

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN

&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 10TH DAY OF SEPTEMBER 2015/19TH BHADRA, 1937

WA.No. 1521 of 2015 ()

AGAINST THE JUDGMENT IN WP(C).NO. 8088/2014 DATED 08-04-2015

APPELLANT/PETITIONER :

**M.P. NARAYANAN NAMBISAN
S/O.P.KRISHNAN NAMBISAN, AGED 71 YEARS
KOUSTHUBAM, VENGARI P.O.
KOZHIKODE - 673 010.**

**BY ADVS.SRI.NIRMAL S.
SMT.VEENA HARI**

RESPONDENTS/RESPONDENT AND PETITIONER :

**1. KOZHIKODE CORPORATION
REP. BY ITS SECRETARY, KOZHIKODE -673 001.**

**2. V.RADHAKRISHNAN NAIR
VAZHAYIL HOUSE, VENGARI P.O.,
KOZHIKODE - 673 010.**

***ADDL. R3 IMPEADED**

***ADDL.R3. SECRETARY TO GOVERNMENT
LOCAL SELF GOVERNMENT DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM.**

***IS SUO MOTU IMPEADED AS ADDITIONAL THIRD RESPONDENT VIDE
ORDER DATED 10/9/15 IN WA NO. 1521/2015.**

**R1 BY ADV. SRI.K.D.BABU, SC
R2 BY ADV. SRI.C.M.SURESH BABU
ADDL. R3 BY SR. GOVT. PLEADER SRI. P.I. DAVIS**

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 10-09-2015,
ALONG WITH WA NO. 1596/2015 & WA NO. 1693/2015, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:**

Mn

ASHOK BHUSHAN, CJ

&

A.M.SHAFFIQUE, J.

W.A.Nos.1521, 1596 & 1693 of 2015

Dated this the 10th day of September 2015

J U D G M E N T

Shaffique, J

W.A.Nos.1521 of 2014 and 1596 of 2014 have been filed by a common appellant challenging the common judgment dated 08/04/2014 in W.P.C.No.8088 of 2014, 5045 of 2015. W.A.No.1693 of 2015 has been filed by the very same appellant against W.P.C.No.34658 of 2014 wherein the appellant was not a party to the proceedings. The issue raised by the appellant is substantially common in so far as it relates to certain unauthorised construction being made by the writ petitioner in W.P.C.No.34658 of 2014, who is hereinafter referred to as the writ petitioner. The issue projected by the appellant is regarding certain unauthorised construction made by the petitioner, which was being objected by the appellant.

2. Though applications were filed by the petitioner for regularisation, the same was not permitted as it had become final since the Secretary of the Corporation was of the opinion that he

has no jurisdiction to grant such regularisation. The matter was carried in appeal before the Tribunal for Local Self Government Institutions and the same had been rejected. Therefore, the fact remains that the application for regularisation of the unauthorised construction as far as the petitioner is concerned, has become final. While so, Kerala Building (Regularization of Unauthorised Construction) Rules, 2014 (hereinafter referred to as 'the 2014 Rules') has been promulgated by the Government as per G.O (M.S.)No.39/2014/LSGD dated 14/02/2014 in terms of S.R.O No.122/2014 by which an opportunity has been given to the persons who had made unauthorised constructions before 31/03/2013 in any Municipality or Municipal Corporation to submit application to the Secretary for regularising the unauthorised construction. Petitioner submitted an application on the basis of the aforesaid rules and since no action was taken by the Corporation, he filed W.P.C.No.34658/2014 and by judgment dated 19/12/2014, a direction has been issued by the learned Single Judge directing the Corporation to consider the application for regularisation in accordance with law and to pass appropriate orders. It was also observed that all further action to demolish

any portion of the petitioner's construction pursuant to the implementation of Ext.P5 shall be kept in abeyance till final orders are passed. Challenge in W.A.No.1693/2015 is with reference to the aforesaid judgment inter alia contending that though the appellant has agitated the entire issue before various authorities for a long time, this judgment has been obtained behind his back. Further, the appellant has filed W.P.C.No.8088/2014 and 5045/2014 before the learned Single Judge for implementing the orders passed by the Corporation for demolishing the unauthorised construction. When the matter came up for hearing it was pointed out that already a judgment has been passed by the learned Single Judge in W.P.C.No.34658/2014. Therefore, the learned Single Judge disposed of those writ petitions directing the Secretary of the Corporation to consider the regularisation of the application after hearing the appellant as well. It is submitted by the learned counsel for the appellant that as the application for regularisation has already been rejected even as per the 2014 Rules, he is not entitled to submit an application and there was no necessity for the matter being referred to the Corporation in terms with the 2014 Rules.

3. It is submitted by the learned counsel for the appellant that this process would further delay the demolition of the unauthorised construction. It is also pointed out that the petitioner had deliberately not made the appellant a party to W.P.C.No.34568/2014 and this caused substantial prejudice to the appellant.

4. We have heard the learned counsel appearing for the Corporation and the learned counsel for the petitioner. It is submitted by the learned counsel appearing for the Corporation that the parties were already heard on 21/08/2015 and the Secretary is taking necessary steps in accordance with the 2014 Rules. The learned counsel for the petitioner would submit that the building is constructed in an extent of 1.88 cents and he is entitled to get the benefit of 2014 Rules. It is also pointed out that these rules were in force in 2010 as well. Further, there is no legal restriction for the Secretary to consider the present application and it is for the Government to ultimately consider whether regularisation application should be allowed or not.

5. Having regard to the aforesaid factual situation, we are of the view that since the matter had been remitted back to the

Corporation to consider the application, it is for the Secretary to initially consider whether the application is in order or not. If the Secretary has not disposed of the matter so far by referring the matter to the Government, it has to be done within a period of 15 days from the date of receipt of a copy of this judgment. If the Secretary decides to refer the matter, the Government has to further consider whether the regularisation application has to be allowed or not in terms with the 2014 Rules. If the matter is referred by the Secretary, Government shall consider the same and pass appropriate orders after hearing the affected parties within a further period of two months from the date of receipt of the reference. We do not think that we will be justified in interfering with the judgment passed by the learned Single Judge at this point of time, as we do not find any error in the said judgment.

6. The learned counsel for the appellant has also submitted that the appellant has filed another writ petition, W.P.C.No.24263/2015 challenging the vires of the 2014 Rules. We do not think that the challenge to the said rule shall preclude the Corporation/Government from considering the regularisation

application, as matters stand now.

In the result, these writ appeals are disposed of as under:

The Secretary shall pass appropriate orders in the regularisation application submitted by the petitioner within a period of fifteen days from the date of receipt of a copy of this judgment and thereafter if it is referred, Government shall consider the matter within a further period of two months after notice to the aggrieved parties including the appellant.

(sd/-)
(ASHOK BHUSHAN, CHIEF JUSTICE)

(sd/-)
(A.M.SHAFFIQUE, JUDGE)

jsr

