has no factual or legal basis. It is also submitted that the investigation sought for by the petitioner through CBI is not sustainable under law. Petitioner has also produced Ext. R25 series of photographs showing the constructions carried out.

32. Reply affidavit is filed by the petitioner reiterating the stand adopted in the writ petition and has also produced documents as an attempt to establish that the constructions are carried out illegally.

33. We have heard, Sri. K. C. Santosh Kumar for the petitioner, learned Senior Government Pleader Sri. K. P. Harish for the State and its officials, Sri. S. Manu, learned Assistant Solicitor General for the Union of India, and Smt. Jayasree K. T. for the Panchayat and its officials and perused the pleadings and material on record.

34. On an appreciation of the facts and circumstances put forth by the petitioner in the writ petition, one thing is clear that the entire circumstances are surrounded by various facts which can only be deciphered by the appropriate fact finding authorities. So far as the challenge made to the construction of the building, the Secretary of the Grama Panchayat has in unequivocal terms submitted that the height of the building is less than 10 meters on the personal inspection conducted by the Secretary and as per the inspection conducted by the Assistant Engineer of the LSGD Department.

35. In fact a re-inspection was conducted by the Secretary as well as the Assistant Engineer on the basis of the directions issued by this Court in a writ petition filed by the party respondent. Still it was found that the height of the building is less than 10 meters.

36. As we have pointed out above, since it is stated by the Secretary that the height of the building was identified by carrying out due measurements and conducting appropriate enquiry, this Court will have to legally presume that the action of the Secretary as well as the Assistant Engineer of the LSGD Department is in accordance with law.

37. Petitioner has not taken any effort to adequately establish before this Court that the height of the building as found out by the Secretary and the Assistant Engineer is not correct. The petitioner, aggrieved by the measurement carried

out by the Secretary as well as the Assistant Engineer, had remedy under the provisions of the Kerala Panchayat Raj Act, 1994 and the Kerala Panchayat building Rules, 2011, to approach either the Ombudsman or the Tribunal for Local Self Government Institutions, which authorities are empowered to analyze the issues by calling for the original files and records from the Grama Panchayat in question.

38. Moreover, the Panchayat has in categorical terms stated in its counter affidavit that it has issued a communication to the District Disaster Management Authority seeking certain clarifications, however the District Disaster Management Authority has not responded to the same; however from the counter affidavit of the District Disaster Management Authority, it could be gathered that appropriate steps are taken to identify the issue as to whether it's orders are violated.

39. Anyhow if there is any violation of any order passed by the Disaster management Authority in regard to the constructions carried out in an area where restrictions are imposed, it is for the said Authority to take appropriate action in accordance with law. Still the course is open to the said authority.

40. As regards the relief sought for by the petitioner to conduct a CBI enquiry in order to find out as to whether there is money laundering or violation of Income Tax laws, there are no adequate documents produced before this Court to establish such aspects, apart from making certain blunt allegations in the writ petitions. Therefore no CBI investigation can be ordered by this Court as is sought for by the petitioner.

41. Apart from all the above, if there is money laundering as alleged by the petitioner, there are statutory authorities under the prevention of Money Laundering Act, a Central Legislation, and there is no case for the petitioner that the petitioner has approached any such authority.

42. If there is violation of income tax laws, the income tax authority is vested with powers to take appropriate action against the party respondents, however there is no case for the petitioner that petitioner has approached the income tax authorities. Therefore when there are statutory authorities to tackle situations and take appropriate action for violation of the laws through the mechanism provided under such laws, petitioner is not entitled to seek for a roving enquiry through another specialized agency like the C.B.I, which relief if granted would be nothing short of ridiculing the investigative powers conferred on such authorities under law.

43. We are also of the clear opinion that the construction of buildings in a Panchayat area is guided by the provisions of the Kerala Panchayat Raj Act, 1994 and the Kerala Panchayat Building Rules, 2011, and later, the new Act, the Kerala Panchayat Building Rules, 2019.

44. Apparently the permits are issued to the party respondent, namely the 25th

respondent, prior to the introduction of the Kerala Panchayat Building Rules, 2019.

45. Therefore if construction of the building is completed on the basis of the permits and the approved plan granted by the Secretary of the Grama Panchayat, necessarily, the proceedings have to culminate by processing applications and documents filed by the permit holder seeking occupancy certificates and building numbers, which are stated to be pending before the Secretary of the Grama Panchayat, and it is for the said authority to take appropriate decision after conducting due enquiries.

46. Therefore, since the Secretary is vested with ample powers to conduct due enquiries and find out as to whether the construction is carried out in accordance with the approved plan, building permit and in accordance with the relevant rules, the challenge in regard to legality of the constructions in question is nothing but a premature one and accordingly no interference can be made at this stage of the proceedings.

47. Taking into account the factual and legal circumstances pointed out above, we have no hesitation to hold that the petitioner has failed to make out any case for granting the reliefs as are sought for in the writ petition, in a proceeding under article 226 of the Constitution of India.

48. Therefore the writ petition is dismissed, however we make it clear that the Secretary of the Grama Panchayat as well as the District Disaster Management Authority, Wayanad will be at liberty to conduct due inspection and enquiries under the prevailing laws for the purpose, in order to find out as to whether the constructions are carried out in accordance with law.

Since the civil suits are pending consideration before a competent civil court, we make it clear that the observations and findings contained above will not stand in the way of the civil court considering the issues pending before it dispassionately and in accordance with law.