

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

WA.No. 485 of 2015 () IN WP(C).728/2014

AGAINST THE JUDGMENT IN WP(C) 728/2014 of HIGH COURT OF KERALA
DATED 13-08-2014

APPELLANT(S)/PETITIONER :-

P.V.BABU
PADIKKAPARAMBU VELIYIL, VARANADU P.O., CHERTHALA

BY ADV. SRI.R.KRISHNA RAJ

RESPONDENT(S)/RESPONDENTS :-

1. THANNEERMUKKAM GRAMA PANCHAYATH
REPRESENTED BY ITS PRESIDENT
THANNEERMUKKAM GRAMA PANCHAYAT OFFICE, CHERTHALA
ALAPPUZHA DIST - 688 527.
2. SECRETARY
THANNEERMUKKAM GRAMA PANCHAYATH, CHERTHALA
ALAPPUZHA DIST - 688 527.
3. SABU T., VILAYIL HOUSE, KARIKKAD P.O.,
THANNEERMUKKAM, ALAPUZZHA - 688 527.
4. DILEEP, KOTTUMMEL VELY HOUSE
KARIKKAD P.O., THANNEERMUKKAM, ALAPUZZHA - 688 527.
5. ANUMOD, KOTTUMMEL HOUSE,
KARIKKAD P.O., THANNEERMUKKAM, ALAPUZZHA - 688 527.

BY ADV. SRI.P.V.JAYACHANDRAN
BY ADV. SRI.JOBY CYRIAC

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 04-03-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

jvt

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

W.A. No.485 of 2015

Dated this the 4th day of March 2015

J U D G M E N T

Shaffique, J.

The petitioner in W.P.(C) No.728 of 2014 is the appellant. The writ petition was filed seeking for a direction to the respondents not to interfere with the smooth functioning of the toddy shop T.S.No.28 functioning in building No.T.P.6/339-G of Thanneermukkam Grama Panchayat till the expiry of appeal period as provided under Sec.276 of the Kerala Panchayat Raj Act. The petitioner also seeks to quash Ext.P8, an order, which according to the petitioner, is without jurisdiction.

2. By Ext.P8 order dated 7.1.2014 issued by the Panchayat to the petitioner, it was informed that the appeal filed against the deemed licence was disposed of deciding to cancel the deemed licence obtained by the petitioner on 4.11.2013. It is inter alia stated that the building was situated in a populated area and that the committee is convinced that

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the establishment of toddy shop is against the public opinion. That apart, the number was given for residential purpose. It is contended by the appellant that as long as he is having valid deemed licence, such licence cannot be revoked by the Panchayat merely for the reason that it is a residential area and the occupancy of the building is for residential purpose. That apart, it was contended that the landlord has filed an application seeking for change of occupancy, which is pending consideration by the Panchayat. The other writ petition, W.P. (C) No.8720 of 2014 was filed by the landlord seeking for a direction to the Secretary to change the occupancy of the building to commercial. The learned Single Judge heard the matter together and by a common judgment, permitted the petitioner to prefer an appeal before the Tribunal for Local Self Government Institutions, if it is filed within a period of three weeks and in regard to the writ petition filed by the landlord, a direction was given to the Secretary of the Panchayat to consider the application submitted for changing the occupancy of the building, in accordance with law.

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3. Heard the learned counsel for the appellant. It is argued that the learned Single Judge ought to have exercised the discretion to set aside Ext.P8 as the petitioner is running a toddy shop with all valid licence. Merely for the reason that it is numbered as residential building for fiscal purpose, it cannot be treated that the petitioner cannot use the same for commercial activity.

4. Having gone through the judgment of the learned Single Judge and having perused the records, we are of the view that the learned Single Judge did not commit any error in not entertaining the writ petition. The petitioner is only permitted to avail the alternate remedy by approaching the Tribunal as disputed questions of fact may arise for consideration in the matter and substantial rights of the parties are involved. Apparently this was a case in which the occupancy was given as residential and that fact has been taken note of by the Panchayat. We are not expressing any opinion regarding the rights of the parties. As held by the learned Single Judge, it is always open for the petitioner to challenge Ext.P8 order by preferring an appeal before the

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Tribunal for Local Self Government Institutions. We do not find any good ground to interfere with the judgment of the learned Single Judge.

The writ appeal is hence, dismissed. The petitioner is granted further two weeks time to prefer an appeal before the Tribunal for Local Self Government Institutions.

Sd/-
ASHOK BHUSHAN
Ag. CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE
JUDGE

//TRUE COPY//

P.A. TO JUDGE

Jvt