

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 4TH DAY OF JUNE 2015/14TH JYAISHTA, 1937

WA.No. 1717 of 2013 () IN WP(C).9167/2012

JUDGMENT IN WP(C) 9167/2012 of HIGH COURT OF KERALA DATED
12-09-2013

APPELLANT/7TH RESPONDENT IN WPC:

ARUN YESUDAS, AGED 30 YEARS,
S/O YESUDAS, THITTAVILA VEEDU, KANNANALLOOR P.O
KOLLAM PROPRIETOR OF CARMEL ENGINEERING WORKS
BENZIGER HOSPITAL, KOLLAM 691001

BY ADV. SRI.B.SURESH KUMAR

RESPONDENT: PETITIONER & RESPONDENTS 1 TO 6 IN THE W.P.(C):

1. CHANDRASEKHARAN PILLAI
S/O.PARAMESWARAN PILLAI, RESIDING AT CHANDRA BHAVAN
VENDAR MURI, PUTHOOR PO, KOTTARAKKARA TALUK
REPRESENTED BY HIS POWER OF ATTORNEY HOLDER
P.ANIL KUMAR
LAKSHMI BHAVAN, VENDAR.P.O, PUTHUR
KOTTARAKKARA. 691507
2. THE STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY TO GOVERNMENT
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM 695001
3. THE KOLLAM MUNICIPAL CORPORATION,
REPRESENTED BY ITS SECRETARY
KOLLAM MUNICIPAL CORPORATION, KOLLAM 691001

WA.No. 1717 of 2013

4. THE TOWN PLANNING OFFICER,
MUNICIPAL CORPORAITON, KOLLAM 691001
5. THE VILLAGE OFFICER,
KOLLAM EAST VILLAGE, KOLLAM 691001
6. TRAVANCORE DEVASWOM BOARD,
REPRESENTED BY ITS SECRETARY
TRAVANCORE DEVASWOM BOARD OFFICE, KOWDIAR
THIRUVANANTHAPRUAM 695001
7. THE SUB GROUP OFFICER,
TRAVANCORE DEVASWOM BOARD, CHITTADEESWARAM
KOLLAM 691001

R1 BY ADV. SRI.LEO GEORGE
R1 BY ADV. SRI.P.B.SURESH KUMAR (SR.)
R1 BY ADV. SRI.S.SREEKUMAR (SR.)
BY SENIOR GOVERNMENT PLEADER SRI.P.FAZIL
BY SRI.M.K.CHANDRA MOHAN DAS,SC,KOLLAM MUNICIPAL
CORPORATION
SRI.P. GOPAL, SC FOR TDB

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 04-06-2015 ALONG WITH W.A. NO.1742 OF 2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

smv

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

W.A. Nos.1717 & 1742 of 2013

Dated this the 4th day of June, 2015

JUDGMENT

Antony Dominic,J.

These writ appeals are filed by the 7th respondent and respondents 5 and 6 in Writ Petition No.9167 of 2012.

2. The said writ petition was filed by the first respondent herein seeking to quash Ext.P13, an order passed by the Tribunal for Local Self Government Institutions in Appeal No.150 of 2011. By the said order, the Tribunal set aside Ext.P2 building permit obtained by the first respondent and clarified that the order will not preclude him from obtaining a proper permit by showing the correct access available to his plot in re-survey No.148/24 of Kollam East Village.

3. By the judgment under appeal, the learned Single Judge set aside the order of the Tribunal with a finding that Appeal No.150 of 2011 filed by the appellant in Writ Appeal No.1717 of 2013, was barred by limitation and therefore was not maintainable. The learned Single Judge has also dealt with the

other contentions that were raised at the Bar. It is aggrieved by this judgment, these appeals are filed.

4. We heard the counsel for the appellants, Senior Counsel appearing for the first respondent and the counsel appearing for the other respondents.

5. The first issue that arises for consideration is whether the finding of the learned Single Judge that Appeal No.150 of 2011 filed by the appellant in Writ Appeal No.1717 of 2013 was time barred, is legally tenable. Section 509 of the Kerala Municipality Act,1994 provides for appeal and revision. Sub-section 7 provides that an appeal may be preferred to the Tribunal against any decision mentioned therein, within 30 days from the date of passing of such decision, order or notice. In the Tribunal for Kerala Local Self Government Institutions Rules, 1999, Rule 8 provides for petition to the Tribunal. Sub-rule 3 provides that petition under sub-rules (1) and (2) shall be in Form-C and that the same shall be submitted before the Tribunal within 30 days from the date of notice of order or proceedings against which the petition is filed. The proviso to this Rule empowers the Tribunal to admit petition submitted within a further time limit of 30 days in addition to what is

provided in Rule 8(3), if the Tribunal is satisfied that there is sufficient reason for not submitting petition within 30 days.

