

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

FRIDAY, THE 4TH DAY OF DECEMBER 2015/13TH AGRAHAYANA, 1937

W.P.(C).No. 8733 of 2012 (N)

PETITIONER(S):

LEKHA DAMODARAN, AGED 62 YEARS,
10.C, BELAIR PANAMPALLY NAGAR,
ERNAKULAM -682 036.

BY ADVS. SMT. SUMATHY DANDAPANI (SR.)
SRI.BENNY GERVACIS
SRI.K.M.VENKATESH KAMATH
SRI.U.J.NIKHIL RAJ
SRI.SIDDARTH MENON

RESPONDENT(S):

1. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT,
LOCAL SELF GOVERNMENT DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM -695 001.
2. CORPORATION OF KOCHI
REPRESENTED BY ASSISTANT ENGINEER,
CORPORATION OF KOCHI, ZONAL OFFICE,
FORT KOCHI -682 001.
3. CORPORATION OF KOCHI
REPRESENTED BY ASSISTANT EXECUTIVE ENGINEER,
ERNAKULAM, KOCHI 682 011.
4. ART & HERITAGE COMMISSION,
REPRESENTED BY MEMBER SECRETARY ,
CHIEF TOWN PLANNER, ERNAKULAM -682 011.

R1 BY SENIOR GOVERNMENT PLEADER, SRI. THOMAS JOHN AMBOOKEN
R2 & R3 BY ADV. SRI.K.P.JUSTINE(KARIPAT) SC, COCHIN CORPORATION.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04-12-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.T.O.

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1: COPY OF THE MAP SHOWING THE LOCATION OF THE PETITIONER'S BUILDING.
- EXHIBIT P2: A TRUE COPY OF THE BUILDING PERMIT DATED 28.09.2010 ISSUED TO THE PETITIONER BY THE 2ND RESPONDENT, VIDE NO.FCPI-335/10.
- EXHIBIT P2(A):TRUE COPY OF THE PLAN APPROVED BY THE RESPONDENT CORPORATION.
- EXHIBIT P3: A TRUE COPY OF THE NO OBJECTION CERTIFICATE DATED 4.8.2011 ISSUED BY MR. VIJAYAN TO THE CORPORATION.
- EXHIBIT P4: TRUE COPY OF THE REVISED BUILDING PERMIT FCPI-335/10 DATED 25.08.2011 ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT P4(A):TRUE COPY OF THE REVISED PLAN ISSUED BY THE KOCHI CORPORATION.
- EXHIBIT P5: TRUE COPY OF THE STOP MEMO NO.FCPI-335/10 DATED 30.09.2011 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.
- EXHIBIT P5(A):PHOTOCOPY OF THE ENVELOP IN WHICH EXHIBIT P5 STOP MEMO IS SENT BY THE RESPONDENT CORPORATION.
- EXHIBIT P6: A TRUE COPY OF THE NOTICE NO.FCPI-335/10 DATED 14.10.2011 ALONG WITH PROVISIONAL ORDER U/S. 406(1) OF KERALA MUNICIPALITIES ACT ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT P7: THE COPY OF THE COVERING LETTER DATED 15.10.2011 SENT BY THE PETITIONER TO THE ASSISTANT EXECUTIVE ENGINEER.
- EXHIBIT P8: TRUE COPY OF THE EXPLANATION DATED 29.10.2011 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT, VIDE REF.NO.LD/AEE/CC/11/01.
- EXHIBIT P8(A):COPY OF THE ACKNOWLEDGEMENT DUE CARD, REFERRED TO IN THE WRIT PETIT.
- EXHIBIT P9: TRUE COPY OF THE REPRESENTATION DATED 28.11.2011 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.
- EXHIBIT P10: TRUE COPY OF THE TAX RECEIPT NO.0048757 DATED 30.04.2008 FOR THE YEAR 2008-2009 ISSUED BY THE 2ND RESPONDENT.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

St/-

SHAJI P. CHALY, J.

