

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA, 1937

WP(C) .NO. 2183 OF 2012 (W)

PETITIONER:

JAGAL PRASAD, AGED 71 YEARS,
S/O. V.K.PANICKER, RESIDING AT PANICKERS, M.N.H.5,
MALLOOR NAGAR, VAZHUTHACAUD, THIRUVANANTHAPURAM 695010

BY ADV. SRI.B.HARISH KUMAR

RESPONDENT(S) :

1. THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS
TRIDA BUILDING, MEDICAL COLLEGE P.O.,
THIRUVANANTHAPURAM 695011
2. THE CORPORATION OF THIRUVANANTHAPURAM,
REPRESENTED BY ITS SECRETARY, CORPORATION OFFICE,
THIRUVANANTHAPURAM 695033.
3. THE SUPERINTENDING ENGINEER,
CORPORATION OF THIRUVANANTHAPURAM,
THIRUVANANTHAPURAM 695033
4. SHEELA R, W/O. AJITH KUMAR,
TC 14/1016(1) MALOOR ROAD, VAZHUTHACAUD,
THIRUVANANTHAPURAM 695010

R2,R3 BY ADV. SRI.N.NANDAKUMARA MENON (SR.)

R2,R3 BY ADV. SRI.P.K.MANOJKUMAR

R4 BY ADV. SRI.BECHU KURIAN THOMAS

BY GOVERNMENT PLEADER, SRI. T.J. MICHAIL

R BY SRI.P.K.MANOJKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
19-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P1: A TRUE COPY OF THE BUILDING PERMIT DT 6/3/91 ISSUED BY THE
2ND AND 3RD RESPONDENT
- EXT.P2: A TRUE COPY OF THE ORDER DT 13/10/04 ISSUED BY THE 2ND
RESPONDENT
- EXT.P3: A TRUE COPY OF THE ORDER DT 14/1/2005 ISSUED BY THE 1ST
RESPONDENT
- EXT.P4: A TRUE COPY OF THE ORDER DT 27/1/2005 ISSUED BY THE 2ND
RESPONDENT
- EXT.P5: A TRUE COPY OF THE ORDER DT 21/6/2005 PASSED BY THE 1ST
RESPONDENTS
- EXT.P6: A TRE COPY OF THE JUDGMENT DT 24/6/2009 PASSED BY THIS
HON'BLE COURT
- EXT.P7: A TRUE COPY OF THE ORDER DT 13/8/2009 ISSUED BY THE 2ND
RESPONDENT
- EXT.P8: A TRUE COPY OF INFORMATION DT 16/12/2009 FURNISHED BY THE
SECOND RESPONDENT
- EXT.P9: (A) & (B): TRUE COPIES OF THE INFORMATION DT 15/7/11 &
8/8/2011 FURNISHED BY THE SECOND RESPONDENT
- EXT.P10: A TRUE COPY OF THE ORDER DT 7/1/2012 PASSED BY THE 1ST
RESPONDENT

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY/

P.A. TO JUDGE

DST

K. HARILAL, J.

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W.P. (C) No.2183 of 2012

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Dated this the 19th day of November, 2015

J U D G M E N T

This Writ Petition has been filed with the following prayers:

- 1. To call for the records leading to exhibit P10 order issued by the first respondent and set aside the same by issuing a Writ of Certiorari or any other appropriate Writ.*
- 2. To issue a writ of mandamus order or direction commanding the second respondent to regularize the residential building of the petitioner in accordance with law and as per exhibit P6 judgment.*
- 3. To declare that the Exhibit P10 order passed by the first respondent is without jurisdiction and against Rule 8(3) of the Tribunal for the Kerala Local Self Government Institutions Rules, 1999.*
- 4. Any other appropriate order or direction as this Hon'ble Court may deem fit in the interest of Justice.*
- 5. To grant the cost of this writ petition(civil)*

-: 2 :-

2. The facts necessary for the consideration of this Writ Petition alone need be summarised and the same stands as follows: As per Ext.P6 judgment passed by this Court, the 2nd respondent was directed to consider the application for regularisation of the building constructed by the petitioner, after affording an opportunity of being heard to the 4th respondent within a period of six weeks from the date of the judgment. The 2nd respondent passed Ext.P7 order, in accordance with Ext.P6 judgment admittedly, without affording an opportunity of being heard and so also, the 2nd respondent regularised the building, which was constructed by the petitioner by Ext.P7 order. According to the 4th respondent, the copy of the order regularising the building, was not served to the 4th respondent and the 4th respondent was unaware of the passing of the said order. Therefore, she approached the 2nd

