

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

MONDAY, THE 14TH DAY OF SEPTEMBER 2015/23RD BHADRA, 1937

WP(C).No. 8211 of 2009 (V)

PETITIONER(S):

**K.T. MUHAMMED SHAFI, S/O.MOIDU.T.,
KANNANTHOTTI VEEDU, MANNARKKADU COLLEGE P.O.
MANNARKADU, PALAKKAD DISTRICT.**

BY ADV. SRI.N.K.KARNIS.

RESPONDENT(S):

- 1. MANNARKKADU GRAMA PANCHAYATH,
REP.BY ITS SECRETARY, MANNARKKADU P.O.,
PALAKKAD DISTRICT.**
- 2. SECRETARY,
MANNARKKADU GRAMA PANCHAYATH,
MANNARKKADU P.O., PALAKKAD DISTRICT.**

BY ADV. SRI.C.E.UNNIKRISHNAN, SC.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 14-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1. TRUE COPY OF THE TAX RECEIPT ISSUED BY THE MANNARKADU VILLAGE OFFICER TO THE PETITIONER DATED 21/04/2008.
- EXT.P2. TRUE COPY OF THE BUILDING PERMIT ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER DATED 14/09/2007.
- EXT.P3. TRUE COPY OF THE MEMO ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER DATED 15/04/2008.
- EXT.P4. TRUE COPY OF THE REPLY TO EXT.P3 SUBMITTED BY THE PETITIONER DATED 22/04/2008.
- EXT.P5. TRUE COPY OF THE NOTICE OF THE 2ND RESPONDENT DATED 30/04/2008 ISSUED TO THE PETITIONER
- EXT.P6. TRUE COPY OF THE REPLY T EXT.P5 SUBMITTED BY THE PETITIONER DATED 13/05/2008.
- EXT.P7. TRUE COPY OF THE ORDER OF THE LOCAL SELF GOVERNMENT INSTITUTIONS TRIBUNAL DATED 20/09/2008 ON APPEAL NO.295/2008.
- EXT.8. TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE HIGH COURT OF KERALA IN WPC NO.24662/2008 DATED 16/10/2008.
- EXT.P9. TRUE COPY OF THE NOTICE ISSUED BY THE 2ND RESPONDENT DATED 11/11/2008
- EXT.P10. TRUE COPY OF THE REPLY TO EXT.P9 SUBMITTED BY THE PETITIONER DATED 19/11/2008.
- EXT.P11. TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT DATED 24/11/2008.
- EXT.P12. TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 04/12/2008 SUBMITTED ON 11/12/2008.
- EXT.P13. TRUE COPY OF THE NOTICE OF THE 2ND RESPONDENT DATED 31/12/2008.
- EXT.P14. TRUE COPY OF THE RECEIPT SHOWING THE PAYMENT OF FEES ISSUED BY THE 1ST RESPONDENT DATED 31/12/2008.

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- EXT.P15. TRUE COPY OF THE REVISED PLAN SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT**
- EXT.P16. TRUE COPY OF THE MEMO SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 05/01/2009.**
- EXT.P17. TRUE COPY OF THE NOTICE ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER DATED 02/01/2009.**
- EXT.P18 COPY OF THE ORDER OF THE 2ND RESPONDENT DATED 24/02/2009.**

RESPONDENT'S EXHIBITS:-

- EXT.R1A COPY OF THE CERTIFICATE OF POSSESSION ISSUED BY THE VILLAGE OFFICER, MANNARKKAD, DATED 05/02/2009.**
- EXT.R1B COPY OF THE DIRECTION DATED 05/01/2009.**
- EXT.R1C COPY OF THE REPORT RECEIVED ON 24/02/2009.**
- EXT.R1D COPY OF THE REPORT RECEIVED ON 21/02/2009.**
- EXT.R1E COPY OF THE PROCEEDINGS OF THE 2ND RESPONDENT VIDE NO.B 1-3447/08 DATEED 02/03/2009 AND SENT ON 06/03/2009.**

//TRUE COPY//

P.S. TO JUDGE

rs.

ANU SIVARAMAN, J.

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W.P.(C).No.8211 of 2009

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Dated this the 14th day of September, 2015

JUDGMENT

The prayers sought for in this writ petition are for direction to consider Ext.P15 revised plan and request for permit made by the petitioner and not to enforce Exts.P11 and P13 until a decision is taken on Ext.P15. The petitioner had been issued with Ext.P2 building permit for the construction of a two storeyed commercial building by the 1st respondent Panchayat. However, by Ext.P3 he was issued with a stop memo on the ground that there is violation of Kerala Municipal Building Rules and Ext.P5 show cause notice was issued for cancellation of the building permit already issued. By Ext.P7, the Tribunal for Local Self Government had in an appeal preferred by the petitioner, found that the proceedings for revocation of the building permit were unjustified and action under Section 235W of the Kerala Panchayat Raj Act could only be resorted to in the facts of the case. The appeal was thus allowed. Ext.P5 notice was set aside and the 2nd respondent Secretary was directed to initiate fresh

proper proceedings in accordance with law. Thereafter, Ext.P9 notice dated 11.11.2008 was issued to the petitioner alleging violation of the building permit to which Ext.P10 reply was submitted. However, Ext.P11 demolition notice was issued on 24.11.2008 and Ext.P13 was issued pursuant to the same on 31.12.2008. The petitioner had preferred Ext.P15 revised plan and application for building permit. It is the specific case of the petitioner that it is on the basis of the cancellation of possession certificate issued to him showing the extent of his property as 8 cents and by the issuance of a later possession certificate limiting the extent of the property shown in his possession as 6 cents and 200 Sq.links, that the violation of the building Rules is now alleged by the Panchayat.

2. W.P.(C) No.19969 of 2011 has already been disposed of on today directing the Tahasildar to cause a survey of the property conducted by the Taluk Surveyor and to issue fresh possession certificate within three months. In the above circumstances, this writ petition is disposed of directing the Panchayat to take up Ext.P15 or any revised application to be submitted by the petitioner on the basis of the possession

certificate issued to him after the field verification and survey as directed in W.P.(C) No.19969 of 2011. The Panchayat shall take up Ext.P15 or any further application to be submitted by the petitioner on the basis of the possession certificate to be issued by the Revenue authorities and pass orders on the same within a period of one month from the date of production of the possession certificate by the petitioner.

Status quo as on today shall be maintained and no further steps shall be taken by the respondents until further orders as directed above are passed. The writ petition is disposed of as above.

Anu Sivaraman, Judge

sj