

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 12TH DAY OF FEBRUARY 2015/23RD MAGHA, 1936

WP(C).No. 996 of 2015 (Y)

PETITIONER(S):

MARTIN, AGED 74 YEARS,
S/O.AUGUSTINE, KOLARIKKAL HOUSE, SOUTH CHITTOOR
ERNAKULAM-682027.

BY ADVS.SRI.C.P.SAJI
SMT.P.DEEPA MOHAN

RESPONDENT(S):

1. CHERANALLUR GRAMA PANCHAYATH,
SOUTH CHITTOOR P.O., ERNAKULAM-683027.

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2. THE SECRETARY,
CHERANALLUR GRAMA PANCHAYAT, SOUTH CHITTOOR P.O.
ERNAKULAM-683027.

3. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO LOCAL SELF GOVERNMENT
DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-692001.

R1&2 BY ADV. SRI.T.K.AJITHKUMAR (VALATH)
R BY GOVERNMENT PLEADER SRI.JUSTINE JACOB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
12-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1 : TRUE COPY OF THE BUILDING PLAN SUBMITTED BEFORE R1 BY THE PETITIONER.
EXT.P2 : TRUE COPY OF THE BUILDING PERMIT ISSUED TO PETITIONER BY THE R2 DT.5-7-2008.
EXT.P3 : TRUE COPY OF THE COMPLETION PLAN SUBMITTED BEFORE R1 BY THE PETITIONER.
EXT.P4 : TRUE COPY OF THE NOTICE DT.19-3-2012 ISSUED BY R2 TO THE PETITIONER.
EXT.P4A : ENGLISH TRANSLATION OF EXT.P4.
EXT.P5 : TRUE COPY OF THE REPLY DT.25-6-12 SUBMITTED BY THE PETITIONER TO R2.
EXT.P5A : ENGLISH TRANSLATION OF EXT.P5
EXT.P6 : TRUE COPY OF THE LETTER DT.16-8-2012 ISSUED BY R2 ISSUED BY R2.
EXT.P6A : ENGLISH TRANSLATION OF EXT.P6
EXT.P7 : TRUE COPY OF THE LETTER DT.10-9-2012 ISSUED BY R2 TO THE PETITIONER.
EXT.P7A : ENGLISH TRANSLATION OF EXT.P7
EXT.P8 : TRUE COPY OF THE APPEAL DT.26-9-2012 SUBMITTED BY THE PETITIONER TO R1.
EXT.P8A : ENGLISH TRANSLATION OF EXT.P8
EXT.P9 : TRUE COPY OF THE JUDGMENT DT.9-4-13 IN WPC 9510/13 OF THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM.
EXT.P10 : TRUE COPY OF THE ORDER DT.3-12-2013 ISSUED TO PETITIONER BY R2.
EXT.P10A : ENGLISH TRANSLATION OF EXT.P10.
EXT.P11 : TRUE COPY OF THE ORDER DT.3-2-14 ISSUED TO PETITIONER BY R2.
EXT.P11A : ENGLISH TRANSLATION OF EXT.P11.
EXT.P12 : TRUE COPY OF THE JUDGMENT DT.16-7-14 IN WPC 4192/14 OF THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM.
EXT.P13 : TRUE COPY OF THE REPRESENTATION FOR REGULARISATION DT.14-8-14 SUBMITTED BY THE PETITIONER R1.
EXT.P14 : TRUE COPY OF THE JUDGMENT DT.20-9-14 IN COC (C) 956/14 OF THE HON'BLE HIGH COURT OF KERALA ERNAKULAM.
EXT.P15 : TRUE COPY OF THE BUILDING TAX RECEIPTS NOS.11408102152, 11408102153 AND 11408102154 DT.22-9-2014 ISSUED BY R1 TO PETITIONER.
EXT.P16 : TRUE COPY OF THE ORDER NO.NIL DT.11-12-14 OF R2 TO PETITIONER.

RESPONDENT(S) ' EXHIBITS

: NIL

/TRUE COPY/

P.S. TO JUDGE.

DAMA SESHADRI NAIDU, J.

CR

W.P.(C).No. 996 OF 2015

Dated this the 12th day of February, 2015

JUDGMENT

Heard the learned counsel for the petitioner, the learned Standing Counsel for respondents 1 & 2 and the learned Government Pleader for the 3rd respondent, apart from perusing the records.

2. Having constructed a building, the petitioner applied to the respondent Grama Panchayat for building number, which, however, was rejected. Aggrieved, the petitioner approached this Court by filing the present writ petition. It is evident from the perusal of record that earlier the petitioner approached this Court filing W.P.(C) No.4192/2014. This Court, through Ext.P12 Judgment, permitted the petitioner to file a fresh application for regularisation of his construction and further directed the Grama Panchayat to consider it within two months thereafter. This Court has also directed that in the meanwhile the petitioner's building should also be provisionally numbered.

3. Eventually, as can be seen from the record, in compliance with the direction of this Court in Ext.P12 Judgment, the 2nd respondent, the Secretary of the Grama Panchayat, passed Ext.P16 order rejecting the petitioner's application for regularisation. Consequentially, the provisional number provided earlier was also withdrawn. That is how the petitioner is before this Court for the second time.

4. The learned counsel for the petitioner has contended that, though this Court by Ext.P12 permitted the Grama Panchayat to decide the issue, instead the 2nd respondent passed Ext.P16 order, which, according to the learned counsel, is unsustainable.

5. It is axiomatic that once a direction is given by this Court, there is an invariable presumption that, the said direction is to be complied with in consonance with the statutory position, but not in violation thereof. In other words, any judicial directive is required to be read and interpreted, as well as implemented, in tune with the statutory mandate, unless the direction is expressly and explicitly meant to be applied otherwise *ex debeto justiae*.

6. In the present instance, a direction is said to have been

given to the Grama Panchayat to dispose of the petitioner's application. In my considered view, the directive is only to the effect that the competent officer of the Grama Panchayat shall discharge his or her statutory obligation. Indisputably, the 2nd respondent-Secretary is a competent authority in the Panchayat, for the said authority is also a part of the Grama Panchayat, having statutory responsibilities to be discharged. Accordingly, I do not see anything amiss in Ext.P16 to say that it is *ultra vires* of the 2nd respondent.

7. The learned Standing Counsel for the Grama Panchayat has fairly submitted that given the piecemeal adjudication of the matter at different times, the petitioner may file a comprehensive appeal against Ext.P16 before the Committee of the respondent Grama Panchayat, the Appellate Authority, which can take appropriate decision on the petitioner's grievance.

8. In the facts and circumstances, having regard to the submissions of the learned counsel for the petitioner and the learned standing counsel for the respondent Grama Panchayat, this Court, without expressing any opinion on the merits of the

matter, disposes of the writ petition, leaving it open for the petitioner to file an appropriate appeal before the Committee of the respondent Grama Panchayat, assailing, if advised, Ext.P16 Order passed by the 2nd respondent.

9. It is made clear that if the petitioner files an application for provisional numbering pending disposal of the appeal, it may be considered by the Committee keeping in view the interim arrangement made by this Court in Ext.P12 judgment.

With the above observations, this Court disposes of the writ petition. No order as to costs.

Sd/-

**DAMA SESHADRI NAIDU,
Judge.**

dpk

/True copy/ PS to Judge.

dpk