-: 3 :-

respondent under the Right to Information Act, 2005 to get the details of regularisation, on 13.10.2009. The 2nd respondent issued Ext.P8 information to the 4th respondent but, copy of Ext.P7 order, whereby the 2nd respondent regularised the building was not served to the 4th respondent. Dissatisfied with the documents served to her, she approached the State Information Commission and the State Information Commission passed an order, directing the 2nd respondent to issue copy of the order by which the 2nd respondent regularised the construction of the building made by the petitioner. In compliance with the directions of the Chief Information Commissioner, Ext.P9(a) order along with the copy of the regularisation was served to the 4th respondent. Thereafter, the 4th respondent filed an appeal, before the 1st respondent on 27.08.2011. The petitioner herein filed a preliminary objection to the said

-: 4 :-

appeal mainly contending that the appeal is barred by limitation under Rule 8(3) of the Tribunal for Local Self Government Institutions Rules, 1999, (*hereinafter referred to as 'the Rules'*). It is submitted that the 4th respondent has already received details about Ext.P7 regularisation order, as per Ext.P8 information on 16.08.2011 itself. But, the 4th respondent has not challenged Ext.P8 order, within the period of limitation specified for appeal before the Tribunal, as per the Rules. In short, the 4th respondent filed Appeal No.631 of 2011 only on 27.08.2011, without disclosing about the receipt of Ext.P8 information. Thus, the Appeal was not filed within the period of limitation or within one month from the date of communication or knowledge of the above order.

3. The 2nd respondent filed an objection admitting that even though an opportunity of being heard was

-: 5 :-

provided to the petitioner, the 4th respondent was not afforded an opportunity of being heard and the 2nd respondent expressed willingness to reopen the file and re-hear the matter of regularisation, after affording an opportunity of being heard to the 4th respondent also.

4. After considering the rival pleas, the 1st respondent framed two issues, i.e., whether the appeal is barred by limitation and secondly, whether the impugned order is legally sustainable or not. After considering the arguments advanced by the petitioner stating that the 4th respondent was fully aware of passing of the order regularising the building and she had already received the information or details about Ext.P7 regularisation order as per Ext.P8 information on 16.12.2009 itself: but, the appeal was filed only on 27.08.2011. So the appeal is not filed within the limitation period or within one month, from the date of

-: 6 :-

communication or knowledge of the above order. So the question to be considered in this Writ Petition is, whether there is any illegality or impropriety in the finding that the appeal is not barred by limitation as provided under Rule 8(3) of the Rules. Admittedly, even though this Court by Ext.P6 judgment, directed the 2nd respondent to pass orders on the application for regularisation to be filed by the petitioner, after affording an opportunity of being heard to the 4th respondent, the 2nd respondent has not complied the said direction and the 2nd respondent expressed the willingness to reopen the file and to reconsider the matter, after affording an opportunity of being heard, to the 4th respondent. Thus, it stands admitted that the copy of the order regularising the construction of the building was not served to the 4th respondent. Then, the question to be considered is when did the 4th respondent

-: 7 :-

get the knowledge about the contents of the order passed by the 2nd respondent. It is the case of the 4th respondent that she got knowledge about passing of the order only on 13.10.2009 and immediately she filed an application, invoking the provisions under the Right to Information Act, 2005 to get the details of the order, regularising construction of the building of the petitioner and the same was served on her on 16.12.2009. But, the 2nd respondent has not served the copy of the order regularising the construction of the building. Dissatisfied with the non- serving of the impugned regularisation order, the 4th respondent was constrained to approach the Chief Information Commission and as per the direction of the Chief Information Commission, Ext.P9(a) information was given to her along with the copy of the regularisation order.

5. Going by Ext.P9(a) order, it is seen that the 2nd

-: 8 :-

respondent himself admitted that the regularisation order was served to the 4th respondent only on 15.07.2011. Thus, it stands undisputed that the knowledge about the contents of the regularisation order came to the knowledge of the 4th respondent only on 19.07.2011, the date on which she received Ext.P9 order. Thus, she filed the appeal on 27.08.2011, i.e., with a delay of eight days only.

6. Going by the statutory mandate under Rule 8 (3) of the Rules, an appeal shall be submitted before the Tribunal within 30 days from the date of notice or order or proceeding against which the petition is filed or within 90 days in case where a decision has not been taken within 60 days of filing appeal, before the Local Self Government Institutions. The proviso further says that the Tribunal may admit a petition submitted within one month, after the said time limit, if the Tribunal is

-: 9 :-

satisfied that there is sufficient reason for not submitting the petition within the time limit. In the instant case, the date of order is 13.08.2009. But, admittedly the appeal was filed on 27.08.2011. Indisputably, the order was not served to the 4th respondent. It is discernible from Ext.P9(a) that the impugned order was served to the 4th respondent only on 15.07.2011 in compliance with the order passed by the Information Commission. The expression date of notice or order has been interpreted by the Supreme Court in plethora of decisions, which read as follows:

*"In **D. Saibaba v. Bar Council of India** ((2003) 6 SCC 186) So far as the commencement of period of limitation for filing the review petition is concerned we are clearly of the opinion that the expression the date of that order as occurring in S.48AA has to be construed as meaning the date of communication or knowledge of the order to the review-petitioner. Where the law provides a remedy to a person, the provision has to be*

-: 10 :-

so construed in case of ambiguity as to make the availing of the remedy practical and the exercise of power conferred on the authority meaningful and effective. A construction which would render the provision nugatory ought to be avoided. True, the process of interpretation cannot be utilized for implanting a heart into a dead provision; however, the power to construe a provision of law can always be so exercised as to give throb to sinking heart.

