

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR.JUSTICE ALEXANDER THOMAS**

WEDNESDAY, THE 18TH DAY OF MARCH 2015/27TH PHALGUNA, 1936

WA.No. 1179 of 2013 () IN WP(C).6800/2013

**AGAINST THE ORDER/JUDGMENT IN WP(C) 6800/2013 of HIGH COURT OF KERALA
DATED 12-03-2013**

APPELLANT(S)/PETITIONER:

**THRIKKAKARA MUNICIPALITY
KAKKANAD P.O., KOCHI - 682 030
REPRESENTED BY THE SECRETARY.**

BY ADV. SRI.LEGY ABRAHAM

RESPONDENT(S)/RESPONDENTS:

- 1. THE OMBUDSMAN FOR LOCAL SELF GOVERNMENT INSTITUTIONS
PALAYAM, THIRUVANANTHAPURAM - 695 034
REPRESENTED BY THE SECRETARY.**
- 2. O.M.SHAMEER, KIZHAKKEKARA HOUSE, THRIKKAKARA P.O.,
KOCHI - 682 021.**
- 3. M.H.NAZEER HAMZA, MOLOTH HOUSE, KAKKANAD P.O.,
ERNAKULAM - 682 030.
R2 BY ADV. SRI.K.JAYAKUMAR (SR.)
R2 BY ADV. SMT.SADHANA KUMARI ESWARI**

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 18-03-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WA NO.1179/13

APPENDIX

APPELLANT'S EXHIBITS

ANNEXURE A1: TRUE COPY OF THE INFORMATION RECEIVED FROM THE STATE PUBLIC INFORMATION OFFICER, TALUK SUPPLY OFFICE, KANAYANNUR NO.C.S1-2611/07 DTD.12.7.13 AND ITS TRANSLATION.

ANNEXURE A2: TRUE COPY THE DECISION NO.10 OF THE THRIKKAKARA MUNICIPAL COUNCIL DTD. 24.3.2012 AND ITS TRANSLATION.

//True Copy//

PA to Judge

Rp

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.
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Writ Appeal No. 1179 of 2013
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Dated this the 18th day of March, 2015

J U D G M E N T

Antony Dominic, J.

Thrikkakkara Municipality, which filed WP(C) No.6800/2013, is the appellant. In the writ petition, they challenged Exts.P2, P3, P4 and P5 and sought a declaration that the 2nd respondent is ineligible to claim allotment of a room in the shopping complex newly built by the Municipality at the N.G.O Quarters, Kakkanad. By the judgment under appeal, the learned single Judge dismissed the writ petition mainly on the ground of delay and laches on the part of the Municipality. It is aggrieved by this judgment, the appeal is filed.

2. We heard the learned counsel for the appellant, the learned senior counsel appearing for the 2nd respondent and considered the submissions made.

3. As we have already stated, Exts.P2, P3, P4 and P5 are the orders impugned in the writ petition. Ext.P5, the last order challenged is dated 27/9/12. However, the writ petition was filed only in the second week of March, 2013. This, therefore, shows that as rightly found by the learned single Judge, the writ petition was

filed after a period of six months of the issuance of the last of the impugned orders. There is no explanation whatsoever offered by the appellant justifying the belated filing of the writ petition. Therefore, the learned single Judge was fully justified in concluding that the writ petition filed was a belated one and is bad for laches.

4. Even on merits, we are not satisfied that the appellant has made out a case for interference. Admittedly, rooms were allotted to persons who had occupied puramboke land and had established their business establishments. In so far as the second respondent is concerned, admittedly, he too was occupying a part of the property where the shopping complex in question was constructed, where he had his commercial establishment called Katady Industries. It is also a fact that all occupants were rehabilitated in the newly constructed building. It is true that when Ext.P2 order was passed, the Ombudsman itself disallowed the claim of the 2nd respondent for allotment in the new building for the reason that despite the construction of the building, the 2nd respondent was still occupying a portion as before. However, as can be seen from Ext.P3, the subsequent order passed by the

Ombudsman after Ext.P2 order was passed, the area occupied by the 2nd respondent was also taken over and the building was demolished. This, therefore, shows that with the taking over of the portion occupied by the 2nd respondent and the demolition of the building, the 2nd respondent was placed in a position equal to that of the remaining allottees and it was recognising that entitlement of the 2nd respondent, in Exts.P3 and P5, the Ombudsman ordered allotment of a room in the newly constructed building to the 2nd respondent. While doing so, the Ombudsman has also taken note of the contention of the Municipality that it is their policy decision that only one from one residence would be allotted a room and that the appellant was residing with his father and that his father has already been allotted a room. It was therefore in Ext.P3 order, the Ombudsman has directed the Secretary to conduct an enquiry into that aspect and allot him a room, if it is found that he is residing separately from his father.

5. Annexure A2, the resolution passed by the Municipality produced along with the writ appeal, itself shows that, on enquiry, the Secretary has found that the 2nd respondent

is leading a life separately from his father. Therefore, not only that the 2nd respondent was entitled to be treated like other 46 allottees, who were similarly situated, but also having regard to the fact that the 2nd respondent is living separately from the family of his father, he is entitled to be allotted a room in the shopping complex. For all these reasons, we are not satisfied that the appellant has made out a case for interference.

Appeal fails and it is dismissed.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**ALEXANDER THOMAS
JUDGE**

Rp

//True Copy//

PA to Judge