

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.NO.559/93.

Tuesday, this the 30th day of November, 1993.

C O R A M

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

KK Vidyadharan, Valve Man,
Office of the Assistant Garrison Engineer (MES),
NAD, Aluva.

...Applicant

By Advocate Shri Asok M Cherian.

Vs.

1. The Engineer-in-Chief, Army Headquarters,
Engineer-in-Chief's Branch,
DHQ P.O., New Delhi--110 011.
2. The Commander Works Engineer (MES),
Naval Base, Cochin-4.
3. Union of India represented by
Secretary, Ministry of Urban Development,
New Delhi.

...Respondents

By Advocate Shri S Krishnamoorthy,, Addl Central Govt Standing Counsel.

O R D E R

Applicant has applied for a House Building Advance to construct a residential building in his own land which is situated within the local jurisdiction of Edathala Panchayat. First respondent rejected his application on the ground that he has not produced the building plan duly approved by the Municipality/Municipal Board and that Panchayat is not authorised to approve the building plan.

2. Applicant has stated that since his land is situated in the Panchayat area, the building plan can be approved only by the Panchayat, and he has produced a 'No Objection Certificate' issued by the Panchayat. It is not possible for him to produce any approval from a Municipality, as no Municipality has jurisdiction over the land concerned.

3. A similar case had come up before this Tribunal in OA 465/93 in which orders were passed following an earlier decision rendered

contd.

in OA 1749/92, wherein it was held that after producing a certificate from the Executive Officer of the Panchayat, the applicant had fully complied with the formalities for getting House Building Advance.

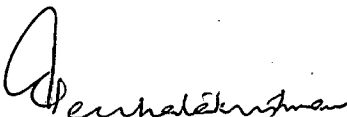
4. It is obvious that the land being situated in a Panchayat area, and not within the jurisdiction of any Municipality, it is not possible for the applicant to produce an approval from a Municipality. In any case, as far as powers of local bodies are concerned, a Panchayat is as competent as a Municipality to certify matters within its jurisdiction in regard to building approvals.

It is not possible to understand the logic behind the refusal to admit the approval given by the Panchayat which is seen in the impugned order at Annexure A1.

5. I, therefore, quash the impugned order, and direct first respondent to consider the matter afresh, taking due note of the fact that the land being situated in a Panchayat area, the approval of the concerned Panchayat would be a valid document.

6. Application is disposed of as above. No costs.

Dated the 30th November, 1993.


(PV VENKATAKRISHNAN)
ADMINISTRATIVE MEMBER

ps/3011

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE: 10.8.93

O.A. 465/93

1. N. Sunil Kumar
S/o S. Narayana Pillai
Vengoor Village, Perumbavoor
2. T.G. Sreedharan
s/o T.K. Thevan
3. Varghese Mathew
s/o Mathew Varghese
4. N. Ramachandran Nair
s/o Narayanan Nair

Applicants

vs.

1. The Engineer-in-Chief,
Army Hqs, Engineer-in-Chief Branch
HQ P.O. New Delhi-11
2. The Commander Works Engineer (MES)
Naval Base, Cochin-4
3. Union of India represented by the
Secretary to Govt., Ministry of
Urban Development, New Delhi

Respondents

Mr. Asok M. Cherian

Counsel for
applicants

Mr. S. Krishnamoorthy, ACGSC

Counsel for
respondents

CORAM

THE HON'BLE MR. N. DHARMADAN JUDICIAL MEMBER

JUDGMENT

MR. N. DHARMADAN JUDICIAL MEMBER

Applicants are employees working under the first respondent. According to them they are eligible for House Building Advance (HBA) from the second respondent for constructing their own houses. They have submitted applications on 27.1.92, 11.12.91, 15.7.92 and 9.3.92 respectively. They were also forwarded to the competent authority for grant of the loan. After considering the loan applications, the first respondent passed the impugned orders Annexure A-1, A-2, A-3 and A-4 /s/ all the applicants. The reason given for rejecting the applications is

as follows:

".. The Panchayat is not authorised to approve the Building Plan. Hence it is regretted to inform you that in the absence of the Building Plan duly approved by the Municipal/Municipal Board the case cannot be considered for the grant of HBA."

2. Respondents sought to support the impugned order on the ground that Annexure-R-2 provides that the application should be accompanied by photostat copy of the plan approved by the Municipality. Since all other officers are submitting application for HBA along with photostat copy of the plan approved by the Municipality, the applicants are also directed to follow the same procedure.

3. Admittedly, the applicants are residing in the rural area within the jurisdiction of the Panchayat and there is no question of any approval of construction of building in rural areas. Hence, they have produced certificate from the Executive Officer of the Panchayat stating that the Panchayat has no objection. Notwithstanding production of the certificate, respondents have taken a technical stand for grant of the HBA. ^{hence} the applicants should comply with the mandatory clause (f) of Annexure R-2.

4. When similar question arose for consideration in K. C. Joseph Vs. Engineer in Chief, Engineer in Chief Branch, Army Hqs, AHQ New Delhi, O.A. 1749/92, this Tribunal considered the issue and held as follows:

"In the result, I am of the view that the respondents are stopped from denying the benefit of HBA as referred to in Annexure-III. Hence, I am of the view that this application is to be allowed. Accordingly I quash Annexure-IX and declare that the applicant is entitled to HBA in terms of Annexure-III. As per orders of this Tribunal dated 6.1.93..an amount of Rs. 73,500/- which is admittedly the HBA entitled to the applicant as per Annexure-III is reserved from the available fund to be disbursed to the applicant in the case the application is allowed. Since the application has already been allowed, it goes without saying that the said amount of Rs.73,500/- shall be disbursed to the applicant as expeditiously as possible before the same is lapsed as stated by learned counsel for respondents."

5. I further held in that case that by producing a certificate from the Executive Officer of the Panchayat, the

applicant has fully complied with the formalities of getting HBA and allowed that application .

6. Respondents have no case in the impugned order that the applicants have not complied with any other formalities except production of approved plan from the Municipality/Municipal Board. However, learned counsel for respondents submitted that the respondents have not examined whether the applicants have complied with all other formalities for grant of HBA.

7. Having considered the matter in detail, I am of the view that the decision of this Tribunal in O.A. 1749/92 referred to above will apply to the facts of this case also. Accordingly, I allow the original application and quash the impugned orders.

8. There shall be no order as to costs.

Sd/-
(N. DHARMADAN)
JUDICIAL MEMBER
10.8.93

kmm

CERTIFICATE TRUE COPY
Date 16-8-93

Deputy Registrar