The words 'from the date of decision or order' used with reference to the limitation for filing an appeal or revision under certain statutory provisions had come up for consideration in a number of cases. We may state that the ratio of the decisions uniformly is that in the case of a person aggrieved filing the appeal is revision, it shall mean the date of communication of the decision or order appealed against. However, we may note a few leading cases on this aspect.

In D. Saibaba v. Bar Council of India

((2003) 6 SCC 186) the Apex Court held that, where the law provides a remedy to a person, the provision has to be so construed in case of

-: 11 :-

ambiguity as to make the availing of the remedy practical and the exercise of power conferred on the authority meaningful and effective. A construction which would render the provision nugatory ought to be avoided. So far as the commencement of period of limitation for filing the review petition is concerned the expression 'the date of that order' as occurring in Section 48AA of the Advocates Act, 1961, has to be construed as meaning the date of communication or knowledge of the order to the review-petitioner. Paragraphs 13 and 14 of the judgment read thus;

"13. In Raj Kumar Dey v. Tarapada Dey (1987) 4 SCC 398 this Court pressed into service two legal maxims guiding and assisting the Court while resolving an issue as to calculation of the period of limitation prescribed, namely, (i) the law does not compel a man to do that which he could not possibly perform, and (ii) an act of the court shall prejudice no man. These principles support the view taken by us hereinabove. Any view to the contrary would lead to an absurdity and anomaly. An order may be passed without

-: 12 :-

the knowledge of anyone except its author, may be kept in the file and consigned to record room or the file may lie unattended, unwittingly or by carelessness. In either case, the remedy against the order would be lost by limitation though the person aggrieved or affected does not even know what order has been passed. Such an interpretation cannot be countenanced.

14. How can a person concerned or a person aggrieved by expected to exercise the right of review conferred by the provision unless the order is communicated to or is known to him either actually or constructively? The words the date of that order, therefore, mean and must be construed as meaning the date of communication or knowledge, actual or constructive, of the order sought to be reviewed."

*In **Chhattisgarh SEB v. Central Electricity Regulatory Commission ((2010) 5 SCC 23)** the Apex Court has reiterated that, for seeking the remedy the limitation starts from the date on which the order was communicated to the parties affected or the date on which it was pronounced or published under such circumstances that the parties*

-: 13 :-

affected by it have a reasonable opportunity of knowing of passing of the order and what it contains. The knowledge of the party affected by such a decision, either actual or constructive is thus an essential element which must be satisfied before the decision can be said to have been concluded and binding on him. Otherwise the party affected by it will have no means of obeying the order or acting in conformity with it or of appealing against it or otherwise having it set aside. Paragraph 43 of the judgment reads thus;

7. The principle that can be culled out from all these decisions is that the date of order can be equated with the date of knowledge. When applying the above principle in the instant case, I have no doubt in my mind that the 4th respondent got knowledge of the contents of the impugned order in the appeal only on 19.07.2011 when she got the copy of the order, in compliance with the direction of the order dated 15.7.2011 passed by the Chief Information Commission. As regards the delay of

-: 14 :-

eight days in filing the appeal is concerned, it is a matter left to the discretion of the 1st respondent as the Rules provides that the Tribunal can admit a petition submitted within one month, after the time limit, if the Tribunal is satisfied that there is sufficient reason for not submitting the appeal within the time limit. Therefore, the satisfaction of the Tribunal need not be doubted or considered in this Writ Petition. Therefore, I find that there is no illegality or impropriety or any kind of unreasonableness in arriving at a finding that the appeal is not barred by limitation.

8. As regards the second issue, the 1st respondent himself admitted that the impugned order was passed without considering the site plan and service plan. So also, the 2nd respondent expressed willingness to reopen and rehear the matter, after affording an opportunity of being heard to the 4th respondent. When the statute

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specifically insisted that regularisation can be made only after considering the site plan and service plan, the impugned regularisation order passed, without considering those materials and documents cannot be sustainable under the relevant law. In the above view of the matter, no doubt, the matter requires a reconsideration. Therefore, I find that there is no illegality or impropriety in the reasoning whereby, the matter was remitted to the 2nd respondent to consider the matter afresh.

In the above analysis, this Writ Petition is devoid of merits and dismissed accordingly.

Sd/-

**K. HARILAL,
JUDGE**

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//True copy//

P.A. To Judge