

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.2023/2010**

ABAD BUILDERS (P) LTD.

APPELLANT(S)

VERSUS

THRIKKAKARA GRAMA PANCHAYAT & ANR.

RESPONDENT(S)

WITH

CIVIL APPEAL NO. 2024/2010

CIVIL APPEAL NO. 2025/2010

CIVIL APPEAL NO. 2026/2010

CIVIL APPEAL NO. 2027/2010

CIVIL APPEAL NO. 2031/2010

CIVIL APPEAL NO. 2032-2033/2010

CIVIL APPEAL NO. 8044/2010

CIVIL APPEAL NO. 7418/2010

O R D E R

CIVIL APPEAL NO.2023/2010

Heard Mr. Pallav Shishodia, the learned Senior Counsel for appellants. The State of Kerala is represented by Mr. Jayant Muth Raj, the learned Senior Counsel. Mr. K. Rajeev, learned counsel is representing the Thrikkakara Gram Panchayat.

2. The challenge here is to the 25.11.2009 judgment of the High Court of Kerala in WP (Civil) No.5493 of 2008 and other connected writ petitions. Under the common judgment, those writ petitions were dismissed. For the purpose of this judgment, we have referred to the pleadings in Civil Appeal

No.2023/2010 pertaining to Abad Builders Pvt. Ltd.

3. The appellant is engaged in the construction and development of residential/commercial buildings and had commenced construction of residential building within the area of Thrikkakara Grama Panchayat, Kochi. The building permission was secured from the respondent-Panchayat under Section 235A (3) of the *Kerala Panchayat Raj Act, 1994* (for short “Panchayat Raj Act”) after furnishing all necessary information as needed for undertaking the construction. The respondent-Gram Panchayat on the basis of the application submitted by the appellant had issued a No Objection Certificate (NOC) with a condition therein that “three meters distance should be left from the boundary adjacent to PWD roads and earmarked Panchayat roads and adequate drainage facilities should also be provided” as per Section 220b of the *Panchayat Raj Act*.

4. The appellant on the strength of the said NOC commenced construction of the multi-storied residential apartment building but at that stage the Kerala Government issued the G.O. dated 06.11.2006 extending the provisions of the *Kerela Municipality Act, 1994*(for short “*Municipality Act*”) and *Kerala Municipality Building Rules, 1999* (for short “*Municipality Building Rules*”) to the Thrikkakara Grama Panchayat. The G.O. was issued in exercise of Powers under Section 274(1) of the *Panchayat Raj Act*. This was followed by the G.O. dated 06.06.2007 also in exercise of powers conferred under *Section 274(1)* of the *Panchayat Raj Act*, extending the provisions of the *Municipality Act* and the *Municipality Building Rules* to all the Panchayats in the State of Kerala.

5. Thereafter, the Circular dated 20.06.2007 was issued stipulating the

procedure to be followed by the Panchayats for applying the provisions of the Municipality Building Rules in the Panchayat areas. The government Circular required the Panchayats to take steps to facilitate further construction only after the issuance of permit under the Municipality Building Rules for those structures which are not constructed beyond the ground level. Fee was leviable for buildings where the structure was completed but the building had not been numbered. Scrutiny fee had to be collected in respect of constructions that had received NOC or which had been constructed without NOC.

6. The above was followed by next Circular dated 25.07.2007 whereby the actions needed to be taken were specified following the extension of the Municipality Building Rules to Gram Panchayat areas. It was stipulated that the Municipality Building Rules are made applicable to all Panchayats in the State with effect from 06.06.2007 and the newly introduced Rules shall be made applicable only for buildings commencing construction after 06.06.2007. For those buildings which have completed construction prior to the cut-off date of 06.06.2007 and those which have commenced construction before 06.06.2007 and where the construction is underway, the requirement of preparing fresh plans and submitting them to the Panchayat was waived and for these categories, the Rules were made inapplicable. The Panchayat Secretary was however required to inspect such buildings and issue numbers thereto. It was particularly specified that in cases of buildings having areas in excess of 150 sq. m. or more than two floors, the stipulations in the 20.6.2007 Circular will have to be followed. Part II of the Circular dated 20.06.2007 specifically refers to the "Buildings Under Construction". Under paragraph (2) of Part II of the Circular, the Panchayat Secretary is required to collect details of all buildings constructed with or without NOC with their location plan, site

plan, plinth area, section, elevation, number of floors, FAR coverage from 01.03.2007 onwards. Under paragraph 6 of Part II, “fee is applicable to the buildings in cases where structural works are completed but numbers are not yet assigned” and the Circular specified that numbering of buildings shall not be delayed for non-collection of the required particulars. For buildings that were completed, permit fee as stipulated under the Municipality Building Rules were to be realized by the Secretary of the concerned Gram Panchayat.