6. Therefore, a combined report of Section 509(7) and the provisions of Rule 8(3) mentioned above show that an appeal, as in this case, should have been filed before the Tribunal within 30 days from the date of proceedings against which the appeal is filed. The Tribunal is also empowered to admit an appeal within a further period of one month if it is satisfied that there is sufficient reason for not submitting the appeal within the 30 days prescribed. In so far as this case is concerned, the judgment under appeal shows that the learned Single Judge has found that the permit in question was obtained by the first respondent on 25.11.2009 and the appeal was filed only on 18.02.2011. Considering the provisions of the Act and the Rules, the learned Single Judge held that since the special law of limitation contained in the aforesaid provisions prescribed that the appeal should be filed within the time or the extended time from the date of the order or proceedings impugned in the appeal, the period of limitation should be reckoned from the date of order impugned and not from the date of its knowledge. It is on that basis, the learned Single Judge has held that the appeal was time

barred.

7. However, before us, the counsel for the appellant in Writ Appeal No.1717 of 2013, contended that date of knowledge is what is relevant and to substantiate this contention, he referred us to Clause 5 of Form-C, the form of the petition prescribed in the Tribunal's Rules referred to above. It is true that this provision was not brought to the notice of the learned Single Judge. Since it has been brought to our notice, we have considered the implication of this provision as well. But, in our view, considering the facts of this case even if we accept this contention of the appellant, that will not save the appellant from the plea of limitation. The counsel for the appellant attempted to escape from the finding of limitation by pointing out that the building permit obtained was produced before the court in RCP No.34/2009 on 26.11.2009 and that the said RCP filed against another tenant was ordered to be jointly tried along with BRC No.31/2009 filed against the appellant, only by order dated 17.12.2010 and that it was only thereafter that on 02.02.2011 a copy of the chief affidavit filed was given to the appellant. Therefore, according to him, the appeal filed on 18.02.2011 was within the time prescribed in the Rules.

8. However, this contention does not have any foundation. In his appeal filed before the Tribunal, the appellant has stated thus:

“For that purpose, after the elapse of the period of one year from the date of purchase, the 5th respondent filed separate BRC petitions before the concerned Rent Control Court stating that the 5th respondent is in bonafide need of the entire building to be demolished and to construct a multistoried shopping complex cum lodge there, for which he claimed that he had obtained a permit dated 25.11.2009 from the 1st and 2nd respondents and his plan for constructing the said multistoried shopping complex cum lodge was got approved. But the 5th respondent suppressed the factum of permission and approval of the plan till 2.2.2011 from the pending legal proceedings in the Rent Control Court against the appellant.”

9. A reading of the above shows that the fact that the first respondent had obtained the permit dated 25.11.2009 was disclosed in his pleadings in BRC No.31/2009 and this fact is admitted by the appellant. If that be so, the moment when he obtained a copy of the Rent Control Petition from the court he came to know about the permit that has been obtained by the first respondent. Consequently the limitation should start to run from that date. Therefore, there is no substance in contending

that the plea of limitation can start only from the date when the chief affidavit was served on 02.02.2011. If that be so, even if the case of the appellant that the limitation should run only from the date of knowledge is accepted, the appeal filed by him on 18.02.2011 is hopelessly time barred. This therefore means that the appeal filed by the appellant before the Tribunal could not have been entertained by the Tribunal in view of the provision contained in Section 509(7) of the Kerala Municipality Act and Rule 8(3) of the Rules mentioned above.

10. It is true that the counsel for the appellant in Writ Appeal No.1742 of 2013 contended that he was a party to the Rent Control proceedings and therefore the averments in the Rent Control proceedings cannot create bar of limitation as against the Devaswom Board. In our view, this plea is also devoid of merit because the Devaswom Board, on its own, did not impugn the building permit. Instead they got impleaded as an additional respondent in Appeal No.150/2011 filed by the appellant in Writ Appeal No.1717 of 2013 before the Tribunal. When that appeal is found to be a time barred one, the said finding should operate against the Board also at least in so far as this litigation is concerned.

11. In view of the above findings, we do not think it necessary to deal with the other contentions dealt with by the learned Single Judge.

In such circumstance, we do not find any reason to interfere with the judgment under appeal.

Appeals are accordingly dismissed.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.A. to Judge

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