

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

WA.No. 199 of 2015 IN RP.934/2014

AGAINST THE JUDGMENT IN RP 934/2014 DATED 26-11-2014
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APPELLANT/3RD RESPONDENT :

ABDUL HAREEF AGED 40 YEARS
S/O. SAITHALAVI, AMBALERI HOUSE, KALPETTA AMSOM DESOM
VYTHIRI TALUK, KALPETTA P.O.
WAYANAD DISTRICT - 673 121.

BY ADV. SRI.C.P.MOHAMMED NIAS

RESPONDENTS/PETITIONERS AND RESPONDENTS 1 & 2 :

1. C.Y.KURIAKOSE, AGED 69 YEARS
S/O. YACOB, CHAMBAKKOTTUKUDIYIL, COLLEGE ROAD
KUPPADI AMSOM DESOM, SULTHAN BATHERY TALUK
SULTHAN BATHERY P.O., WAYANAD DISTRICT - 673 592.
2. CHINNAMMA KURIAKOSE, AGED 58 YEARS
W/O. C.Y.KURIAKOSE, CHAMBAKKOTTUKUDIYIL, COLLEGE ROAD
KUPPADI AMSOM DESOM, SULTHAN BATHERY TALUK
SULTHAN BATHERY P.O., WAYANAD DISTRICT - 673 592.
3. SECRETARY
KALPETTA MUNICIAPALITY, KALPETTA
WAYANAD DISTRICT - 673 121.
4. STATION HOUSE OFFICER
KALPETTA POLICE STATION, WAYANAD DISTRICT - 673 121.

R1 & R2 BY SRI.MATHEW KURIAKOSE
R3 BY ADV. SRI.JOE JOSEPH KOCHIKUNNEL, SC.
R3 BY ADV. SRI.GOPAKUMAR G. (ALUVA)
R4 BY SR.GOVERNMENT PLEADER, SRI.P.I. DAVIS

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 03-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**ASHOK BHUSHAN, C.J &
A.M. SHAFFIQUE, J.**

W.A. No.199 of 2015

Dated this the 3rd day of July 2015

J U D G M E N T

Ashok Bhushan, CJ

Heard the learned counsel for the appellant, the learned counsel appearing for the writ petitioners as well as the learned Standing Counsel appearing for the Municipality.

2. This writ appeal has been filed against the judgment dated 23.10.2014 in W.P.(C) No.19661 of 2014 as well as the subsequent order dated 26.11.2014 rejecting the review petition. The appellant was the 3rd respondent in the writ petition. The writ petition was filed by the landlords of the premises, which were let out to the appellant. The allegation against the appellant was that in the parking space, he has stored certain materials, which are required to be removed and the Municipality is required to take action for removing the said unauthorised occupation of parking area. The learned Single Judge, in paragraph 5 of the judgment, noted that the Municipality has taken appropriate steps by issuing notice under Sec.406 of the Kerala Municipalities Act (for short 'the Act'). The learned Single Judge disposed of the writ petition directing the Municipality to serve notice to the 3rd respondent and take further action accordingly. The grievance of the

appellant is that in pursuance to the judgment of this Court, notice, Annexure - 2 dated 15.11.2014 was issued by the Municipality directing the appellant to remove within seven days all the unauthorisedly stored articles in the parking space of the building.

3. Appellant's case is that the Municipality has not given any chance to explain the case of the appellant. It is submitted that the judgment of the learned Single Judge can be read as a direction to the Municipality to remove the unauthorised articles rather it was left open for the Municipality to take appropriate proceedings in accordance with the notice issued under Sec.406 of the Act.

4. Learned counsel for the landlord submits that notice was earlier issued by the landlord to the appellant on the basis of the letter of the Chief Town Planner. The Municipality, on the basis of the letter of the Chief Town Planner, had already directed the landlord to get the articles removed.

5. We have heard the learned counsel for the parties and perused the records.

6. The judgment of the learned Single Judge can be read as a direction to the Municipality to straight away remove the

articles. The learned Single Judge has disposed of the writ petition noticing the Municipality's stand that they have already taken appropriate action by issuing notice under Sec.406 of the Act. Thus, it is clearly indicated in the judgment that since the Municipality has issued a notice under Sec.406 of the Act, it will be open for them to take appropriate action. We do not find any error in the judgment passed by the learned Single Judge. We only observe that for taking action as per the judgment of the learned Single Judge, it is open for the Municipality to issue a fresh notice to the appellant giving an opportunity to submit reply and thereafter take appropriate steps in accordance with law.

With the above observation, this writ appeal is disposed of.

**ASHOK BHUSHAN
CHIEF JUSTICE**

**A.M. SHAFFIQUE
JUDGE**