

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY, THE 11TH DAY OF AUGUST 2015/20TH SRAVANA, 1937

Con.Case(C).No. 940 of 2015 (S)

(THE ORDER IN WP(C) 16404/2014 of HIGH COURT OF KERALA DATED
02-07-2014)

PETITIONERS/PETITIONERS IN THE WP:

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1. A BASHEER,
S/O.ABUBACKOR, AGED 65 YEARS, ROOMNO.2
CLOCK TOWER BUILDING, CHINNAKADA, KOLLAM
RESIDING AT ARA VEEDU, TAGORE NAGAR -17, KOLLAM - 12.
 2. S.THAMPI, S/O.SREEDHARA PANICKER, AGED 60 YEARS,
ROOM NO.1, CLOCK TOWER BUILDING, CHINNAKADA
KOLLAM, RESIDING AT KULANGARA VEEDU, ASRAMAM
KOLLAM -12.
 3. RUKIYA UMMAL, W/O.SHAMSUDHEEN,
AGED 55 YEARS, ROOM NO:8, CLOCK TOWER BUILDING
CHINNAKADA, KOLLAM, RESIDING AT SHA MANZIL
BHARATH NAGAR-105, VADAKKEVILA, KOLLAM.
 4. SHAMSUDEEN, S/O.MUHAMMED SALI,
AGED 65 YEARS, ROOM NO:5, CLOCK TOWER BUILDING
CHINNAKADA, KOLLAM, RESIDING AT S.N.NAGAR-160
AYATHIL.P.O., KOLLAM.
 5. JAFFET JOHNSON FREDY, S/O. JOHNSON FREDY,
AGED 47 YEARS, ROOM NO:4, CLOCK TOWER BUILDING
CHINNAKADA, KOLLAM, RESIDING AT MATHA BHAVAN
FRIENDS NAGAR-44, THANKASSERY, KOLLAM.
 6. CHENGOTTAI SINGAM, S/O.THIRUMALAICHANI THEVAR,
AGED 50 YEARS, ROOM NO:7, CLCOK TOWER BUILDING
CHINNAKADA, KOLLAM, RESIDINGG AT THEVAR ILLAM
KOTTAMUKKU, KOLLAM.
 7. M.G.SHAJI, S/O.LATE M.A.GAFOOR,
AGED 45 YEARS, ROOM NO:3
CLOCK TOWER BUILDING, CHINNAKADA, KOLLAM
RESIDING AT NINE STAR HOUSE, CONTONMENT NORTH, KOLLAM.
 8. NIZAR.A.J., S/O.ABDUL JALAL, AGED 42 YEARS,
ROOM NO:6, CLOCK TOWER BUILDING, CHINNAKADA
KOLLAM, RESIDING AT CRESENT VILLA, UMMAYANALLOOR
KOLLAM.

9. RAJEEV, S/O.SUBAHAN, AGED 35 YEARS,
ROOM NO:10, CLOCK TOWER BUILDING, CHINNAKADA
KOLLAM, RESIDING AT VELLIYATH THEKETHIL, KUREPUZHA
KAVANAD, KOLLAM.

BY ADV. SRI.B.MOHANLAL

RESPONDENTS/RESPONDENTS:

1. SMT.HONEY BENCHAMIN,
FATHER'S NAME AND AGE NOT KNOWN TO THE PETITIONER
THE MAYOR KOLLAM CORPORATION COUNCIL
CORPORATION BUILDINGS, KOLLAM - 691 001.
2. SRI.VIJAYAN, FATHER'S NAME AND AGE NOT KNOWN TO THE
PETITIONER, THE SECRETARY, KOLLAM CORPORATION
CORPORATION BUILDING, KOLLAM, PIN - 695 001.
3. SRI.CHANDRAN PILLAI, FATHER'S NAME AND AGE NOT KNOWN
TO THE PETITIONER, THE REVENUE OFFICER, KOLLAM MUNICIPAL
CORPORATION, KOLLAM, PIN - 695 001.

