

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

WA.No. 967 of 2010 () IN WP(C).20524/2004

JUDGMENT IN WP(C) 20524/2004 of HIGH COURT OF KERALA DATED 08-04-2010

APPELLANT/5TH RESPONDENT:

K.G.AUGUSTINE, S/O.K.A.GEORGE.
KANNIKAL HOUSE, MARKET ROAD (NORTH END), KOMBARA
TATAPURAM.P.O, KOCHI-14.

BY ADVS.SRI.DINESH R.SHENOY
SRI.G.HARIKRISHNAN (TRIPUNITHURA)

RESPONDENTS/PETITIONER/RESPONDENTS:

1. SHEELA SEBASTIAN, W/O.SEBASTIAN KANNIKAL
KANNIKAL HOUSE, MARKET ROAD (NORTH END), KOMBARA
TATAPURAM.P.O, KOCHI-14.
 2. STATE OF KERALA,
REP.BY THE SECRETARY TO GOVERNMENT
LOCAL SELF GOVERNMENT (H) DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.
 3. THE SECRETARY, CORPORATION OF COCHIN,
BOAT JETTY, ERNAKULAM.
 4. THE COMMISSIONER OF POLICE,
OFFICE OF THE COMMISSIONER OF POLICE,
KOCHI CITY, ERNAKULAM.
- ** ADDRESS OF R4 CORRECTED AS PER ORDER DATED 3/8/11 IN I.A.
506/11.

5. THE SUB INSPECTOR OF POLICE,
CENTRAL POLICE STATION, KOMBARA, ERNAKULAM.

R3 BY ADV. SRI.M.K.CHANDRA MOHANDAS

R1 BY ADVS. SRI.LAL K.JOSEPH

SRI.A.A.ZIYAD RAHMAN

SRI.P.MURALEEDHARAN (THURAVOOR)

SRI.V.R.REKESH

R2, R4 & R5 BY GOVERNMENT PLEADER ROSE MICHAEL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 20-05-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

APPELLANT'S ANNEXURES:

ANNEXURE A1 : TRUE PHOTOCOPY OF THE LETTER DATED 25.03.2010
ISSUED BY THE SECRETARY OF THE LOCAL SELF
GOVERNMENT INSTITUTION WITH TRUE TRANSLATION OF
ANNEXURE -A1.

RESPONDENTS' ANNEXURES: NIL

//TRUE COPY//

P.A. TO JUDGE

smv

**ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.**

W.A.No.967 OF 2010

Dated this the 20th day of May, 2015

JUDGMENT

Antony Dominic, J.

The 5th Respondent in W.P.(C) No.20524/2004 is the appellant. The writ petition was filed by the 1st Respondent herein, challenging Ext.P7, an order passed by the Government of Kerala, disposing of an appeal filed by the appellant, who was aggrieved by Ext.P3, an order passed by the 3rd Respondent, directing demolition of the structure mentioned therein. By Ext.P7, the Government ordered that the 3rd Respondent will make necessary alterations to the structure constructed to bring it in conformity with the provisions of Rules 24 and 25 of the Kerala Municipality Building Rules, 1999, after the dispute over the boundary between the parties is settled. It was challenging Ext.P7 to the extent it directs further action by the 3rd

Respondent after the dispute over the boundary is settled, that the 1st Respondent filed the writ petition. By the judgment under appeal, the learned Single Judge quashed Ext.P7 on the ground that by the time the order was passed by the Government on 17.06.2004, the Tribunal for Local Self Government Institutions constituted by the Government was already functioning and that an appeal against Ext.P3 could have been entertained only by that Tribunal under Sec.509 of the Kerala Municipality Act. On that basis, the learned Single Judge found that the order to be without jurisdiction and set aside the order and directed the Government to transmit the appeal petition dated 14.07.2003 filed by the appellant to the Tribunal which was to dispose of the matter afresh. It is this judgment which is under challenge before us.

2. We heard the learned counsel for the appellant, the learned counsel for the 1st Respondent and the learned Government Pleader and have considered the submissions made.

3. As we have already stated, the view taken by the learned Single Judge in the judgment under appeal is that as on 17.06.2004 when Ext.P7 order was passed, the Tribunal

was already functioning and that in view of Sec.509, the appeal could not have been entertained by the Government.

4. Before us, the learned counsel appearing for the appellant relied on Annexure-A1, a reply obtained to a query made under the Right to Information Act and contended that the Tribunal commenced functioning only on 13.09.2004 and that therefore it was perfectly within the power of the Government to have passed Ext.P7 order on 17.06.2004. Therefore, the counsel contended that the view taken by the learned Single Judge is illegal and deserves to be reversed.

5. The Tribunal for Local Self Government Institutions was constituted under Sec.271(s) of the Kerala Panchayat Raj Act, 1994 and this was by G.O.(P)No.52/2004/LSGD dated 05.02.2004. However, the Presiding Officer for the Tribunal was appointed by the Government only by G.O.(P) No.259/2004/LSGD dated 11.08.2004 and the Presiding Officer appointed assumed charge only on 21.08.2004. It therefore, means that though the constitution of the Tribunal as per Sec.271 of the Kerala Panchayat Raj Act was by Government Order dated 05.02.2004, the commencement of the Tribunal as contemplated in Sec.509(12) of the Kerala Municipality Act

was only subsequent at least to 11.08.2004, when the Presiding Officer was appointed. If this view is not taken, the resultant position will be that during the interregnum period, there would have been no authority to entertain grievances which were only then entertained by the Government and which power was later conferred on the Tribunal.

6. In such circumstances, we can only hold that as on 17.06.2004 when Ext.P7 order was passed, the Government was fully within its power in doing so. Therefore, we cannot endorse the view taken by the learned Single Judge that when Ext.P7 order was passed, the Tribunal was functioning and therefore the order is without jurisdiction. We therefore, set aside the judgment under appeal. The appeal will stand allowed as prayed for.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**SHAJI .P. CHALY
JUDGE**

//true copy//

P.S. to Judge

St/-