

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 20TH DAY OF FEBRUARY 2015/1ST PHALGUNA, 1936

WP(C).No. 5316 of 2015 (L)

PETITIONER:

FISH MARKETING CO-OPERATIVE SOCIETY,
REG. NO.E 529, NAYARAMBALAM - 682 509,
REPRESENTED BY ITS PRESIDENT P.P. NATESAN.

BY ADV. SRI.R.VENUGOPAL

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY THE SECRETARY
TO GOVERNMENT, LOCAL SELF GOVERNMENT
DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
2. THE SECRETARY,
NAYARAMBALAM GRAMA PANCHAYATH,
NAYARAMBALAM POST - 682 509.

R BY SMT. C.K. SHERIN, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
20-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

: 2 :

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1 : PHOTO COPY OF THE BUILDING PERMIT DATED 07.04.2014 ISSUED BY THE 2ND RESPONDENT.
- EXT.P2 : PHOTO COPY OF APPROVED PLAN.
- EXT.P3 : PHOTO COPY OF NOTICE DATED 21.11.2014 OF THE 2ND RESPONDENT.
- EXT.P3(a) : ENGLISH TRANSLATION OF EXHIBIT P3 NOTICE.
- EXT.P4 : PHOTO COPY OF THE TEMPORARY ORDER DATED 21.11.2014 OF THE 2ND RESPONDENT.
- EXT.P4(a) : ENGLISH TRANSLATION OF EXHIBIT P4 ORDER.
- EXT.P5 : PHOTO COPY OF THE LETTER DATED 25.11.2014 OF THE 2ND RESPONDENT.
- EXT.P5(a) : ENGLISH TRANSLATION OF EXT.P5 LETTER.
- EXT.P6 : PHOTO COPY OF THE NOTICE DATED 27.12.2014 OF THE 2ND RESPONDENT.
- EXT.P6(a) : ENGLISH TRANSLATION OF EXHIBIT P6 NOTICE.
- EXT.P7 : PHOTO COPY OF THE ORDER DATED 27.12.2014 OF THE 2ND RESPONDENT.
- EXT.P7(a) : ENGLISH TRANSLATION OF EXHIBIT P7 ORDER.
- EXT.P8 : PHOTO COPY OF REPLY DATED 12.01.2015 SENT ON BEHALF OF THE PETITIONER.
- EXT.P8(a) : ENGLISH TRANSLATION OF EXHIBIT P8 REPLY.
- EXT.P9 : PHOTO COPY OF THE ORDER DATED 23.01.2015 OF THE 2ND RESPONDENT.
- EXT.P9(a) : ENGLISH TRANSLATION OF EXHIBIT P9 ORDER.
- EXT.P10 : PHOTO COPY OF CONSENT LETTER.
- EXT.P10(a) : ENGLISH TRANSLATION OF EXHIBIT P10.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P.A. TO JUDGE

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 5316 of 2015 (L)

Dated this the 20th day of February, 2015.

JUDGMENT

Heard the learned counsel for the petitioner and the learned Government Pleader, 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 Fish Marketing Co-Operative Society, after obtaining the necessary building permit, began its construction activities. When the construction was at the foundation level, the second respondent issued Ext.P3 notice along with Ext.P4 order in terms of Section 235W(1) of the Kerala Panchayath Raj Act detailing the violations said to have been committed by the petitioner in his construction. At any rate, based on the explanation submitted by the petitioner, the second respondent, however, issued Ext.P5 proceedings withdrawing Exts.P3 and P4 notices.

3. When about 90% of the construction was completed, the second respondent once again issued Ext.P6 notice enclosing Ext.P7 order detailing the violations said to have been committed by the

petitioner in deviation of the sanctioned plan. The petitioner in turn submitted Ext.P8 reply to the second respondent. Having not been satisfied with the explanation submitted by the petitioner, the second respondent issued Ext.P9 final orders, assailing which the petitioner filed the present writ petition.

4. The learned counsel for the petitioner has made herculean efforts to impress upon the Court that there is a clear infraction of the principles of natural justice, and that the petitioner need not take recourse to the statutory appeal before approaching this Court.

5. I am afraid, no violation of principles of natural justice is discernible from the record. The contention of the learned counsel is that, having withdrawn the earlier objections through Ext.P5, the second respondent ought not to have issued the subsequent notices. In other words, once the second respondent withdrew his objections, it is impermissible for him to raise any other objections at a later point of time. This contention cannot be countenanced on the simple premise that at the earliest point of time, Exts.P3 and P4 notices were issued, when the structure was, indeed, at the foundation level. Subsequently, Exts.P6 and P7 notices were issued when the construction was almost completed, when the second respondent

noticed the violation. Even otherwise, there can be no estoppel against the statute and once the second respondent notices any violations at any point of time, he cannot be deterred from invoking the statutory powers in that regard.

6. The petitioner could not establish to the satisfaction of this Court why he has not taken recourse to the appellate remedy in the first instance. The contention of the learned counsel for the petitioner that there is violation of principles of natural justice having already been rejected, this Court does not have any other option than relegating the petitioner to his statutory remedy, such as an appeal.

7. At any rate, the learned counsel has apprehended that the petitioner is entitled to file an appeal within 30 days from the date of the impugned order, but the second respondent has given him only two weeks' time, instead of 30 days. According to him, the petitioner could as well approach the appellate authority on or before 06.03.2015. In the end, the learned counsel has sought indulgence of this Court in the manner of an interim direction to protect the petitioner's interest until he approaches the appellate authority, within the limitation period.

In the facts and circumstances, having regard to the

submissions made by the learned counsel for the petitioner, this Court disposes of the writ petition leaving it open for the petitioner to take recourse to, if advised, statutory appeal. Since the time fixed for appeal has not expired, it is in the fitness of things to direct the respondent authorities not to take any precipitous steps until the time for appeal fixed has expired. No order as to costs.

sd/- DAMA SESHADRI NAIDU, JUDGE.

