

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

THURSDAY, THE 26TH DAY OF FEBRUARY 2015/7TH PHALGUNA, 1936

WA.No. 1780 of 2014 () IN WP(C).15690/2014

AGAINST THE JUDGMENT IN WP(C) 15690/2014 of HIGH COURT OF KERALA
DATED 27.8.2014

APPELLANT(S)/PETITIONERS :-

1. VASANTHAKUMARI, AGED 65 YEARS
D/O.PARVATHY PILLAI
RESIDING AT MATHANAVILAKATHU VEEDU, KURAVANKONAM
KAWDIAR P.O., THIRUVANANTHAPURAM, PIN - 695 003.
2. RAMACHANDRAN NAIR.K., AGED 73 YEARS
S/O.KRISHNA PILLAI
RESIDING AT MATHANAVILAKATHU VEEDU, KURAVANKONAM
KAWDIAR P.O., THIRUVANANTHAPURAM, PIN - 695 003.

BY ADV. SRI.P.S.RAMESH KUMAR

RESPONDENT(S)/RESPONDENTS :-

1. THE NEDUMANGADU MUNICIPALITY
REPRESENTED BY ITS SECRETARY, NEDUMANGADU
THIRUVANANTHAPURAM DISTRICT, PIN 695541.
2. LEKSHMY V., AGED 30 YEARS
W/O.RAVIKUMAR ALIAS KANNAN
RESIDING AT LEKSHMY BHAVAN, IDAYILAKONAM
MANNANTHALA P.O., THIRUVANANTHAPURAM, PIN - 679 523.

R1 BY ADV. SRI.P.RAMAKRISHNAN
R2 BY ADV. SRI.K.S.HARIHARAPUTHRAN
SRI.M.D.SASIKUMARAN
SRI.GEORGE MATHEW
SRI.SUNIL KUMAR A.G
SRI.DIPU JAMES

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 26-02-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

W.A. No.1780 of 2014

Dated this the 26th day of February 2015

J U D G M E N T

Ashok Bhushan, Ag.CJ

Heard the learned counsel for the appellants.

2. This writ appeal has been filed against the judgment dated 27.8.2015 passed in W.P.(C) No.15690 of 2014. The writ petition had been filed by the appellants/petitioners seeking the following reliefs :-

- "(i) To issue a writ of mandamus or any other appropriate writ, order or direction, commanding the 1st respondent to take statutory steps for the removal of the entire unauthorized constructions carried out by the 2nd respondent in her property specifically pointed out by the petitioners in Ext.P1 complaint and narrated in this Writ Petition para 12 (a), 12(b), 12(c), 12(d), 12(e) and 12(f) in violation of the Building Permit and plan issued by the 1st respondent vide Building Permit No.ONDD/2/13-14 dt. 5.4.2013 and in terms with the letter and spirit of this Hon'ble Court's Judgment, Ext.P4;
- (ii) To issue appropriate order appointing an Advocate Commissioner assisted by expert P.W.D. Engineer to file a report before this Hon'ble Court after conducting physical verification and measurements of the building under construction in the property of the 2nd respondent pursuant to the Building No.ONDD/2/13-14 dt. 5.4.2013 issued by the 1st respondent, and note the unauthorized constructions specifically pointed out by the petitioner in Ext.P1 complaint and narrated in para 12(a), 12(b), 12(c), 12(d), 12(e) and 12(f) in this writ petition in order to enable this Hon'ble Court to grant prayer No.(i) in this Writ Petition, properly and effectively."

3. The learned Single Judge issued notice on admission to the respondents, the parties, who had entered appearance were heard. As per the earlier judgment passed by the learned Single Judge in W.P.(C) No.3942 of 2014, the Municipality authorities had inspected the spot and certain unauthorized constructions were noted, which were directed to be removed and pursuant to such directions, the 2nd respondent had removed the construction, which has been noted by the learned Single Judge. The petitioners were still dis-satisfied, stating that the entire unauthorized constructions have not yet been removed. The learned Single Judge has taken the view that in the writ proceedings such an enquiry cannot be conducted and the petitioners may invoke the statutory remedy available to them.

4. Learned counsel for the appellants submits that the details of unauthorized construction were placed before the Municipality by the appellants and instead of removing the entire unauthorized construction pointed out by the appellants, the first respondent did something in order to appear that the directions issued by the learned Single Judge in the earlier judgment have been complied with.

5. We have considered the submissions and perused the records.

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6. There is no dispute that in pursuance to the earlier judgment dated 3.3.2014 passed by this Court, certain constructions were removed, which was also admitted by the 2nd respondent as has been noted by the learned Single Judge. In any event, if the petitioners are still aggrieved and contend that there are some more unauthorized constructions, it is open for them to avail their statutory remedy under the Kerala Municipalities Act. The learned Single Judge has rightly observed that the petitioners are free to avail the statutory remedy for their grievances. Such grievances can neither be entertained nor adjudicated in the writ proceedings.

We do not find any error in the judgment passed by the learned Single Judge. Hence, the writ appeal is dismissed.

Sd/-
ASHOK BHUSHAN
Ag. CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE
JUDGE

//TRUE COPY//

P.A. TO JUDGE