

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE

WEDNESDAY, THE 28TH DAY OF JANUARY 2015/8TH MAGHA, 1936

WP(C).No.4425 of 2014 (C)

PETITIONER:

**S.YAMUNAMANI,AGED 36,W/O.JANARDHANAN,
KUNNUNPURATHU VEEDU,(MAHILA MANDIRAM),
KURUMANDAL-B,S.PARAVUR P.O,KOLLAM DISTRICT.**

BY ADV. SRI.V.VENUGOPALAN NAIR

RESPONDENTS:

- 1. THE PARAVUR MUNICIPALITY,
REPRESENTED BY ITS SECRETARY,
S.PARAVUR.P.O,KOLLAM,PIN-691301.**
- 2. THE SECRETARY,PARAVUR MUNICIPALITY,
MUNICIPAL OFFICE,S.PARAVUR.P.O,
KOLLAM,PIN-691301.**
- 3. SMT.NALINI,KUNNUNPURATHU VEEDU,
KURUMANDAL-B,S.PARAVUR P.O,
KOLLAM DISTRICT.**

**R1 & R2 BY SRI.AYYAPPAN SANKAR,S.C.
R3 BY ADV.SRI.G.BHAGAVAT SINGH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 28-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

pk

WP(C).No.4425 of 2014 (C)

APPENDIX

PETITIONER'S EXHIBITS:

**EXT.P1:A TRUE COPY OF THE BUILDING PERMIT DTD 29-03-2011 ISSUED BY
THE 1ST RESPONDENT AND THE SITE PLAN.**

**EXT.P2:A TRUE COPY OF THE ORDER OF THE TRIBUNAL FOR LOCAL SELF
GOVERNMENT INSTITUTIONS DTD 27-9-2012 IN APPEAL NO.322/2012.**

**EXT.P3:A TRUE PHOTOCOPY OF THE JUDGMENT IN W.P(C)7713/12
DTD 28-1-2013.**

**EXT.P4:A TRUE COPY OF THE SAID LETTER OF THE 1ST RESPONDENT
DTD 27-9-2013 AND RECEIVED BY THE PETITIONER ON 30-1-2014.**

**EXT.P4(a):A TRUE COPY OF THE POSTAL COVER SHOWING THE DISPATCH OF
EXT.P4.**

**EXT.P5:A TRUE COPY OF THE ORDER OF THE 1ST RESPONDENT SAID
DTD 27-9-2013 AND AFFIXED ON PETITIONERS HOUSE ON 31-1-2014.**

**EXT.P6:TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER
BEFORE THE TALUK SURVEYOR.**

RESPONDENT'S EXHIBITS:

**EXT.R3(a):COPY OF THE COMPLAINT FILED BY THE 3RD RESPONDENT BEFORE
THE S.I OF POLICE,PARAVOOR.**

//TRUE COPY//

P.S. TO JUDGE

pk

A.M.SHAFFIQUE, J

*** * * * ***

W.P.C.No.4425 of 2014

Dated this the 28th day of January 2015

J U D G M E N T

Petitioner challenges Ext.P2, an order passed by the Tribunal for Local Self Government Institutions by which the petitioner was asked to stop construction of a well which was being dug in his property. It was found by the Municipality that the construction of the well was without providing appropriate set back as contemplated under the Rules. When a complaint was received by the Municipality, they conducted an inspection and it was found that the well was constructed in violation of Rule 104 of the Kerala Municipality Building Rules. Therefore, stop memo was issued. The Tribunal, after considering the matter, found that the evidence in the case indicated that the well was constructed only leaving 1.20 meters from the street boundary which is also evident from the order passed by the Revenue Divisional Officer. Therefore, the Municipality was justified in issuing the stop memo. The Tribunal further

directed the Secretary of the Municipality to proceed under Section 406 of the Kerala Municipality Act.

2. According to the petitioner, the order passed by the Tribunal is in violation of Ext.P3 judgment and there is a clear dispute as far as the boundary of the petitioner's property near the well is concerned. The learned counsel for the petitioner submits that necessary steps had been taken for fixation of boundary.

3. Counter affidavit has been filed by the 3rd respondent supporting the stand taken by the Tribunal and inter alia contending that there is no legal grievance projected in the writ petition. The learned counsel appearing for the Municipality submits that pursuant to Ext.P2 order passed by the Tribunal, final orders had been passed as Ext.P5 and it was clearly found that there is violation of the rules.

4. The fact being so, when Ext.P5 has been issued, and in the absence of any material to indicate that the order passed is in any way illegal, it may not be possible for this

Court to interfere at this stage. That apart, no attempt has been made by the petitioner to challenge Ext.P5 by preferring an appeal, as contemplated under the statutory provisions. Under such circumstances, I do not find any merit in this writ petition and the same is liable to be dismissed.

5. As far as the contention regarding demarcation of the boundary is concerned, it is always open for the petitioner to approach the competent authority for demarcation of the boundary line and thereafter necessary steps can be taken to obtain appropriate permission from the Municipality and dig a well. At this stage of the proceedings, it may not be possible for this Court to entertain the writ petition.

With the above observation, this writ petition is dismissed.

(A.M.SHAFIQUE, JUDGE)

jsr

