

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. 5356 of 2015 (T)

PETITIONER(S) :

M.KANAKAMBARAN,
MANAGING PARTNER, SREEKASHI WORKING WOMENS' HOSTEL
VIKASAVANI, THENGODE, KAKKANAD P.O.
KOCHI-30.

BY ADV. SRI.K.K.SATHEESH

RESPONDENT(S) :

1. THE THRIKKAKARA MUNICIPALITY,
KAKKANAD P.O., KOCHI-682 030
REPRESENTED BY ITS SECRETARY.

2. THE SECRETARY,
THRIKKAKARA MUNICIPALITY, KAKKANAD P.O.
KOCHI-682 030.

ADDL.R3.A.N.RADHAKRISHNAN,
S/O. NARAYANAN, AYNIMOOTTIL HOUSE,
THENGOODE P.O. THENGOODE KARA,
KAKKANAD, KOCHI - 682 030.

ADDL.R4. M.N.SURENDREN, S/O. NANU,
KALLINGAPPARAMBIL, THENGOODE P.O. THENGOODE KARA,
KAKKANAD, KOCHI 682 030.

ADDL.R5.P.B.VENUGOPAL, S/O. P.S. BALAKRISHNA PILLAI,
PUTHENVEED HOUSE,
THENGOODE P.O., THENGOODE KARA
KAKKANAD, KOCHI 682 030.

ADDL.R6. K.X.JOHN, Y,
KOCHUVEETIL HOUSE,
THENGOODE P.O., THENGOODE KARA,
KAKKANAD, KOCHI 682 03.

(ADDL. R3 TO R 6 ARE IMPEADED AS PER ORDER IN I.A. NO
2634/2015 DATED 20/2/2015)

RADDL 3-R6 BY ADV. SRI.P.M.BENZIR
RADDL 3-R6 BY ADV. SMT.AYSHAMMA ABRAHAM
RADDL 3-R6 BY ADV. SRI. SARATH PRASAD S.
R BY SRI.S.SHANAVAS KHAN

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

WP(C).No. 5356 of 2015 (T)

APPENDIX

PETITIONER(S) ' EXHIBITS

P1 : COPY OF THE NOTICE DTD.5.1.2015 ISSUED BY THE 2ND RESPONDENT TO
THE PETITIONER.

P1(A) : COPY OF THE ENGLISH TRANSLATION OF EXT.P1.

P2 : COPY OF THE REPLY NOTICE SUBMITTED BY THE PETITIONER TO THE 2ND
RESPONDENT DTD.6.1.2015.

P3 : COPY OF THE ORDER DTD.16.1.2015 PASSED BY THIS HON'BLE COURT IN
WPC NO.1031/2015.

P4 : COPY OF THAT NOTICE DTD.18.2.2015 ISSUED BY THE 2ND RESPONDENT
TO THE PETITIONER.

P4(A) : COPY OF THE ENGLISH TRANSLATION OF EXT.P4.

P5 : COPY OF THAT CERTIFICATE OF ANALYSIS ISSUED BY THE POLLUCHEM
LABORATORIES PVT. LTD.

RESPONDENT(S) ' EXHIBITS
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/true copy/ P.S to Judge.

DAMA SESHADRI NAIDU, J.

W.P.(C).No. 5356 OF 2015

Dated this the 20th day of February, 2015

JUDGMENT

Heard the learned counsel for the petitioner and the learned Standing Counsel for respondents, apart from perusing the record. Since the issue lies in a narrow compass, this Court proposes to dispose of the writ petition at the very admission stage.

2. Briefly stated, the petitioner, who is said to be the Managing Partner of a working women's hostel, has been running the said establishment with a licence renewed for 2014-15 by the civic authorities.

