

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

WP(C).No. 3534 of 2012 (N)

PETITIONER(S)/ADDL.PETITIONERS 2 TO 8:

1. THOMAS T., AGED 70 YEARS,
THUDIYAMPLACKAL, ERATTAYAR P.O., KALKOONTHAL VILLAGE,
IDUKKI DISTRICT. (*DIED*)

*ADDL.PETITIONERS 2 TO 8:

- *2. THRESIAMMA, AGED 76 YEARS,
W/O.THOMAS T.,THUDIYAMPLACKAL, ERATTAYAR P.O.,
PIN-686514, IDUKKI DISTRICT.
- *3. SABU THOMAS, AGED 52 YEARS,
S/O.THOMAS T.,THUDIYAMPLACKAL, ERATTAYAR P.O.,
PIN-686514, IDUKKI DISTRICT.
- *4. SIBY THOMAS, AGED 50 YEARS,
S/O.THOMAS T.,THUDIYAMPLACKAL, ERATTAYAR P.O.,
PIN-686514, IDUKKI DISTRICT.
- *5. SAJI THOMAS, AGED 48 YEARS,
S/O.THOMAS T.,THUDIYAMPLACKAL, ERATTAYAR P.O.,
PIN-686514, IDUKKI DISTRICT.
- *6. SOJI THOMAS, AGED 46 YEARS,
S/O.THOMAS T.,THUDIYAMPLACKAL, ERATTAYAR P.O.,
PIN-686514, IDUKKI DISTRICT.
- *7. SINIMOL THOMAS, AGED 44 YEARS,
D/O.THOMAS T.,THUDIYAMPLACKAL, ERATTAYAR P.O.,
PIN-686514, IDUKKI DISTRICT.
- *8. SUJAMOL THOMAS, AGED 42 YEARS,
D/O.THOMAS T.,THUDIYAMPLACKAL, ERATTAYAR P.O.,
PIN-686514, IDUKKI DISTRICT.

(*IMPLEADED AS ADDITIONAL PETITIONERS 2 TO 8 VIDE ORDER
DATED 9.11.2015 IN IA 15975/2015)

BY ADVS.SRI.MATHEWS K.UTHUPPACHAN
SRI.BIJU .C. ABRAHAM

(...2)

RESPONDENTS:

1. SECRETARY,
ERATTAYAR GRAMA PANCHAYATH, KALKOONTHAL VILLAGE,
ERATTAYAR.P.O., PIN-685 514, IDUKKI DISTRICT.

2. ERATTAYAR GRAMA PANCHAYATH,
KALKOONTHAL VILLAGE, ERATTAYAR.P.O., PIN-685 514,
IDUKKI DISTRICT, REPRESENTED BY ITS SECRETARY.

R1-R2 BY ADV. SRI.K.M.KURIAN, STANDING COUNSEL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 09-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER(S) EXHIBITS

- EXT.P1- TRUE COPY OF THE PATTa NO.4/81 IN L.A.3/81/KAL DATED 12.11.1981 ISSUED BY THE SPECIAL TAHSILDAR (LA) , UDUMBANCHOLA TO THE PETITIONER.
- EXT.P2- TRUE COPY OF THE APPLICATION DATED 25.2.2011 SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT.
- EXT.P3- TRUE COPY OF THE ORDER DATED 25.3.2011 PASSED BY THE RESPONDENT.
- EXT.P4- TRUE COPY OF THE ORDER OF THE PANCHAYATH COMMITTEE DATED 19.5.2011.
- EXT.P4 (a) - TRUE COPY OF THE APPEAL NO.427 OF 2011 FILED BY THE PETITIONER BEFORE THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS.
- EXT.P5- TRUE COPY OF THE ORDER DATED 7.7.2011 OF THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS.
- EXT.P6- TRUE COPY OF THE REVISION PETITION FILED BY THE PETITIONER BEFORE THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS.
- EXT.P7- TRUE COPY OF I.A.NO.1430/2011, THE APPLICATION TO CONDONE THE DELAY FILED BY THE PETITIONER BEFORE THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS.
- EXT.P8- TRUE COPY OF THE ORDER IN I.A.NO.1430/2011 PASSED BY THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS.
- EXT.P9- TRUE COPY OF THE ORDER PASSED BY THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS IN THE REVISION PETITION.