BY ADV. SRI.M.K.CHANDRA MOHAN DAS,SC,KOLLAM MPT

THIS CONTEMPT OF COURT CASE (CIVIL) HAVING BEEN FINALLY HEARD
ON 11-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

- ANNEXURE-A1: THE TRUE COPY OF THE NOTICE NO.R-13-36051/12 DATED 06/07/2012 ISSUED BY THE 2ND RESPONDENT TO THE OCCUPANTS OF THE SHOP ROOMS IN THE CLOCK TOWER.
- ANNEXURE-A2: THE TRUE COPY OF THE NOTICE DATED 07/07/2012 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONERS.
- ANNEXURE-A3: THE TRUE COPY OF THE SETTLEMENT DATED 23.4.2012 ENTERED INTO BETWEEN THE PETITIONERS AND THE RESPONDENTS.
- ANNEXURE-A4: THE TRUE COPY OF THE UNDERTAKING GIVEN BY THE 1ST PETITIONER BEFORE THE 2ND RESPONDENT DATED 18.10.2012.
- ANNEXURE-A5: THE TRUE COPY FO THE JUDGMENT IN W.P.(C)NO.16736/2012 DATED 19/07/2012 OF THIS HON'BLE COURT.
- ANNEXURE-A6: THE TRUE COPY OF THE NOTICE NO.R-13-32068/14 DATED 23/06/2014 ISSUED BY THE 3RD RESPONDENT TO THE 6TH PETITIONER.
- ANNEXURE-A7: THE TRUE COPY OF THE INTERIM ORDER DATED 02/07/2014 IN W.P.(C)NO.164042014 OF THIS HON'BLE COURT.
- ANNEXURE-A8: THE TRUE PHOTOGRAPH OF THE PRESENT STATE OF AFFAIRS OF THE CLOCK TOWER BUILDING.
- ANNEXURE-A9: THE TRUE COPY OF THE APPLICATION DATED 28/04/2015 SUBMITTED BY THE PETITIONERS BEFORE THE 1ST RESPONDENT.
- ANNEXURE-A10: THE TRUE COPY OF THE BROCHURE ISSUED BY THE RESPONDENTS REGARDING THE INAUGURATION OF THE OVER-BRIDGE AND UNDERPASS.
- ANNEXURE-A11: THE TRUE COPY OF THE RECEIPT ISSUED BY THE REVENUE OFFICER GRADE-II, KOLLAM CORPORATION TO THE PETITIONERS 1 AND 2.

RESPONDENTS' EXHIBITS:

- ANNEXURE A: A COPY OF RESOLUTION NO.13 DATED 30.07.2015.

// TRUE COPY //

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P.S. TO JUDGE

C.T.RAVIKUMAR, J.

Contempt Case (C) No.940 of 2015

Dated 11th August, 2015

JUDGMENT

The captioned contempt petition has been filed alleging willful disobedience with the directions of this Court in the interim order dated 2.7.2014 passed in W.P.(C)No.16404 of 2014. This Court passed the said order after taking note of paragraph 3 of an earlier judgment of this Court in W.P.(C)No.16736 of 2012 filed by petitioners 1 to 6 herein viz., Ext.P5 judgment and the undertaking given by the Kollam Municipal Corporation. Evidently, those persons who filed the aforementioned writ petition before this Court which culminated in Ext.P5 were occupying certain rooms belonging to the Corporation in the Clock Tower building. The Corporation wanted to construct an underpass and the petitioners and certain other occupiers were issued with notice to give vacant possession for the aforesaid purpose. In fact, it was at that circumstance that they approached this Court by filing the said writ petition. Pursuant to the order passed by this Court, taking note of the undertaking recorded in Ext.P5 judgment and the interim order passed by this Court on 2.7.2014 the underpass has been constructed. The captioned contempt petition has been filed

