

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

WP(C).No. 4648 of 2013 (E)

PETITIONER :-

**SHAHIM K. B., AGED 38 YEARS,
S/O.BEERANKUNJI,
RESIDING AT KOCHIKKARAN VADAKKEVEETIL,
AISWARYA GARDENS, VAKAYIL,
KOORKKANCHERRY VILLAGE AND DESOM,
KOORKKANCHERRY P.O.,
THRISSUR DISTRICT, PIN - 680 007.**

BY ADV. SRI.GEORGE POONTHOTTAM

RESPONDENTS :-

- 1. ABDUL RAHIMAN, AGED 65 YEARS,
S/O.UMMER, RESIDING AT PANIKKAVEETIL,
MULLASSERY VILLAGE AND DESOM, MULLASSERY P.O.,
CHAVAKAD TALUK, THRISSUR DISTRICT, PIN - 680 509.**
- 2. THE CORPORATION OF THRISSUR,
REPRESENTED BY ITS SECRETARY,
CORPORATION OFFICE, THRISSUR P.O.,
PIN - 680 001.**
- 3. THE EXECUTIVE ENGINEER,
CORPORATION OF THRISSUR,
CORPORATION OFFICE,
THRISSUR P.O., PIN - 680 001.**

**R1 BY ADVS. SRI.G.SREEKUMAR (CHELUR)
SRI.ASHIS K.**

**R2&R3 BY ADVS. SRI.V.J.JOSEPH,SC,THRISSUR CORPORATION
SRI.K.P.VIJAYAN
SRI.V.N.HARIDAS**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXHIBIT P1 :- TRUE COPY OF BUILDING PERMIT NO. DIV 3/BA/319/10-11 DTD 26/12/2011.
- EXHIBIT P2 :- TRUE COPY OF JUDGMENT DATED 03/12/2012 IN OP(C) NO. 4037 OF 2012.
- EXHIBIT P3 :- TRUE COPY OF STOP MEMO DATED 7/11/2012.
- EXHIBIT P4 :- TRUE COPY OF THE SHOW CAUSE NOTICE DTD 26/11/2012.
- EXHIBIT P5 :- TRUE COPY OF ORDER DTD 12/12/2012 CANCELLING THE BUILDING PERMIT.
- EXHIBIT P6 :- TRUE COPY OF ORDER DTD 31/1/2013 IN APPEAL NOS.967/2012 AND 1045/2012 OF THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS.
- EXHIBIT P7 :- TRUE COPY OF SURPRISE CHECK REPORT DATED 25/1/2013 SUBMITTED BY THE VIGILANCE AND ANTI-CORRUPTION DEPARTMENT.
- EXHIBIT P8 :- TRUE COPY OF REPORT NO. C/143/2013/LDis DTD 10/1/2013.
- EXHIBIT P9 :- TRUE COPY OF WRITTEN STATEMENT FILED BY THE 2ND RESPONDENT BEFORE THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS IN APPEAL NO. 967/2012.

RESPONDENT(S)' EXHIBITS : NIL

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//TRUE COPY//

P.A. TO JUDGE

P.V. ASHA, J.

W.P.(C)No.4648 of 2013

Dated this the 1st day of June, 2015

JUDGMENT

This writ petition is filed challenging Ext.P6 order passed by the Tribunal in Appeal Nos.967/2012 and 1045/2012 filed by the first respondent challenging the stop memo and cancellation of building permit respectively issued by the 2nd respondent Corporation of Thrissur. The orders impugned before the Tribunal were passed on the basis of complaint preferred by the petitioner alleging that building permit was issued to the 1st respondent on the basis of misrepresentation of facts to the effect that the extent of property owned by him is less than three cents, so that exemption could be availed for permit for construction of building.

2. The Thrissur Corporation issued Ext. P1 building permit to 1st respondent for construction of a two storied building. Petitioner herein preferred a complaint before the Corporation, pointing out that the first respondent is in

possession and ownership of 1.14 Ares property i.e 3 1/3 cents of property in which he is constructing the building, availing exemption for those with less than 3 cents of property, suppressing the real facts. Based on the complaint of petitioner, the Corporation issued Ext. P3 stop memo to 1st respondent against the construction. This was followed by a show cause notice proposing cancellation of permit. By Ext. P5, building permit was cancelled.

3. The 1st respondent challenged the stop memo and cancellation of permit in separate appeals before the Local Self Govt Institutions Tribunal (Tribunal for short). Tribunal considered the sustainability of the orders issued by the Corporation. Tribunal found that both the orders impugned were issued by the Executive Engineer of Thrissur Corporation and that the Executive Engineer was not the competent authority to issue a stop memo or to cancel the building permit. Hence it was found that both those orders were unsustainable. After considering the merits of the orders, by Ext. P6 order, the Secretary of the Corporation was directed to pass fresh orders after conducting a verification of the site. The petitioner has

challenged the same alleging that the order is unsustainable.

4. I heard the learned counsel appearing for either parties.

5. The learned counsel for the corporation as well as that of petitioner pointed out that stop memo alone was issued by the Executive Engineer; the cancellation of permit-Ext.P5 was issued by the Secretary, who is competent. On examination of Ext. P5, it is evident that the Secretary, the competent authority has passed it. Therefore the finding of the Tribunal that Ext. P5 order of cancellation of permit is illegal, as it is issued by an officer without authority, is baseless.

6. Main complaint against the construction is that 1st respondent illegally availed exemption admissible to those with less than 3 cents of property, in suppression of material facts.

7. The Tribunal in para 20 of the order, interpreted the definition of 'plot' under Section 2 (bg) and held as follows:

“Thus if the present plot of the appellant which if enclosed by definite boundaries contains only less than

3 cents of land case of appellant that even though the title deeds show more extent and more survey number he did not obtain that much extent of land and one particular survey number in the deed and hence his case would come squarely within the purview of chapter VIII will have to be accepted, Before jumping to the conclusion that the appellant has misrepresented the facts, this ought to have been verified by the Secretary."

8. In para 21, the Tribunal held that Town Planning Act has no legal force in view of the judgment of this court in **Sivaprasad Vs State of Kerala [2011(1) KLT 690]**. But in para 29 and 30, it was held that Rule 56(1a) of Kerala Municipal Building Rules, which exempts commercial buildings in town planning area from providing side yards, shall apply to the building.

9. The Tribunal has further directed the Secretary of the Corporation to verify various aspects by actual inspection of the site in presence of 1st respondent, appellant and 2nd respondent and to take action based on the same.

10. As I have already found that the definition of plot as interpreted by the Tribunal in para 20 of the order and the findings in para 29 and 30 as to requirement to provide side yards, are incorrect and unwarranted, the verification and further follow up action by the Secretary shall be done

without taking into account the aforesaid findings.

The order of the Tribunal is accordingly modified to that extent. This writ petition is disposed of accordingly, directing the 2nd respondent to pass fresh orders in accordance with law within a period of three months from the date of receipt of a copy of the judgment. Parties shall maintain status quo in the meanwhile.

Sd/-
P.V. ASHA
JUDGE

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P.A. TO JUDGE