W.P.(C)No.8733 of 2012

Dated this the 4th day of December, 2015

JUDGMENT

This writ petition is filed by the petitioner seeking to quash Exts.P5 and P6, by which the petitioner was directed to stop the works undertaken as per the plan sanctioned by 3rd Respondent.

2. Heard. Brief facts required for the disposal of the case are as follows:

3. Petitioner is the owner of land bearing Survey No.73/IB of Fort Kochi Village and the petitioner and her family were residing in the building situated in the said property. The said building was allotted to the petitioner by the Kerala Housing Board as per document No.1107/98 dated 23.03.1998. Since the building was old, petitioner wanted to renovate the same and thereupon petitioner approached the 2nd and 3rd Respondents and secured Ext.P2 building permit and Ext.P2(a) plan. Thereafter, when the work was going on, a revised plan was submitted and 'No Objection Certificate' was required by the Respondents 2 and 3 from the

neighbouring building owner viz., one Vijayan. Accordingly, Ext.P3 No Objection Certificate was also produced by the petitioner. In such circumstances, the 3rd Respondent has issued Ext.P4 revised permit dated 25.08.2011 and Ext.P4(a) revised plan. Anyhow, after some time, while the work was going on, Ext.P5 notice was issued by the 3rd Respondent notifying that the construction undertaken by the petitioner is within the Heritage Zone and therefore the petitioner ought to have produced necessary permission from the Heritage as well as the Archaeological Department, and further directed the petitioner to produce the same within a period of seven days. Obviously, petitioner failed to produce the same and consequent to which, Ext.P6 provisional order was passed by the 2nd Respondent by invoking powers under Sec.406(1) of the Kerala Municipality Act, 1994. Against which, petitioner had preferred Exts.P7 and P9 representations. In spite of the same, petitioner could not carry on the construction work undertaken. It is thus aggrieved, petitioner has approached this Court by filing the writ petition.

4. This Court by an order dated 04.05.2012, permitted the petitioner to proceed with the construction on certain

conditions. One of the condition that was provided in the said interim order is that the Respondents were at liberty to approach this Court to modify the said order in the event of said Respondents come across any notification treating the said area as a heritage zone. It is not in dispute that none of the Respondents have produced any such document before this Court.

5. Anyhow, petitioner has proceeded with the construction in accordance with the interim order secured from this Court and when the matter was taken up today, it is submitted that the construction is complete in all respects and the Municipality has issued the completion certificate, numbered the building and accepted the property tax. This submission made by the learned Senior Counsel for the petitioner, Smt. Sumathy Dandapani is approved by the learned Standing Counsel for Respondents 2 and 3, Sri. K.P. Justine Karipat.

6. It is also submitted by the learned Standing Counsel for Respondents 2 and 3 that so far the Corporation has not received any intimation from the respective statutory authorities under the Archaeological Department or any other

authority, directing them to interdict the petitioner from proceeding with the construction. It is also submitted that they have not come across any notification treating the area in question as a heritage zone.

7. I have also heard learned Senior Government Pleader, Sri. Thomas John Ambooken for and on behalf of 1st and 4th Respondents also. He submits that so far no information is provided to the office of the Advocate General with regard to the liberty given by this Court to produce any order concerning heritage zone, while passing the interim order way back in 2012.

8. In that view of the matter, I am of the considered opinion that Ext.P6 order has lost its efficacy and cannot be said to be in force in view of the construction completed by the petitioner taking recourse to the interim order passed by this Court referred *supra*. The 2nd and 3rd Respondents have no objection also in view of the subsequent development, after the filing of the writ petition in quashing Ext.P6 provisional order. Therefore, I quash Exts.P5 and P6 orders passed by 2nd and 3rd Respondents.

9. Therefore, I allow the writ petition quashing Exts.P5 and P6 and leave open the liberty of the 1st and 4th Respondents, in regard to the matter concerning heritage zone.

The writ petition is allowed accordingly.

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.S. to Judge

St/-
07.12.2015