

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

FRIDAY, THE 30TH DAY OF JANUARY 2015/10TH MAGHA, 1936

WP(C).No. 12520 of 2007 (M)

PETITIONER :

K.D.KUNJAPPAN, S/O DEVASSY,
XVIII/142(1), ALUVA GENERAL MARKET, ALUVA.

BY ADV. SRI.P.K.ABOOBACKER(EDAPPALLY)

RESPONDENTS :

1. THE ALUVA MUNICIPALITY,
REPD. BY ITS SECRETARY.
2. THE TRIBUNAL FOR LOCAL SELF GOVERNMENT
INSTITUTIONS, THIRUVANANTHAPURAM.

R1 BY ADV.SRI.V.MKURIAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 12520 of 2007 (M)

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : PHOTOCOPY OF THE PHOTOGRAPH SHOWING THE POSITIION OF THE TRUSS WORK

EXT.P2 : PHOTOCOPY OF THE REPLY DATED 1.9.06 FILED BY THE PETITIONER BEFORE THE RESPONDENT

EXT.P3 : PHOTOCOPY OF THE ORDER-DATED 18.11.06 ISSUED BY THE RESPONDENT TO THE PETITIONER

EXT.P4 : COPY OF THE ORDER-DATED 30.1.07 ISSUED BY THE 2ND RESPONDENT IN APPEAL NO.475/06

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P.A TO JUDGE

AV

K.SURENDRA MOHAN, J.

W.P.(C) No.12520 of 2007

Dated this the 30th day of January, 2015

J U D G M E N T

The petitioner is the owner of Shop No.XVIII/142(1) of the Aluva Municipality near the National Highway adjacent to the Aluva Market. The petitioner's son Jaison is conducting business in that shop. According to the petitioner, the shop room was purchased about 15 years back. At that time itself, there was truss work having a length of 3 metres in front of the shop room. While so, the petitioner reconstructed the building during the year 2006. The construction was made on the strength of a building permit issued by the 1st respondent. It is the case of the petitioner that, at the time of reconstruction, a set back of 3 metres was provided at the front. Therefore, after the construction was completed, the petitioner put up a truss work having a length of 6 metres, in front of the building. It is contended that, the present truss work is standing in the same position as the one that was existing till the year 2006. Therefore, the same has been put up within the petitioner's property. The petitioner's shop room is away from the public road and facing the Aluva market. Therefore, it is contended that, the structure does not cause any obstruction to the users of the public road. There are also trees standing by the side of the road beyond the truss work of the petitioner. It is the case of the petitioner that, such truss work have been put up by all the shops in the market, as evident from Ext.P1 photograph.

2. The petitioner is aggrieved by the action initiated by the 1st respondent under Section 406 of the Kerala Municipality Act, 1994 (hereinafter referred to as 'the Act' for short) directing demolition of the said structure. The petitioner was initially issued with a notice. He was also heard on 08.11.2006. Thereafter, as per Ext.P3 he was directed to demolish the truss work that was put up in violation of the Kerala Municipality Building Rules, 1999 (hereinafter referred to as 'the Rules' for short). Since the petitioner apprehended that Ext.P3 would be implemented through coercive action, he had approached this Court by filing W.P.(C).No.31202/2006. However, the said writ petition was disposed of directing the petitioner to challenge Ext.P3 order in appeal. Accordingly, the petitioner preferred an appeal to the 2nd respondent. However, by Ext.P4 the appeal has been dismissed.

3. It is the contention of the petitioner that, Ext.P4 is unsustainable and liable to be set aside. The petitioner had left out 3 metres of open space in his property, at the front of his shop room. The truss work structure extending 3 metres had been in existence up to the year 2006, as part of the whole building. It was for the said reason that, the petitioner had put up a truss work extending 6 metres. The said structure does not cause any obstruction to any user of the public road or the market. Since two trees are standing in front of the shop room, the truss work does not even extend to the road margin. It is also contended that, the structure does not violate Rule 24(11), as

found by the 2nd respondent. Therefore, it is contended that Exts.P3 and P4 orders are liable to be set aside.

4. Adv.Sri.V.M.Kurian appears for the 1st respondent. According to the counsel, the existence of the offending structure is not disputed. It is also not disputed that, the truss work extends 6 metres outside the building of the petitioner. The petitioner also admits that, he had left out 3 metres of open space at the front of his building. The said open space is to be maintained free, in accordance with the stipulations contained in the Rules. However, the petitioner has made the construction in the said open space. Therefore, there is clear violation of the Rules, as found in Ext.P4. For the above reason, it is contended that no interference with Ext.P4 is called for.

5. Heard. As rightly contended by the counsel for the 1st respondent, it is admitted by the petitioner that he had left out open space at the front of his shop room, extending 3 metres. His case is that, the old building that was there in place of the present new building put up by him in the year 2006, had a similar truss work that was projecting to a distance of 3 metres out of the building. There were no complaints raised against the said structure at any time, by any one. Therefore, according to the petitioner, the present truss work put up by him extending 6 metres out of his building cannot be found fault with.

6. The above contention cannot be sustained for the reason that,

the open space of 3 metres left by the petitioner is to be maintained open to the sky as stipulated by the Rules. The said open space is necessary as part of the present building that has been permitted to be put up by the petitioner as per the building permit issued by the 1st respondent. As per Rule 24(11), every such open space has to open to the sky, without any interfering structure protruding into it, except to the extent permitted by the said Rule. In the present case, the petitioner has put up a structure made of trusses and tin sheets protruding not only into the open space but also extending by an additional 3 metres beyond the boundary of his property. The said structure is a clear violation of Rule 24(11) of the Rules. The fact that, other shop owners have also put up similar structures cannot be a ground to permit the structure put up by the petitioner. The 1st respondent would have to demolish all the unauthorised structures. The petitioner does not have a case that, there has been any violation of the procedures stipulated by Section 406 of the Act. Therefore, I do not find any grounds to interfere with Ext.P4 or to grant any of the reliefs sought for in this writ petition.

For the foregoing reasons, this writ petition fails and the same is accordingly dismissed. No costs.

Sd/-
K.SURENDRA MOHAN, JUDGE.