3. Initially, on 8/8/2014 the 2nd respondent issued a notice under Section 440 of the Kerala Municipalities Act 1994 ('the Act' for brevity) directing the petitioner to rectify the sanitation problem of overflowing of the waste water

contaminating the nearby wells. Later, when the 2nd respondent issued another notice through Ext.P1, the petitioner filed W.P.(C) NO.1031/2015 and invited Ext.P3 interim order. This Court granted four weeks' time to the petitioner to abate the nuisance by taking appropriate remedial measures as directed by the respondent Municipality.

4. Once again on the ground that the petitioner had not taken any measures to abate the nuisance, the 2nd respondent, for the third time, issued Ext.P4 notice dated 18/2/2015. Assailing the said notice, the petitioner has approached this Court.

5. The learned counsel for the petitioner has drawn my attention to Ext.P5 certificate of analysis dated 19/2/2015 issued by the Government approved Chemical and Environmental Laboratory to the effect that no pollution is being caused by the petitioner. Since Ext.P4 mandated that the petitioner shall abate nuisance within 24 hours, the learned counsel for the petitioner has sought the interdiction of the said order, as well as an order of restraint against the respondent Municipality from proceeding

further.

6. The learned Standing Counsel for the respondent Municipality, initially, sought a short adjournment by one day and, the very next day, produced a statement of facts dated 19/2/2015 to the effect that so far the petitioner had not taken any steps to rectify the defects. The respondent has also produced certain photographs to underline what are said to be the unhygienic conditions prevailing in the working women's hostel being run by the petitioner. Of course, the learned counsel for the petitioner has strenuously contested the statement made by the learned Standing Counsel for the respondent Municipality, including the photographs produced by him.

7. It could be seen that the first notice was issued in the month of August 2014 and the second one in January 2015. This Court by Ext.P3 interim order provided four weeks' time to the petitioner to abate the nuisance, if any, by taking appropriate remedial measures. It is to be observed further that the petitioner did produce Ext.P5 certificate of analysis dated 19/2/2015. Despite grant of four weeks' time by this Court

through Ext.P3 interim order, the petitioner neither produced Ext.P5 before the respondent authorities within the said period, nor has he sought any extension of time from this Court. With regard to the statement of facts dated 19/2/2015 produced by the learned Standing Counsel for the respondents, grievance of the petitioner is that he had not been put on notice before the said alleged inspection. This statement, in fact, has hardly been contested by the learned Standing Counsel.

8. Having produced a bunch of photographs, the learned counsel for the petitioner has requested this Court to appoint an Advocate Commissioner to determine the true state of affairs regarding the sanitary and hygienic conditions prevailing in the working women hostel maintained by the petitioner.

9. I am afraid that this Court cannot indulge in fact finding, especially when the respondent authorities, as the civic administrators, are best suited to determine the sanitary conditions prevailing in the petitioner's premises. Unless any *mala fides* have been attributed to the respondent officials, this Court is not inclined to substitute the opinion of the officers

based on either the report of an Advocate Commissioner or by any other means.

10. The fact, however, remains that the petitioner has grievance that before inspecting the premises the respondent officials ought to have given sufficient advance notice to the petitioner. At any rate, it is not discernible from the statement of facts that any such procedure has been followed by the authorities.

11. In the facts and circumstances of the case, I am of the considered opinion, and it is also in the interest of justice, that a direction be given, and is accordingly given, to the respondent authorities, by keeping in abeyance Ext.P4 for a short while, to inspect the working women's hostel maintained by the petitioner after due written notice served on the petitioner by fixing a specific date and time and later take a subjective decision whether the petitioner has complied with Ext.P4 notice or not. Once such an inspection as has been indicated above takes place, the respondent authorities are at liberty to proceed further in accordance with law.

It is further made clear that once the respondent officials completed the process of inspection and have taken any subsequent measures, it is left open for that petitioner to take recourse to statutory remedy of appeal, as is available.

With the above observations, this writ petition is disposed of.

Sd/-

**DAMA SESHADRI NAIDU,
Judge.**

dpk

/True copy/ PS to Judge.