

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. 4102 of 2015 (K)

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PETITIONER:

LAKESHORE HOSPITAL AND RESEARCH  
CENTRE LIMITED, NETTOOR P.O.,  
MARADU, KOCHI - 682 304 REP. BY ITS  
COMPANY SECRETARY R.MURALEEDHARAN.

BY ADVS.SRI.P.K.SURESH KUMAR (SR.)  
SRI.SANTHEEP ANKARATH  
SRI.K.P.SUDHEER

RESPONDENTS:

1. MARADU MUNICIPALITY REP. BY ITS  
SECRETARY, MARADU, ERNAKULAM  
DISTRICT PIN - 682 304.
2. COASTAL ZONE MANAGEMENT AUTHORITY,  
REP. BY ITS MEMBER SECRETARY,  
SASTHRA BHAVAN, PATTOM,  
THIRUVANANTHAPURAM - 605 004.

R1 BY SRI.T.R.RAJAN  
R2 BY SRI.PRAKASH C.VADAKKAN. J.

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 4102/2015**

PETITIONER'S EXHIBITS:

EXT. P1 TRUE COPY OF BUILDING PERMIT NO.BA-214/12-13 DATED 19.11.2013 ISSUED BY THE FIRST RESPONDENT

EXT. P2 TRUE COPY OF ORDER NO.E2-2630/11 DATED 5.2.2015 ISSUED BY THE FIRST RESPONDENT

EXT.P2(a) ENGLISH TRANSLATION OF EXT. P2

EXT. P3 TRUE COPY OF JUDGMENT DATED 19.2.2013 IN OP 38209/2002 PASSED BY THIS HON'BLE COURT

EXT. P4 TRUE COPY OF SKETCH CERTIFIED BY VILLAGE OFFICER, MARADU DATED 22.11.2013

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

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W.P.(C)No.4102 of 2015 K  
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Dated this the 9<sup>th</sup> day of February, 2015

### **JUDGMENT**

Heard the learned counsel for the petitioner and the learned Standing Counsel for the first respondent, 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 is said to have had its hospital complex in existence since 2003. Initially when the main building was constructed, an objection was raised by the respondent Municipality on the ground that the construction was hit by Zoning Regulations. It appears that the objection was at the behest of a public spirited person. At any rate, this Court disposed of the writ petition filed by the petitioner in O.P.No.38209/2002 through Exhibit P3

judgment. As could be seen, a learned Division Bench of this Court has held that the canal abutting to which the structure has been raised by the petitioner is actually not part of the restricted zone and that the objection could not be sustained.

3. Subsequently, with a view to expanding the hospital, the petitioner obtained Exhibit P1 permit for constructing an additional building. While the construction was half way through, the respondent Municipality issued Exhibit P2 in the nature of stop memo asking the petitioner to show cause why action should not be taken against it under Sections 406(1) and (2) of the Act because the proposed construction allegedly falls within the Coastal Regulation Zone as per the draft map of the Coastal Zone Managing Authority published in 2011.

4. The learned counsel for the petitioner has submitted that the objection raised by the respondent

Municipality stands squarely answered by a learned Division Bench of this Court through Exhibit P3 judgment. He has further contended that for whatever reason if the newly notified draft map of the Coastal Regulation Zone restrictions applies to the petitioner, still the construction is situated beyond nineteen metres, which is permissible under the Zoning Regulations.

5. The learned Standing Counsel for the respondent Municipality has submitted that Exhibit P2 is only in the nature of a show cause notice, and that the petitioner is at liberty to file its explanation in the light of the objection raised by the respondent Municipality. If the petitioner is permitted to proceed with the construction, the position may become irreversible and that the authorities may be estopped from questioning the same at a later point of time.

6. Be that as it may, having heard the learned counsel for the petitioner and the learned standing counsel,

this Court is of the opinion that Exhibit P2, as has been rightly contended by the learned Standing Counsel, is in the nature of a show cause notice. The petitioner is at liberty to file its explanation concerning the objection raised by the respondent Municipality. Once such a reply is filed by the petitioner, it is expected of the respondent Municipality to consider the same in accordance with law and pass appropriate orders as expeditiously as possible.

7. Given the petitioner's plea that the construction is half way through and that a blanket stay at this stage will cause great hardship, this Court observes that the petitioner may continue with the construction subject to the outcome of the proceedings initiated by the respondent Municipality through Exhibit P2 notice. For any sustainable reason if it is to be held by the respondent Municipality that the construction is hit by the newly published draft map of the Coastal Zone Managing Authority, without taking

shelter under equities, the petitioner shall abide by the said decision. It is made clear that the petitioner is expected to file objections, if any, within two weeks from the date of receipt of a copy of this judgment.

With the above observations, the writ petition stands disposed of.

Dama Seshadri Naidu, Judge

tkv