

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 6TH DAY OF MARCH 2015/15TH PHALGUNA, 1936

WP(C).No. 2640 of 2015 (D)

PETITIONER :

**JOSHY P.K.,
DOOR NO.55/1899,
K.P.VALLON ROAD,
KADAVANTHARA
KOCHI - 682 020.**

**BY ADVS.SMT.NISHA JOHN
SMT. MEERA SIDHARTH**

RESPONDENTS :

- 1. CORPORATION OF KOCHI,
KOCHI - 682 011, REPRESENTED BY ITS SECRETARY.**
- 2. SECRETARY,
CORPORATION OF KOCHI, KOCHI - 682 011.**
- 3. ASSISTANT EXECUTIVE ENGINEER,
DEPARTMENT OF TOWN PLANNING, VYTILA ZONE
KOCHI - 682 019.**

**R1 TO R3 BY ADVS. SRI.RAAJESH S.SUBRAHMANIAN, SC
SRI.P.K.SOYUZ, SC**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 06-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Mn

...2/-

WP(C).No. 2640 of 2015 (D)

APPENDIX

PETITIONERS' EXHIBITS :

**EXHIBIT P1. TRUE COPY OF RECEIPT OF PROPERTY TAX FOR THE YEAR
2013-2014.**

**EXHIBIT P2. TRUE COPY OF RECEIPT OF LICENSE FEE REMITTED FOR THE YEAR
2013-2014 FOR CONDUCTING TEA-SHOP.**

**EXHIBIT P3. TRUE COPY OF THE JUDGMENT DATED 26.11.2014 IN W.P(C)
NO.31623/2014.**

**EXHIBIT P4. TRUE COPY OF THE NOTICE ISSUED BY ASST.EXECUTIVE ENGINEER
AND ITS ENGLISH TRANSLATION.**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 2640 of 2015

Dated this the 06th day of March, 2015

JUDGMENT

Challenge is laid in this writ petition against Exhibit P4 notice issued by the third respondent, directing the petitioner to demolish within seven days what are said to be illegal structures put up by him.

2. The learned counsel for the petitioner has strenuously contended that in terms of Section 406(2) of the Kerala Municipality Act, read with Rule 18(2) of the Kerala Municipality Building Rules, 1999, any precipitous action such as demolition should be preceded by a show cause notice, issuing ample opportunity to the petitioner to put forward his defence in that regard.

3. The learned Standing Counsel for the respondent Municipality, on instructions, has submitted that Exhibit P4 notice was issued only in compliance with the judgment

dated 26.11.2014 of this Court in W.P. (C) No. 31623/2014. He has further contended that Exhibit P4 is only a show cause notice, in response to which the petitioner is at liberty to submit his explanation, based on which the respondent Municipality will take further action.

4. Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent Corporation.

5. Though Exhibit P4 is said to have been issued by the respondent Corporation only in compliance with a judicial directive of this Court in judgment dated 26.11.2014 in W.P. (C) No. 31623/2014, a cursory reading of the said notice does not leave any manner of doubt in my mind that it is peremptory in nature, directing the petitioner to demolish the structures straight away, lest he should face the consequences. I am afraid, it cannot be called a show cause notice. Nevertheless, the learned Standing Counsel has fairly submitted that the respondent Municipality is not inclined to take any precipitous steps without receiving an explanation from the petitioner and without processing it further.

6. In the facts and circumstances, this Court hereby sets aside Exhibit P4, leaving it open for the respondent Corporation to issue a fresh show cause notice. Thereafter, it is open for the petitioner to submit a suitable reply, based on which the Corporation can as well take all other consequential steps strictly in accordance with law.

With the above observation, this writ petition is disposed of. No order as to costs.

**DAMA SESHADRI NAIDU
JUDGE**

DMR/-