

(2012) 07 KL CK 0219

High Court Of Kerala

Case No: Writ Petition (C) . No. 16176 of 2012 (V)

Dr. Shyam Sunder, Ward No. 8,
Sai Sadahanam, Pullikunnu,
Mankombu P.O, Alappuzha
District

APPELLANT

Vs

Circle Inspector of Police,
Pullikunu Police Station,
Mankomb P.O, Alappuzha -
688504 and Others

RESPONDENT

Date of Decision: July 25, 2012

Acts Referred:

- Headload Workers Act, 1978 - Section 2(m)

Citation: (2012) 3 KLJ 669 : (2012) 3 KLT 698

Hon'ble Judges: K.M. Joseph, J; K. Harilal, J

Bench: Division Bench

Advocate: M.R. Sudheendran and Smt. A. Afreezaa Khan, for the Appellant; P. Vijayaraghavan, State Attorney, Sri. C.R. Syam Kumar, Sr. Government Pleader for R1 and R2 and Sri. B. Pramod, for R3 to R8 and R10, for the Respondent

Final Decision: Allowed

Judgement

K.M. Joseph, J.

Petitioner has approached this Court seeking the following reliefs:

- Declare that the petitioner can carry out the constuction work of the residential building in his property and loading and unloading work connected with the construction work with workers of his choice and that respondents 3 to 10 have no right to obstruct the same.
- Direct respondents 1 & 2 to afford necessary police protection to the life of the petitioner and property of the petitioner and take appropriate action against

respondents 3 to 10 in accordance with law in case of any obstruction or threat from the side of respondents 3 to 10.

iii. Direct respondents 1 & 2 to take appropriate action on Exhibits P1 & P2 complaints filed by the petitioner.

Briefly put, the case of the petitioner is as follows: Petitioner is a resident of Pulinkunnu Grama Panchayat. He is constructing a house in his property and he has engaged workers for the same. Petitioner has got necessary sanctioned plan and permission for construction of the building and he is carrying on construction in accordance with law. When the work was about to be started, respondents 3 to 10 trespassed into the property and prevented the petitioner from carrying out the work. They demanded that they should be engaged for construction work. Petitioner filed Ext.P1 before the police and Ext.P2 which is another representation filed before the police and is before us.

2. When the matter came up on 13.7.2012, we asked the learned counsel for the petitioner as to whether the petitioner has obtained a permit. Thereupon, the counsel for the petitioner has produced the NOC from the Pulinkunnu Grama Panchayat. It reads as follows:

The Govt. has not insisted the provisions of KPBR 2011 for residential buildings upto 300m² in Pulincunnu Grama Panchayat.

Hence this is to certify that Pulincunnu Grama Panchayat has no objection to H. V. Syam Sunder, Sai Sadanam, Pulincunnu for constructing a residential building in Survey No. 273/5 of Kunnumma Village in accordance with the provisions of KPBR.

3. Thereupon, we issued notice to the party respondents. The party respondents entered appearance and filed Counter Affidavit. We heard the learned counsel for the petitioner, the learned counsel appearing for the party respondents and also the learned Government Pleader.

4. Learned counsel for the party respondents raised three objections before us. He would first of all submit that there is no permit and the built up area which the petitioner proposes to construct, is not indicated in the NOC produced. Secondly, he would submit that the petitioner engaged a contractor and, therefore, the benefit of exemption from the provisions of the Head Load Workers Act, cannot be availed of by the petitioner. He would further submit that there is a settlement arrived at between the District Collector, the District Labour Officer and the Contractors Association and therefore the petitioner is bound to engage the party respondents only for unskilled work.

5. The Kerala Panchayat Building Rules, 2011 provides in Section 10 that no building permit is necessary for executing certain works which do not otherwise violate any provisions regarding applicable general building requirements, structural stability and fire safety requirements of the Rules. Clause (xiii) reads as follows:

Buildings in Category - II Village Panchayats under Group A1 - Residential occupancy with total built-up area on all floors upto 300 sq. metres (including existing and proposed within the plot) and the number of storeys limited to two and all single family Residential Buildings."

6. Apparently, the petitioner is putting up a building which is less than 300 Sq. Metres and it is, therefore that we find that a NOC has been given by the Panchayat that it has no objection in the petitioner constructing the residential building as already adverted to.

7. The main objection of the party respondents appears to be based on the contention that the petitioner is actually not doing the work himself, but he is doing it through a contractor. Learned counsel for the petitioner actually says that the petitioner has engaged a supervisor. Of course, learned counsel for the party respondents would draw our attention to the first sentence of Ground (C) which reads as follows:

The respondents 3 to 10 have no right to demand that they should be employed by the petitioner or the contractor or workers employed by the petitioner.

8. The words "head load worker" is defined u/s 2 (m) of the Head Load Workers Act, 1978. It, inter alia, provides that it does not include a person engaged by an individual for domestic purposes. Explanation (1) being relevant, inter alia, reads as follows:

Explanation 1:- For the purpose of this clause, a person engaged by an individual for domestic purposes" means any person engaged by an individual for,-

(iv) constructing or repairing and maintenance of house including the shifting and transportation of construction materials, equipments or machinery for personal use and not for the purpose of trade.

9. We feel that there is no merit in the argument of the party respondents. What is contemplated by the Legislature is that a person concerned must be engaged for a domestic purpose. Construction of a house, inter alia, is brought within the purview of "domestic purpose". That is to say that, if an individual is engaged for the purpose of construction of a house, inter alia, he will be treated as a person engaged by an individual for domestic purpose. Such a person would not fall within the purview of the definition of the word "head load worker". The argument of the learned counsel for the party respondents would appear to be that the person who engages a person, must be the person who is actually constructing the building. His objection in this case is that the workers who are engaged, are not directly engaged by the petitioner, but through a contractor and, therefore, those workers would not be entitled to the benefit of the exemption contemplated under the Head Load Workers Act. We are of the view that this argument cannot stand our scrutiny. The intention of the Legislature would appear to be to exempt those persons who are

engaged for carrying out the construction of a house. In this case, the workers are engaged in the construction of a house. Such persons, therefore, whether they are engaged directly through the person who is actually putting up the house or through the medium of his contractor, would clearly fall within the purview of the Explanation (1) to Section 2(m). It is not necessary that the workers employed should be directly employed by the petitioner. What is important is the purpose for which those workers are engaged. As far as Clause (iv) is concerned, if the purpose is for construction/repairing or maintenance of a house, inter alia, then, whether they are engaged through the person who is actually putting up the house or through his agent or contractor, they would fall within the purview of the Explanation. Therefore, we repel the above said contention of the party respondent. The further and last contention raised by the learned counsel for the party respondents is the existence of an agreement. When we asked the counsel for the petitioner whether the petitioner is a party to the agreement, it is submitted that the petitioner is not a party to the agreement. Anyway, there is no case that the contractor of the petitioner also signed such agreement.

In such circumstances, we allow the Writ Petition and direct respondents 1 and 2 to afford police protection to the life and property of the petitioner as against any obstruction from respondents 3 to 10 in the matter of construction of the residential house of the petitioner for which the NOC has been granted by the Panchayat.