

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

OP(C).No. 3973 of 2013 (O)

**CMA 50/2012 OF VI ADDL.DISTRICT COURT, ERNAKULAM.
OS 155/2012 OF MUNSIF COURT, KOCHI.**
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PETITIONER(S):

- 1. KALPATHARUA CO-OPERATIVE HOUSING SOCIETY
LTD. NO.E-895, 6/2180, GUJARATHI ROAD,
KOCHI - 682 002, REP. BY ITS SECRETARY,
RAJESH KUMAR AGARWAL.**
- 2. MADHUSUDAN GUPTA, PRESIDENT,
KALPATHARU CO-OPERATIVE HOUSING SOCIETY LTD.
NO.E-895, 6/2180, GUJARATI ROAD, KOCHI - 682 002.**

BY ADV. SRI.SAIBY JOSE KIDANGOOR

RESPONDENT(S):

- 1. BALACHANDRAN, AGED 38 YEARS,
S/O.BHASKARAN, VEGETABLE MERCHANT,
DOOR NO.5/805, GUJARATHI ROAD,
MATTANCHERY, KOCHI - 682 002.**
- 2. CORPORATION OF COCHIN, ERNAKULAM,
REP. BY ITS SECRETARY - 682 031.**

**R1 BY SRI.S.SREEKUMAR (SENIOR ADVOCATE)
ADV. SRI.M.H.HANIS
R2 BY SRI.P.K.SOYUZ,SC
BY ADV. SRI.RAAJESH S.SUBRAHMANIAN,SC**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 29-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS:

- EXT.P-1: TRUE COPY OF THE ORDER NO.FCP2-404/2012 DATED 7.4.2012 ISSUED BY THE 2ND RESPONDENT.
- EXT.P-2: TRUE COPY OF THE NOTICE DATED 26.5.2012 INTIMATING THE CONDITION OF THE BUILDING TO THE 1ST RESPONDENT.
- EXT.P-3: TRUE COPY OF THE COMMUNICATIOIN NO.FCP2-404/2012 DATED 4.6.2012 OF THE RESPONDENT CORPORATION.
- EXT.P-4: A COPY OF THE SUIT NUMBERED AS O.S.NO.155/2012 AND I A 1190/2012.
- EXT.P-5: TRUE COPY OF THE ORDER OF INJUNCTION DATED 23.7.2012 IN O.S. NO.155/2012.
- EXT.P-6: TRUE COPY OF THE ORDER NO.FCP2-404/2012 DATED 12.6.2012 OF THE 2ND RESPONDENT OVER RULING THE OBJECTION OF THE 1ST RESPONDENT.
- EXT.P-7: TRUE COPY OF THE ORDER IN R P NO.55/2012 DATED 6.11.2012 ISSUED BY THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTION, THIRUVANANTHAPURAM
- EXT.P-8: TRUE COPY OF THE ORDER IN OP(C) 2050/2013 DATED 29.7.2013 BEFORE THIS HON'BLE COURT.
- EXT.P-9: TRUE COPY OF THE REPORT DATED 27.10.2012 OF THE ADVOCATE COMMISSIONER AND REPORT DATED 18.10.2012 OF EXECUTIVE ENGINEER.
- EXT.P-10: TRUE COPY OF THE JUDGEMENT PASSED BY THE HON'BLE DISTRICT COURT IN CMA 50/2012 DATED 30.9.13.
- EXT.P-11: TRUE COPY OF THE PHOTOGRAPHS.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

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B.KEMAL PASHA, J.

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O.P.(C).No.3973 of 2013

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Dated this the 29th day of June, 2015

J U D G M E N T

A building, which is said to be dilapidated, is the subject matter of this Original Petition (Civil) under Section 411 of the Kerala Municipalities Act. A notice was issued by the Corporation to the landlord of the building, thereby directing the landlord to demolish the building, which according to the Corporation, is in a dilapidated stage, which may cause danger and loss of life to others. It seems that by pointing out the dilapidated nature of the building, the landlord had approached the Corporation. Thereafter, the Corporation has made necessary visit of the building and enquiries and it was after that, Exhibit P1 order was issued. Notices were issued to all the tenants including the 1st respondent herein. Except the 1st respondent, all the tenants of the building vacated the premises. Repeatedly,

Exhibit P3 notice was issued by the Corporation to the landlord, thereby directing the landlord to demolish the building. The said order was challenged by the 1st respondent through an appeal. The appeal was dismissed. Thereafter, the 1st respondent preferred a revision before the Tribunal for Local Self Government Institutions, Thiruvananthapuram as Revision Petition No.55 of 2012. Through detailed order dated 06.11.2012, the said revision was also dismissed, by confirming the order in appeal.

2. In the meantime, the 1st respondent filed O.S.No.155 of 2012 before the Munsiff's Court, Kochi. An order of temporary injunction was passed in the suit against the demolition and forcible eviction. The same was challenged in C.M.A.No.50 of 2012 before the District Court, Ernakulam. Through judgment dated 30.09.2013, the learned Additional District Judge confirmed the order passed by the court below, by making it clear that the petitioners are entitled to demolish the building by virtue of Exhibit B1 after evicting the plaintiff (the 1st respondent herein) from the

petition schedule building through due process of law. The said judgment is under challenge.

3. Heard the learned counsel for the petitioners and the learned Senior Counsel and learned Standing Counsel for the respondents in *extenso*.

4. The petitioner has produced photographs of the structure, which show that the existing edifies somewhat in a dilapidated stage. The learned Senior Counsel submits that all the other portions of the building were demolished by the petitioners and it was after that, this kind of appearance has occurred to the building. It seems that still the 1st respondent is conducting a vegetable shop in that portion of the building, which is occupied by him.

5. On hearing either side, this Court is of the view that the court below can be directed to dispose of O.S.No.155 of 2012, as expeditiously as possible, at any rate within a period of three months from the date of receipt of a copy of this judgment. The court below shall take a decision in the matter quite untrammelled by any of the observations made

by the court below in the order of temporary injunction as well as the judgment passed by the appellate court in C.M.A.No.50 of 2012.

In the result, this Original Petition (Civil) is disposed of as above.

Sd/-

B.KEMAL PASHA
JUDGE