RESPONDENTS' EXHIBITS :

- EXT.R1 (A) - TRUE COPY OF NOTICE
- EXT.R1 (B) - TRUE COPY OF DECISION
- EXT.R1 (C) - TRUE COPY OF NOTICE
- EXT.R1 (D) - TRUE COPY OF NOTICE
- EXT.R1 (E) - TRUE COPY OF NOTICE
- EXT.R1 (F) - TRUE COPY OF ORDER
- EXT.R1 (G) - TRUE COPY OF DECISION

OKB

True copy

P.A. to Judge

K.HARILAL, J.

W.P.(C) No.3534 of 2012

Dated this the 9th day of November, 2015.

JUDGMENT

The original petitioner applied for assigning a separate number to the room proposed to be given in rent for a teashop, so as to get a separate electric connection. Ext.P2 is the application for the same. The 1st respondent refused to grant the same on the ground that there is already a number to the building and it is not possible to assign separate number as the petitioner has violated Rule 220B of the Kerala Panchayat Raj Act by fixing additional shutters to the said shop room without the permission of the Panchayat. Thus, Ext.P2 was rejected by Ext.P3. Feeling aggrieved, the petitioner preferred an appeal before the Panchayat Committee and the Committee also dismissed the same by Ext.P4 order. Feeling aggrieved, the petitioner again preferred an appeal before the Tribunal and by Ext.P5 order the Tribunal

rejected that appeal also on the ground that the appeal is not maintainable and a revision is the proper remedy available to the petitioner.

2. Thereafter, the petitioner filed Ext.P6 revision before the Tribunal. But, the Tribunal dismissed the revision also on the finding that there is a considerable delay in preferring the revision. It is also stated that as per the proviso to Rule 8(3) of the Local Self Government Tribunal Rules, delay upto one month alone can be condoned.

3. After the dismissal of the revision petition, for delay, the petitioner has filed this writ petition challenging the rejection of appeal by Ext.P5 order on the ground that when the appeal was found not maintainable, the Tribunal ought to have returned the appeal with sufficient time to cure the defect, instead of rejecting the same. The legality and propriety of the finding whereby the Tribunal for Local Self Government passed Ext.P5 order are under challenge in the writ petition, invoking jurisdiction under Article 226 of the Constitution of India.

4. Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

5. Going by the sequence of events, it is seen that after the dismissal of appeal by Ext.P5, the petitioner has preferred Ext.P6 revision before the Tribunal and got it dismissed by Ext.P8 order on the ground that there is a considerable delay in preferring the revision and as per the proviso to Rule 8(3) of the Local Self Government Tribunal Rules, delay upto one month alone can be condoned. Put it differently, after the rejection of the appeal by Ext.P5, the petitioner has accepted Ext.P5 order and thereafter filed Ext.P6 revision and now, after the dismissal of the revision by Ext.P8, the petitioner again turned back to challenge the legality and propriety of the procedure by which Ext.P5 order was passed.

6. Going by the proceedings, it is seen that Ext.P5 order rejecting the appeal is passed on the ground that the appeal is not maintainable under the Tribunal for Local Self Government Institutions' Rules, 1999, and the Government Orders issued thereunder. If an appeal

is not maintainable under law, the proper remedy is to reject the same and the same cannot be returned for curing the defect, as contended by the petitioner. Therefore, the Tribunal is justified in rejecting the appeal, which was not maintainable, by passing Ext.P5 order. There is no illegality or impropriety in the procedure, whereby Ext.P5 order is passed. Hence this writ petition will stand dismissed.

Sd/-
K. HARILAL, JUDGE

okb.