7. Before the High Court, in the writ petitions filed by those who are undertaking construction in the Gram Panchayat areas, the applicability of the Municipality Building Rules to the Gram Panchayat area was the subject matter of the main challenge. The proposed collection of permit fee for buildings which are under construction but not yet numbered was also questioned, by the appellants.

8. The Division Bench of the High Court under the impugned judgment (dated 25.11.2009) took note of the provisions in Section 235A and 254 2(xviii) of the Panchayat Raj Act and opined that the Government has the power to frame Building Rules making it applicable to Gram Panchayat areas by exercising powers under Section 274 of the Panchayat Raj Act.

9. Section 274 of the Panchayat Raj Act enables the government to extend to the Panchayat areas any of the laws relating to municipalities in the State. Section 235A (1) of the Panchayat Raj Act enables the government to frame Building Rules for Gram Panchayats. The Government can frame rules for regulation or restriction of construction of buildings and the use of building sites under Section 254(2)(xviii). In the instant case, the High Court noted that the government instead of framing rules under the Kerala Panchayat Raj Act decided to adopt the provisions of the Kerala Municipality Building Rules

by invoking the powers under Section 274 of the Kerala Panchayat Raj Act.

10. Rule 3 of the Municipality Building Rules makes the rules applicable to any public or private buildings both at the stage of construction of a new building or for alteration of an existing building. Moreover, when an addition or extension is made to a building, how the calculation of the FAR and coverage are to be calculated, is also provided by the Rules. Under Rule 3(iii), all developments and constructions existing or proposed, in any village panchayat area to which the provisions of these rules were extended, shall also be covered by the Municipality Building Rules.

11. Looking at the scheme of the Municipality Building Rules and the power available with the government under *Section 274 of the Kerala Panchayat Raj Act*, to extend the provisions of the municipal laws and the Rules to any panchayat area, the High Court opined that the government has the power to frame building rules for the gram panchayat areas. This can be done by issuing a notification under Section 274 of the Kerala Panchayat Raj Act as has been done. Of course, the government is also empowered under Section 235A and Section 254(2)(xviii) to frame building rules for the gram panchayat area.

12. Let us now refer to the reliefs claimed by the Builders in the High Court:

“(i) declare that Rule 3(iii) of the Kerala Municipality Building Rules which deals with the applicability of Building ' Rules to Grama Panchayats, being a rule framed under the Municipality Act, cannot have any application to the Panchayats and therefore, the said sub-rule is ultra vires.

(ii) to set aside the provision, providing for collection of permit fee for buildings which are completed but not yet numbered, in paragraph 5 of Ext.P4(a) Circular dated 3.7.2007 (produced .in WP(C) No.13085/09) issued by the Government.”

13. Before this Court, the learned Counsel for the Appellant made arguments with regard to relief no (ii) as above, to challenge the demand of permit fee for construction that has already commenced prior to 15.11.2006. The question before this Court is whether permit fee can be levied for under construction or unnumbered building by extension of the Kerela Municipal Rules to Panchayats, with the aid of Section 274 of the Kerela Panchayat Act, 1994? The legal position was considered in *Ayillath Sreedharan Nambiar v State of Kerela*(2007:KER 32291), where in the Kerala High Court Justice K.M. Joseph (as he then was) after analysing the source of power correctly held that Article 243G of the Constitution contains the source of the legislative power of the State to enact a law relating to buildings in the Panchayats. The following observation in Justice Joseph's Judgment is relevant for the present discussion:

“In fact it is to be noted that in the Panchayat Raj Act itself there is a whole Chapter relating to buildings. It is contained in Chapter XXI. In fact it is to be noted that even Article 243G itself provides for conferment of powers by a law made by the State Legislature on the Panchayats for enabling them to function as institution of self Government. It is difficult to conceive of a modern day institution of self Government which is not provided with power to regulate construction of buildings. At any rate in my view it cannot be said that the power relating to regulation of buildings is not to be a power which is not available to an effective institution of a self Government. I also note that in Entry 11 item No.2 refers to land development. In other words I would think that Articles 243 G and 243 W cannot construe as being the field of a legislation. At any rate it is difficult not to consider a law relating to building regulation as not being embraced within the scope of powers necessary to enable a Panchayat to function as an institution

of self-Government, in which case the power is certainly available even with reference to Article 243G. Section 274 cannot be thought of as a law which contravenes Article 243G. There is a presumption that the legislature knows the needs of its people. There is a presumption of validity of a legislation. The argument of the petitioner being only built around Article 243G and Article 243W read with Eleventh and Twelfth Schedules, once this court comes to the conclusion that there is legislative power to enact laws in relation to regulation of buildings within the area falling in the province of the Panchayat, it is not difficult to sustain Section 274 of the Panchayat Raj Act.”

