

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 18TH DAY OF DECEMBER 2015/27TH AGRAHAYANA, 1937

WP(C).No. 10142 of 2012 (P)

PETITIONERS:

PADMANABHAN
OOMKAR, SWADESHABHIMANI NAGAR, KADAVATTARAM DESOM
NEYATTINKARA VILLAGE.

BY ADV. SRI.R.GOPAN

RESPONDENTS:

1. THE SECRETARY, NEYATTINKARA MUNICIPALITY
NEYATTINKARA MUNICIPALITY, NEYATTINKARA P.O
THIRUVANANTHAPURAM DISTRICT 695 001.
2. THE CIRCLE INSPECTOR OF POLICE
NEYATTINKARA POLICE STATION, NEYATTINKARA P.O
THIRUVANANTHAPURAM DISTRICT 695 001.
3. FRANCIS
FM NIVAS, EENTHIKALA, ARAYOOR DESOM
CHENKAL VILLAGE 695 001.

R1 BY ADV. SRI.PIRAPPANCODE V.S.SUDHIR, SC, NEYATTINKARA
MUNICIPALITY

R3 BY ADVS. SRI.B.S.SWATHY KUMAR
SMT.P.V.SOBHANA
SMT.V.BEENA

R2 BY SENIOR GOVERNMENT PLEADER SRI. R. PADMARAJ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
18.12.2015 ALONG WITH W.P.(C) NO.18902/2012, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

- P1 : TRUE COPY OF THE PROPERTY TAX RECEIPT.
- P2 : THE PHOTOCOPY OF THE BUILDING TAX RECEIPT.
- P3 : PHOTOCOPY OF RESURVEY PLAN.
- P4 : THE PHOTOCOPY OF THE COMPLAINT DT.09.04.2012 FILED BY THE PETITIONER BEFORE THE TAHASILDAR
- P5 : THE PHOTOCOPY OF LETTER DT.17.04.2012 ISSUED BY THE PUBLIC INFORMATION OFFICER TO THE PETITIONER.
- P6 : THE PHOTOGRAPHS OF THE PETITIONERS BUILDING AND THE 3RD RESPONDENTS UNAUTHORISED BUILDING.
- P7 : THE PHOTOCOPY OF THE NEWS PAPER REPORT REPORTED IN KERALA KAUMUDI DAILY DATED 13.04.2012.
- P8 : THE PHOTOCOPY OF THE REPRESENTATION DATED 19.04.2012 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- P8(a) : THE PHOTOCOPY OF THE RECEIPT DT.19.04.2012.
- P9 : THE PHOTOCOPY OF THE REPRESENTATION DATED 19.04.2012 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
- P9(a) : THE PHOTOCOPY OF THE RECEIPT DATED 19.04.2012.

RESPONDENT'S EXHIBITS:

- R3(a) : TRUE COPY OF THE BUILDING PERMIT ISSUED BY THE 1ST RESPONDENT DATED 15.6.2009.
- R3(b) : TRUE COPY OF THE AGREEMENT NO.M.228617 DATED 11.6.2007.
- R3(c) : TRUE COPY OF THE ORDER NO.I.A. NO.864/2012 IN APPEAL NO.444/2012 DATED 15.6.2012.

//TRUE COPY//

P.A. TO JUDGE

smv

SHAJI P. CHALY, J.

W.P.(C). Nos.10142 & 18902 of 2012

Dated this the 18th day of December, 2015

JUDGMENT

The subject matter of these writ petitions are intrinsically connected and relating to similar facts and therefore, I propose to dispose of these writ petitions by a common judgment. W.P.(C) No.18902 of 2012 is filed seeking a declaration that the respondents are statutorily and legally bound to comply with Ext.P4 order passed by the Tribunal for Local Self Government Institutions, Thiruvananthapuram and that the respondents are not having any manner of right or authority to direct the petitioner to stop work on the building and that the petitioner is legally entitled to continue to work in the said building in view of Ext.P4 order staying Ext.P3 order of the Secretary of the 1st respondent. W.P.(C) No.10142 of 2012 is filed by the neighbour of the petitioner in W.P.(C) No.18902 of 2012 with the petitioner as the 3rd respondent in the said writ petition. The said writ petition is filed seeking direction to the 1st respondent to dispose of Ext.P8 complaint filed by the petitioner before the 1st

respondent.

