

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

WP(C).No. 4030 of 2015 (C)

PETITIONER:

C.SUNIL KUMAR, S/O.N.K.CHANDRASEKHARAN,
AGED 43 YEARS, PARTNER M/S.P.S.ENTERPRISES,
ST.JOSEPH SHOPPING COMPEX, BUILDING NO.7/590-C,
PADINJARENADA, NEAR BOAT JETTY, VAIKOM.

BY ADVS.SRI.P.J.MATHEW
SRI.AJITH GEORGE

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY THE
PRINCIPAL SECRETARY TO GOVERNMENT,
LOCAL SELF GOVERNMENT DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM- 695 001.
2. THE VAIKOM MUNICIPALITY,
REP. BY ITS SECRETARY, MUNICIPAL OFFICE,
VAIKOM P.O., KOTTAYAM DISTRICT-686 141.
3. THE CHENNAM PALLIPPURAM GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY,
P.O.CHENNAM PALLIPPURAM, CHERATHALA - 688 541,
ALAPPUZHA DISTRICT.
4. THE DISTRICT COLLECTOR, KOTTYAM, CIVIL STATION,
KOTTAYAM - 686 001.
5. THE VILLAGE OFFICER, VAIKOM, VAIKOM P.O.-686 141.

R1, R4 & R5 BY GOVERNMENT PLEADER SMT.C.K.SHERIN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
09-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC 4030/2015

PETITIONER'S EXHIBITS:

EXT. P1 TRUE COPY OF THE RELEVANT PAGES OF THE AGREEMENT DATED 17.9.2011 EXECUTED BETWEEN THE PETITIONER AND THE FIRST RESPONDENT MUNICIPALITY

EXT. P2 TRUE COPY OF THE AGREEMENT DATED 17TH SEPTEMBER 2011

EXT. P3 TRUE COPY OF THE COMMUNICATION DATED 30.1.2012 REGARDING THE COMPLAINT IN THE PROPELLER

EXT.P3(a) TRUE ENGLISH TRANSLATION OF EXT. P3

EXT. P4 TRUE COPY OF THE COMMUNICATION DATED 2.4.2012 REGARDING THE COMPLAINT IN THE RAMP OF THE JHANKAR

EXT.P4(a) TRUE ENGLISH TRANSLATION OF EXT. P4

EXT. P5 TRUE COPY OF THE COMMUNICATION DATED 11.6.2012 REGARDING HE COMPLAINT IN THE HYDRAULIC GEAR

EXT.P5(a) ENGLISH TRANSLATION OF EXT. P5

EXT. P6 TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE SECRETARY, VAIKOM MUNICIPALITY DATED 13.2.2013

EXT.P6(a) ENGLISH TRANSLATION OF EXT. P6

EXT. P7 TRUE COPY OF THE NOTICE ISSUED BY THE SECRETARY, VAIKOM MUNICIPALITY DATED 11.3.2013

EXT.P7(a) ENGLISH TRANSLATION OF EXT.P7

EXT. P8 TRUE COPY OF THE STAY ORDER DATED 27.3.2013 IN APPEAL NO.320/2013 OF THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS

EXT. P9 TRUE COPY OF THE ORDER OF THE TRIBUNAL DATED 22ND FEBRUARY 2014

EXT. P10 TRUE COPY OF APPEA FILED UNDER SECTION 57 OF THE KERALA MUNICIPALITIES ACT ON 28.3.2014

EXT. P11 TRUE COPY OF THE LETTER OF THE SECOND RESPONDENT DATD 5.6.2013

EXT.P11(a) ENGLISH TRANSLATION OF EXT. P11

EXT. P12 TRUE COPY OF THE DEMAND NOTICE DATED 21.3.2014

EXT.P12(a) ENGLISH TRANSLATION OF EXT. P12

EXT. P13 TRUE COPY OF THE RECEIPT ISSUED BY THE SECOND RESPONDENT DATED 24.3.2014

EXT. P14 A TRUE COPY OF THE NOTICE ISSUED UNDER RVENUE RECOVERY ACT DATED 4.10.2014 DEMANDING RS.11,06,516/-

/TRUE COPY/

Dama Seshadri Naidu, J.

W.P.(C)No.4030 of 2015 C

Dated this the 9th day of February, 2015

JUDGMENT

Heard the learned counsel for the petitioner and the learned Government Pleader for respondents 1, 4 and 5, 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, the petitioner, a partnership firm, entered into a contract with the second respondent Municipality to conduct Jhankar Ferry Service between Vaikom-Chennam-Pallippuram, the kist amount having been fixed at ₹ 10,30,000/- for three years. It is the contention of the petitioner that the Jhankar, being mechanically defective, had been docked for 85 days out of 262 operational days.

3. In the light of docking of the Jhankar, the second respondent Municipality is said to have reduced the lease amount proportionally. When the second respondent Municipality has not made corresponding reduction in the kist amount, the petitioner filed an appeal before the Tribunal for Local Self Government Institutions, Thiruvananthapuram, which disposed of the said appeal through Exhibit P9 order holding that the petitioner should approach the Government under Section 57 of the Kerala Municipalities Act. It is pertinent to note that while the appeal was pending, the Tribunal directed maintenance of status quo, as could be seen from Exhibit P8.

4. The petitioner, in the light of the findings of the learned Tribunal in Exhibit P9 order, filed Exhibit P10 statutory appeal before the first respondent. Along with the statutory appeal, the petitioner also filed a petition for interim stay under Section 57(4) of the Act. It appears that so far the said petition has not been taken up for

consideration by the appellate authority. Recently, the fourth respondent issued Exhibit P14 notice demanding payment of total arrears of kist amount to the tune of ₹ 11,06,516/- with 12% interest. It is the contention of the petitioner that though Exhibit P14 notice was dated 04.10.2014, it was in fact served on him only on 05.01.2015. Aggrieved thereby, the petitioner has approached this Court.

5. It is evident that no application was filed seeking stay of operation of Exhibit P14 before the appellate authority. The fact, however, remains that on earlier occasion too the respondent authorities issued similar demand notice against which the petitioner filed a stay petition in appeal. Given the fact that all along, when the appeal was pending, the learned Tribunal protected the interest of the petitioner through Exhibit P8 interim order, the first respondent - the appellante authority - ought to have considered the petition filed along with Exhibit P10

appeal and passed appropriate orders thereon.

6. In my considered view, it serves the interest of justice if the writ petition is disposed of with a direction to the appellate authority to consider the petitioner's application filed along with Exhibit P10 appeal, taking into account the subsequent demand notice in Exhibit P14 as well and pass appropriate orders thereon.

In the facts and circumstances, having regard to the respective submissions of the learned counsel for the petitioner and the learned Government Pleader, this Court disposes of the writ petition with a direction to the first respondent to consider the petition filed along with Exhibit P10 appeal duly taking into account Exhibit P14 demand notice and pass appropriate orders thereon as expeditiously as possible, at any rate, within a period of two months from the date of receipt of a copy of this judgment. In view of the previous stay granted by the learned Tribunal while the appeal was pending, it is meat to provide the same

protection to the petitioner till the disposal of the petition filed along with Exhibit P10 appeal. Accordingly, Exhibit P14 stands suspended till the disposal of the petition filed along with Exhibit P10 appeal. It is, however, made clear that, while deciding the interlocutory application, the appellate authority may consider the merits of the matter uninfluenced by any observations made by this Court herein.

Dama Seshadri Naidu, Judge

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