

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 4TH DAY OF FEBRUARY 2015/15TH MAGHA, 1936

WP(C).No. 3605 of 2015 (A)

PETITIONER:

M.N.VIJAYAN, S/O.NARAYANAN,
MANGARIYIL HOUSE, PO THRIKKUR,
THRISSUR DISTRICT.

BY ADV. SRI.T.RAJASEKHARAN NAIR

RESPONDENT:

THE THRIKKUR GRAMA PANCHAYATH,
REP. BY ITS SECRETARY,
THRIKKUR GRAMA PANCHAYATH OFFICE,
THRIKKUR PO., THRISSUR - 680 001.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
04-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC 3605/2015

PETITIONER'S EXHIBITS:

EXT. P1 A TRUE PHOTOCOPY OF THE SALE DEED EXECUTED IN FAVOUR OF THE PETITIONER'S WIFE SMT.ROHINI ALONG WITH ENGLISH TRANSLATION

EXT. P2 A TRUE PHOTOCOPY OF THE SALE DEED EXECUTED BY SRI.RAJAN IN FAVOUR OF THE PETITIONER ALONG WITH ENGLISH TRANSLATION

EXT. P3 A TRUE PHOTOCOPY OF THE LICENSE ISSUED BY THE RESPONDENT PANCHAYAT IN FAVOUR OF THE PETITIONER'S BROTHER SRI.GOPIDAS ALONG WITH ENGLISH TRANSLATION

EXT. P4 A TRUE PHOTOCOPY OF THE RECEIPT SHOWING THE REMITTANCE OF LICENSE FEE IN THE RESPONDENT'S OFFICE ALONG WITH ENGLISH TRANSLATION

EXT. P5 A TRUE PHOTOCOPY OF THE RECEIPT SHOWING THE REMITTANCE OF LICENSE FEE IN THE RESPONDENT'S OFFICE ALONG WITH ENGLISH TRANSLATION

EXT. P6 A TRUE PHOTOCOPY OF THE RECEIPT SHOWING THE REMITTANCE OF LICENSE FEE IN THE RESPONDENT'S OFFICE ALONG WITH ENGLISH TRANSLATION

EXT. P7 A TRUE PHOTOCOPY OF THE NOTICE DATED 28.8.2014 ISSUED BY THE RESPONDENT ALONG WITH ENGLISH TRANSLATION

EXT. P8 A TRUE PHOTOCOPY OF THE ORDER PASSED BY THE LOCAL SELF GOVERNMENT TRIBUNAL, THIRUVANANTHAPURAM

EXT. P9 A TRUE PHOTOCOPY OF THE FINAL ORDER ISSUED BY THE RESPONDENT TO THE PETITIONER ALONG WITH ENGLISH TRANSLATION

EXT. P10 A TRUE PHOTOCOPY OF THE REPLY STATEMENT SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT ALONG WITH ENGLISH TRANSLATION

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.3605 of 2015 A

Dated this the 4th day of February, 2015

JUDGMENT

Heard the learned counsel for the petitioner, apart from perusing the record. Since the issue lies in a narrow compass, this Court proposes to dispose of the writ petition at the admission stage itself.

2. Briefly stated, when the respondent Grama Panchayat issued Exhibit P7 notice directing the petitioner to demolish the building on the ground that it had been reconstructed without proper permit, the petitioner assailed the same before the Tribunal for Local Self Government Institutions, Thiruvananthapuram and invited Exhibit P8 order. In fact, the learned Tribunal, having set aside Exhibit P7 notice issued by the respondent Grama Panchayat, has further directed the respondent Grama Panchayat to initiate

fresh proceedings in compliance with Section 235W of the Kerala Panchayat Raj Act.

3. It appears that in compliance with Exhibit P8 order of the learned Tribunal, the respondent Grama Panchayat issued Exhibit P9 order dated 01.01.2015 directing the petitioner to demolish what is said to be the unauthorised reconstructed portion of the building or else submit objections within fifteen days. After submitting Exhibit P10 explanation/objections in the face of Exhibit P9, the petitioner has approached this Court contending that Exhibit P9 is not a notice but a peremptory order without due process, especially in violation of the directive given in Exhibit P8 order of the learned Tribunal.

4. The learned counsel for the petitioner has submitted that Exhibit P9 categorically directs the petitioner to demolish the building without giving any scope for adjudication of the issue, though the last paragraph of Exhibit P9 would indicate that the petitioner could as well

submit objections, if any, in that regard. According to him, the directive in Exhibit P9 is fait accompli. As such, disregarding Exhibit P10 objections on the part of the petitioner, the respondent Grama Panchayat is all set to demolish the building, illegally.

5. To a specific query from the Court, the learned counsel for the petitioner has fairly submitted that in the event of any order being passed by the Grama Panchayat in the light of the objections raised by the petitioner in Exhibit P10, the said order is appealable before the Tribunal for Local Self Government Institutions. He has further submitted that given the grave consequences that would follow in the wake of the decision to be taken by the respondent Grama Panchayat based on Exhibit P9, it is incumbent on its part to hear the petitioner before taking a decision in terms of Exhibit P9.

6. In the facts and circumstances, it is made clear that Exhibit P9 shall be treated as a show cause notice

though it has been ostensibly termed as an order, which it is cannot. At any rate, it is in the interest of justice that the respondent Grama Panchayat shall afford an opportunity of personal hearing to the petitioner notwithstanding his objections in Exhibit P10 and thereafter pass appropriate orders thereon.

7. It is further made clear that once an order is passed based on Exhibit P9 notice and Exhibit P10 explanation, apart from personal hearing to be provided to the petitioner, the respondent Grama Panchayat shall not initiate any coercive steps concerning the building in question until the limitation period provided for filing a statutory appeal expires.

With the above observations, the writ petition stands disposed of. No order as to costs.

Dama Seshadri Naidu, Judge

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