

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

MONDAY, THE 23RD DAY OF FEBRUARY 2015/4TH PHALGUNA, 1936

WP(C).No. 1080 of 2015 (S)

PETITIONER(S) :-

VARGHESE POULOSE AGED 64 YEARS
S/O.POULOSE, COUNCILOR, THRIKKAKARA MUNICIPALITY
MUKKANOTTIL HOUSE, KAKKANAD P.O., KOCHI-682030.

BY ADVS.SRI.V.J.JOSEPH
SMT.M.V.LIGI

RESPONDENT(S) :-

1. STATE OF KERALA REPRESENTED BY ITS SECRETARY
LOCAL SELF GOVERNMENT DEPARTMENT
SECRETARIAT BUILDINGS, THIRUVANANTHAPURAM-695001.
2. THRIKKAKARA MUNICIPALITY
REPRESENTED BY ITS SECRETARY
THRIKKAKARA MUNICIPAL OFFICE, THRIKKAKARA, KAKKANAD-682030.
3. THE SECRETARY, THRIKKAKARA MUNICIPALITY
THRIKKAKARA MUNICIPAL OFFICE, KAKKANAD-682030.
4. THE CHAIRMAN, THRIKKAKARA MUNICIPALITY
THRIKKAKARA MUNICIPAL OFFICE, KAKKANAD-682030.
5. ABDUL SATHAR N.P., ROOM NO.4, (X/992/B1),
THRIKKAKARA SHOPPING COMPLEX, KAKKANAD P.O., PIN 682030.
6. ABDUL KHADER C.P., ROOM NO.5, (X/992/B2),
THRIKKAKARA SHOPPING COMPLEX, KAKKANAD P.O., PIN 682030.
7. ABDUL SATHAR E.A., ROOM NO.6, (X/992/B3),
THRIKKAKARA SHOPPING COMPLEX, KAKKANAD P.O., PIN 682030.
8. KUNJU MUHAMMED V.I., ROOM NO.5, (X/992/B4),
THRIKKAKARA SHOPPING COMPLEX, KAKKANAD P.O., PIN 682030.

R1 BY SPL.GOVERNMENT PLEADER SMT.GIRIJA GOPAL
R2 TO R4 BY ADV. SRI.S.SHANAVAS KHAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS :-

EXHIBIT-P1: TRUE COPY OF AUCTION/QUOTATION NOTICE DATED 17.11.2009 OF THRIKKAKARA MUNICIPALITY WITH ENGLISH TRANSLATION.

EXHIBIT-P2: TRUE COPY OF PETITION DATED 09.08.2011 SUBMITTED BY THE RESPONDENTS 3 TO 6 TO THRIKKAKARA MUNICIPAL COUNCIL WITH ENGLISH TRANSLATION.

EXHIBIT-P3: TRUE COPY OF LETTER DATED 15.05.2012 ISSUED BY SRI.BENNY BEHANNAN, M.L.A. WITH ENGLISH TRANSLATION.

EXHIBIT-P4: TRUE COPY OF LETTER DATED 30.05.2012 OF ADDITIONAL SECRETARY OF LOCAL SELF GOVERNMENT DEPARTMENT, THIRUVANANTHAPURAM WITH ENGLISH TRANSLATION.

EXHIBIT-P5: TRUE COPY OF 18.09.2012 OF ADDITIONAL SECRETARY OF LOCAL SELF GOVERNMENT DEPARTMENT, THIRUVANANTHAPURAM WITH ENGLISH TRANSLATION.

EXHIBIT-P6: TRUE COPY OF REVIEW PETITION DATED 24.09.2012 OF RESPONDENTS 3 TO 6 WITH ENGLISH TRANSLATION.

EXHIBIT-P7: TRUE COPY OF LETTER DATED 25.09.2012 OF MINISTER OF P.W.D. SRI.IBRAHIMKUNJU V.K. WITH ENGLISH TRANSLATION.

EXHIBIT-P8: TRUE COPY OF LETTER DATED 12.10.2012 OF SECRETARY, L.S.G.D TO RESPONDENTS 3 TO 6 WITH ENGLISH TRANSLATION.

EXHIBIT-P9: TRUE COPY OF JUDGMENT DATED 26.02.2013 OF THE HON'BLE HIGH COURT OF KERALA IN W.P. (C) NO.33452/2011.