2. The facts for the disposal of the first among the writ petition are as follows:

3. The petitioner is the absolute owner in possession and enjoyment of 3.29 Ares of land comprised in Re-Sy.No.20 and 20/1 of Neyyattinkara Village by virtue of document No.1960/05 dated 2.12.2005 of the office of the Neyyattinkara Sub Registry. Petitioner obtained building permit No.3628 dated 15.06.2009 for the construction of a building in the said property from the 1st respondent Municipality. The validity of the permit was from 2.6.2009 to 1.6.2012 which is evident from Ext.P1 building permit. It is also contended that later petitioner submitted a revised application for additional construction and that was pending consideration before the 1st respondent. After the expiry of the statutory period fixed for passing orders on the application and in view of the fact that the deeming provision entitles the petitioner to treat the non-consideration of the application within the statutory limit, as being allowed, the petitioner effected further construction on the building as per Ext.P1. It is further contended that the Secretary of the 1st respondent had already assigned door number to the entire

construction as UA number and the petitioner is paying tax for all these constructions and rooms in the constructed portion of the building are occupied by persons who are conducting various kinds of business. While the petitioner was conducting finishing work, petitioner was served with Ext.P3 final order under the Municipality Act by which the petitioner was interdicted from carrying on any further construction as per Ext.P1. Petitioner has challenged the said order before the Tribunal for Local Self Government Institutions, Thiruvananthapuram and obtained Ext.P4 order of stay. It is the case of the petitioner that by virtue of Ext.P4 he is entitled to carry on the construction. While so, petitioner contends that the Municipal authorities are frequently interfering with the construction carried on by the petitioner in pursuance to the order of stay granted by the Tribunal . It is thus challenging the action of the 1st respondent Municipality this writ petition is filed and the relief sought for.

4. On the other hand petitioner in W.P.(C) No.10142 of 2012 has complained before the 1st respondent Municipality that the petitioner in the other petition is carrying on the work without obtaining necessary permit and approved plan from the 1st respondent. It is on the basis of the said complaint filed by

the petitioner in W.P.(C) No.10142 of 2012, a show cause notice was issued under Section 406 and later an order of confirmation was passed which is under challenge before the Tribunal for Local Self Government Institutions at the instance of the petitioner in the other writ petition.

5. Heard learned counsel for the petitioner and learned Standing Counsel for the Municipality.

6. When the matter is taken up today, learned counsel for the petitioner in W.P.(C) No.18902 of 2012 submits that the appeal is still pending before the Tribunal and the Tribunal has to take a final decision in the appeal preferred by the petitioner.

7. After evaluating the facts and circumstance and perusal of the records, I am of the opinion that since the subject matter of dispute is at large before the Tribunal, this Court is not expected to going into the details of the complaint and the subject matter of the appeal pending before the Tribunal. It is for the Tribunal to take appropriate decision in accordance with law. The construction carried out by the petitioner will depend upon the order to be passed by the Tribunal and therefore, I am not inclined to express any opinion on the activities carried on by the petitioner in W.P.(C) No.18902 of 2012. Petitioner is of the

firm opinion that by virtue of the stay order, he is entitled to carry on with the construction and further that since the revised plan was pending before the 1st respondent Municipality without order he was entitled for a deemed permit. Even that matter is under the consideration of the Tribunal. Therefore, I do not want to express any opinion on merits. Therefore, the writ petition is disposed of directing the 1st respondent Municipality to expedite the matter pending before the Tribunal and if at all the Municipality is entitled to proceed, the same shall be done in accordance with law after the orders are passed by the Tribunal in the appeal pending before it. I do not think that, taking into account the pleadings and documents, petitioners are entitled to get any other relief invoking the discretionary jurisdiction of this Court.

Writ petitions are disposed of accordingly.

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.A. To Judge

smv
18.12.2015