

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN

&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 21ST DAY OF DECEMBER 2015/30TH AGRAHAYANA, 1937

WA.No. 2736 of 2015 () IN WP(C).35595/2015

AGAINST THE ORDER IN WP(C) 35595/2015 DATED 14-12-2015

APPELLANT(S)/RESPONDENT NOS.3 AND 4 :-

1. E.M.SUNNY
MANAGING PARTNER, VICTORY GRANITE METALS, MANNAMPETTA
VARAKKARA P.O., TRICHUR-680 302.
2. ALPHONSA JAMES
PROPRIETOR, KUNDUPARAMBIL METAL PRODUCTS, MANNAMPETTA
VARAKKARA P.O., THRISSUR-680 302.

BY ADVS.SRI.T.M.CHANDRAN
SRI.S.SUJITH

RESPONDENT(S)/PETITIONER-RESPONDENT NOS.1 AND 2 :-

1. SHAJU
S/O.C.U.DEVASSY, CHUNDAKKATTIL HOUSE, PUTHUKKAD P.O.
MUKUNDAPURAM TALUK, TRICHUR-680 301.
2. ALAGAPPANAGAR GRAMA PANCHAYAT
REPRESENTED BY ITS SECRETARY, ALAGAPPANAGAR P.O.
TRICHUR-680 302.
3. THE SECRETARY
ALAGAPPANAGAR GRAMA PANCHAYAT, ALAGAPPANAGAR P.O.
TRICHUR-680 302.

BY SRI.K.ABDUL JAWAD
BY SRI.K.S.BHARATHAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 21-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

W.A. No.2736 of 2015

Dated this the 21st day of December 2015

J U D G M E N T

Shaffique, J.

This writ appeal has been filed against the interim order dated 14.12.2015 in W.P.(C) No.35595 of 2015, by which, the learned Single Judge had issued the following direction :-

“The petitioner is provisionally permitted to go ahead with the construction activities in the wake of Ext.P9 order and on the basis of Ext.P2 no objection Certificate (so long as the same has not been annulled or withdrawn). The building shall, however, not be numbered without obtaining further orders from this Hon'ble Court.”

2. The appellants are the 3rd and 4th respondents in the writ petition. The writ petition is filed by the first respondent herein challenging Exts.P7 and P10. By Ext.P7, the 2nd respondent herein, the Panchayat, has called for a report from the Geologist based on the directions issued by this Court as per judgment dated 4.8.2015 in W.P.(C) No.13411 of 2015. By Ext.P10, the petitioner was called upon to show cause regarding certain violations pointed out and he was asked to stop further construction of

residential building in Survey Nos.1409/2, 1425 and 1411/2 of Amballur Village. According to the petitioner, there is no basis for issuance of Ext.P7 as well as Ext.P10 and therefore, the said orders are liable to be set aside.

3. When the matter came up for hearing, the learned Single Judge observed that the petitioner should permit to go ahead with the construction activities in the wake of Ext.P9 order and Ext.P2 issued by the Panchayat. However, it was observed that numbering of the building shall be done only after further orders from the Court. On a perusal of Ext.P9, it is evident that it is only an order passed by the learned Single Judge in another writ petition, where the subject matter in issue was construction of a metal crusher unit by the 2nd appellant in another item of property. It was observed in the interim order dated 11.11.2015 in W.P.(C) No.33982 of 2015 that the construction activities, if any, by the 3rd respondent can continue subject to the result of the writ petition. The 3rd respondent is the 2nd appellant herein and it was a case in which, the writ petition was filed by the first respondent herein seeking for a direction to restrain the construction and establishment of a crusher unit by the 2nd appellant.

4. In fact, Ext.P9 order has no relationship with the subject matter in issue herein. The subject matter in the present case is with reference to right of the writ petitioner to construct a building in their residential premises.

5. This aspect of the matter has not been taken into consideration by the learned Single Judge. Though it was argued by the learned counsel for the first respondent/writ petitioner that Ext.P9 has relevance to the entire factual situation involved in the matter, we do not think that the impugned order reflects a proper consideration of the materials on record.

6. When necessary counter affidavit had been filed by either of the parties, it would have been appropriate for the learned Single Judge to have considered the entire factual issues involved in the matter and to consider whether the challenge against Exts.P7 and P10 are sustainable. If the interim order is permitted to continue, Exts.P7 and P10 would virtually become infructuous. Such a situation should not arise by virtue of the interim order.

7. Under such circumstances, we are of the view that the interim order dated 14.12.2015 is liable to be set aside and hence,

W.A. No.2736 of 2015

-: 4 :-

we do so. The parties shall appear before the learned Single Judge and request for early hearing in the matter.

This appeal is allowed to the above extent.

**Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE**

**Sd/-
A.M. SHAFFIQUE
JUDGE**

//TRUE COPY//

P.A. TO JUDGE

Jvt/23.12.2015.