14. The above proposition of law which traces the legislative power to enact laws under Article 243G is founded on sound legal logic. In the present appeal we therefore, see no infirmity in the conclusion reached by the High Court that the application of Kerala Municipality Building Rules to gram panchayat area by extension through a notification dated 6.11.2006 under *Section 274* of the Kerala Panchayat Raj Act is a legally permissible action.

15. In so far as the direction to the Secretaries of the Gram Panchayats to collect permit fee for the under-construction building, it is necessary to bear in mind the real implication of the Circular dated 25.07.2007. This Circular made it very clear that for those incomplete buildings, which have commenced construction before 06.06.2007, there is no need to prepare plan and submit the same to the Panchayat. Most significantly, the Municipality Building Act and the Municipality Building Rules need not be made applicable to such ongoing construction. However, the Panchayat Secretary is required to inspect such buildings and issue numbers bearing in mind the particulars as stated in paragraph II(2) and II(7) of the Circular dated 20.06.2007. The builders were therefore made free to complete their ongoing construction, without having to follow the Municipality Building Rules which

were extended otherwise to the Panchayat areas by the concerned government Circulars. When the Municipality Building Rules stood extended to panchayat areas, anyone proposing to construct a building within such areas will have to by implication apply and obtain a building permit and further construction can commence only in accordance with such building permit. If the authorities would have insisted on scrupulous adherence to the Building Rules, even those who have commenced construction with the permission of the Panchayat Authority, will be obliged to first pay permit fee and then modify the plans as may be needed and they must also adhere to the FAR and permitted coverage, under the Municipality Building Rules.

16. But, the Government decided to exempt this category of building in the Gram Panchayat areas from the rigors of the municipality building Rules. Instead, it was stipulated that the builders will have to pay the permit fee. The arrangement made by the Government through the aforementioned Circulars was intended to facilitate the builders to complete their ongoing construction without having to adhere midway with the requirement of the Municipality Building Act and the Rules. In a way the builders were relieved of adhering to the Municipal Building Rules by the steps taken by the Government. The instruction to the Gram Panchayat Authorities for facilitating the completion of the ongoing construction must therefore be seen as a concession and not a penalty.

17. Securing a permit for a building and getting a number for the same will facilitate the builders and the occupiers to claim legitimacy for their buildings and the steps taken by the Government even after extending the Municipal Building laws to the gram panchayat areas, should be seen as a

beneficial measure for the ongoing construction in the Gram Panchayat areas.

18. In the above circumstances, no infirmity is noticed in the impugned judgment of the High Court. As such, the appeals challenging the same are found devoid of merit and those are dismissed. It may however be observed that we have not pronounced on the rate of the permit fee that is leviable for a given construction and that aspect is left open to be canvassed and decided in individual cases, by the competent authority.

C.A. Nos.2024, 2025, 2026, 2027, 2031, 2032-2033 & 7418 of 2010

As these appeals arise from the same impugned judgment (25.11.2009) of the High Court, they will abide by the today's order in the Civil Appeal No.2023/2010 [*Abad Builders (P) Ltd. v. Thrikkakara Grama Panchayat & Anr.*] Accordingly, these appeals are disposed of.

Pending application(s), if any, stand closed.

CIVIL APPEAL NO. 8044/2010

Ms. Ritika Sinha, learned counsel appearing for the appellant has instructions not to press this appeal. Accordingly, the Civil Appeal Stands disposed of.

Pending application(s), if any, stand closed.

.....J.
[HRISHIKESH ROY]

.....J.
[PANKAJ MITHAL]

**NEW DELHI;
AUGUST 02, 2023.**

ITEM NO.101

COURT NO.6

SECTION XI-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 2023/2010

ABAD BUILDERS (P) LTD.

Appellant(s)

VERSUS

THRIKKAKARA GRAMA PANCHAYAT & ANR.

Respondent(s)

([GROUP MATTER])

WITH

C.A. No. 2024/2010 (XI-A)

C.A. No. 2025/2010 (XI-A)

C.A. No. 2026/2010 (XI-A)

C.A. No. 2027/2010 (XI-A)

C.A. No. 2031/2010 (XI-A)

C.A. No. 2032-2033/2010 (XI-A)

C.A. No. 8044/2010 (XI-A)

C.A. No. 7418/2010 (XI-A)

Date : 02-08-2023 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HRISHIKESH ROY
HON'BLE MR. JUSTICE PANKAJ MITHAL

For Appellant(s)

Mr. Pallav Shishodia, Sr. Adv.
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Mr. Aditya Verma, Adv.

Mr. Jayanth Muth Raj, Sr. Adv.

Mr. Nishe Rajen Shonker, AOR

Mrs. Anu K Joy, Adv.

Mr. Alim Anvar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeals are disposed of in terms of the signed order.

Pending application(s), if any, stand closed.

(DEEPAK JOSHI)
COURT MASTER (SH)

(KAMLESH RAWAT)
ASSISTANT REGISTRAR

(Signed Order is placed on the File)