EXHIBIT-P10: TRUE COPY OF LETTER DATED 06.03.2013 OF THE PETITIONER TO THRIKKAKARA MUNICIPALITY WITH ENGLISH TRANSLATION.

EXHIBIT-P11: TRUE COPY OF APPLICATION DATED 21.3.2013 FILED BY THE PETITIONER BEFORE INFORMATION OFFICER OF THRIKKAKARA MUNICIPALITY UNDER RIGHT TO INFORMATION ACT WITH ENGLISH TRANSLATION.

EXHIBIT-P12: TRUE COPY OF REPLY DATED 16.04.2013 FROM THE INFORMATION OFFICER OF THRIKKAKARA MUNICIPALITY WITH ENGLISH TRANSLATION.

EXHIBIT-P13: TRUE COPY OF APPLICATION DATED 21.03.2013 FILED BY THE PETITIONER BEFORE INFORMATION OFFICER OF THRIKKAKARA MUNICIPALITY UNDER RIGHT TO INFORMATION ACT WITH ENGLISH TRANSLATION.

EXHIBIT-P14: TRUE COPY OF REPLY DATED 17.04.2013 FROM THE INFORMATION OFFICER OF THRIKKAKARA MUNICIPALITY WITH ENGLISH TRANSLATION.

EXHIBIT-P15: TRUE COPY OF ORDER DATED 01.06.2013 FROM THE SECRETARY OF L.S.G.D., THIRUVANANTHAPURAM WITH ENGLISH TRANSLATION.

RESPONDENT(S) ' EXHIBITS :- NIL

//TRUE COPY//

P.A. TO JUDGE

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

W.P.(C) No.1080 of 2015

Dated this the 23rd day of February 2015

J U D G M E N T

Shaffique, J.

This writ petition is filed seeking the following reliefs :-

- "1. Issue a writ of certiorari or any other appropriate writ, order or direction and call for the records leading to Ext.P15 and quash Ext.P15 and the order of stay passed upon Exhibits-P6 and P7.
2. Issue a writ of mandamus or any other appropriate writ or order directing the respondents 1 to 4 to take effective action forthwith to recover the entire amounts of arrears of rent, interest, service tax, balance security deposit and penal interest as shown in Ext.P14 and the amounts due thereafter till date in lump sum from the respondents 5 to 8 which is due to be paid by them to the 2nd respondent Municipality as lessees of shop room Nos.4, 5, 6 and 7 in the Thrikkakara Municipal Shopping Complex."

2. The main complaint of the petitioner is that, despite respondents 5 to 8, who are the lessees of the shop room Nos.4, 5, 6 and 7 in the Municipal Shopping Complex of the Thrikkakara Municipality, are occupying the said shop rooms since 7.4.2010, no rent is being paid and as matters stand now, a huge amount is due to the Municipality. Since no action has been taken by the Municipality to recover the amount from the defaulters, the petitioner has approached this Court seeking for the reliefs as stated above.

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3. On instructions, the learned counsel appearing for the Municipality submits that necessary action was taken by the Municipality by issuing notice on 10.7.2014 for recovering the amount. The lessees, namely, the private respondents herein had approached the Government and the Government has stayed the matter by order dated 15.7.2014. Since no final orders have been passed in the matter, the Municipality is not in a position to take further action to recover the amount. It is stated by the learned counsel appearing for the Municipality that the Municipality has taken a decision to recover the amount which will be subject to any decision taken by the Government in this regard.

4. This being the facts, we do not think that this Court can interfere at this stage and issue any direction as sought for. The petitioner has a complaint that the Government is not initiating any action despite having issued an order of stay. It is for the petitioner to approach the Government and seek for modification of the order of stay.

Under the said circumstances, we are of the view that this writ petition can be disposed of with the following directions :-

- (i) The petitioner is permitted to submit a representation to the Government for modification of the order of stay, which they have granted on 15.7.2014.

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- (ii) On receipt of the representation, the Government shall take appropriate action in accordance with the procedure prescribed and take a final decision within a period of three months from the date of receipt of the said representation.

Sd/-
ASHOK BHUSHAN
Ag. CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE
JUDGE