contending that though in terms of the order passed by this Court after the construction of the underpass the keys of the shops which were being occupied by the said petitioners are to be returned to them they were not returned so far and that there is wilful disobedience in returning the keys. An affidavit has been filed by the respondents wherein it is stated that virtually, the aforementioned petitioners had not handed over the keys in terms of the order. But, it is evident from the statement that after taking possession the underpass has already been constructed. In such circumstances, the question is whether the respondents have honoured the undertaking given to this Court that was recorded in Ext.P5 judgment and evidently, formed the foundation for the interim order passed by this Court on 2.7.2014. The learned Standing Counsel for the respondent Corporation submitted that subsequent to the construction a resolution was passed by the Kollam Corporation whereby it was decided to verify and ascertain whether it was the benamies of the petitioners who were conducting the business in the shop rooms concerned. Since the possession of the rooms were given/taken and the construction of the underpass has already been effected, the position now, obtained is that nobody is now in possession of those rooms. In terms of the order and the undertaking given already, as noticed hereinbefore, petitioners 1 to 6 are entitled to get the keys of the respective shop rooms which were

in their possession and this position cannot, now, be disputed. The learned standing counsel for the respondent Corporation submitted that virtually, the respondents have no intention to bypass the orders passed by this Court and they only wanted to see whether the shop rooms are going to be conducted by the persons to whom such rooms were actually given by the Corporation viz., by petitioners 1 to 6 themselves. In other words, the attempt is to avert the possibility of conducting of such shops by benamies. That apart, the learned standing counsel for the respondents contended that since improvements were made during the construction of the underpass the Corporation is also entitled to seek for enhancement of the rent. Another contention was also raised by the learned standing counsel based on the interim order passed this Court on 2.7.2014. It is stated that going by the said order, only petitioners 1 to 6 are entitled to get the keys from the Corporation, after the completion of the construction of the underpass. In respect of the others, in terms of the order, they will have to work out their remedies in accordance with law. Since they have not worked out their remedies and they were not beneficiaries of Ext.P5 judgment it is contended that the respondents are not having any bounden duty to hand over the keys to them. I do not think that I need to delve into the said matter any further as I made it very clear that in respect of those persons who were not parties to the

earlier writ petition cannot be the beneficiaries of the undertaking and they will have to work out their remedies, in accordance with law. The learned counsel for the petitioners submitted that the allegation that the shops given to petitioners 1 to 6 were being run through benamies is not true to facts and it is also contended that no improvement whatsoever has been made in respect of the said shop rooms and as such, the Corporation is not entitled to pray for enhancement. In the light of the aforementioned rival submissions and the apprehension of untoward incidents the following order is passed:-

In terms of the order passed by this Court taking note of the undertaking given in Ext.P5 judgment it is made clear that the 2nd respondent who is the Secretary of Kollam Corporation shall hand over the keys in respect of the shop rooms which were in the possession of petitioners 1 to 6 and if all keys of those rooms are not available while handing over the rooms they shall be permitted to put new locks. Considering the apprehension sounded by the learned standing counsel for the respondents at the time of handing over of the keys to petitioners 1 to 6, it is made clear that it will be open to the respondents to seek the presence of the District Police Chief, Kollam or any competent officer deputed by him to oversee the same. Needless to say that after such handing over it will be open to the respondent Corporation to verify

whether the shops are being run by petitioners 1 to 6 themselves and if in violation of the terms of lease/licence they are found conducted by benamies it will be open to the Corporation to take action, in accordance with law. So also, if improvements have been made in respect of the shop rooms which were in the possession of petitioners 1 to 6, after handing over the keys it will also be open to the Corporation to claim for enhancement of the rent/licence fee, in accordance with law and in case of failure to take appropriate action in accordance with law. The handing over of the keys to petitioners 1 to 6 shall be done expeditiously, at any rate, within a period of one month from the date of receipt of copy of this judgment.

This contempt petition is closed subject to the above.

Sd/-
C.T.RAVIKUMAR
Judge

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