

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

WP(C).No. 6679 of 2015 (H)

PETITIONER(S):

- 1. KOZHUVANAL GRAMA PANCHAYAT,
KOZHUVANAL P.O., KOTTAYAM - 686 523,
REPRESENTED BY ITS SECRETARY.**
- 2. THE SECRETARY,
KOZHUVANAL GRAMA PANCHAYAT, KOZHUVANAL P.O.,
KOTTAYAM - 686 523**

**BY SRI.K.JAJU BABU,SENIOR ADVOCATE
ADVS. SMT.M.U.VIJAYALAKSHMI
SRI.BRIJESH MOHAN**

RESPONDENT(S):

- 1. INDUS TOWERS LTD.,
CIRCLE OFFICE, VANKARATH TOWERS, 8TH FLOOR,
N.H.47, PALARIVATTOM, COCHIN - 682 024,
REPRESENTED BY ITS HEAD LEGAL
SRI.PREMA KRISHNAN NAIR M.N.**
- 2. SRI.M.S.SURESH,
S/O.SIVARAMAN, AGED 45 YEARS, KOYIKKAKUNNEL,
KEEZHMAMKULAM P.O.,KOZHUVANAL GRAMA PANCHAYAT,
KOTTAYAM - 686 523.**

**R1 BY ADV. SRI.V.PHILIP MATHEW
R2 BY ADV. SRI.P.C.HARIDAS**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 09-10-2015, ALONG WITH WPC.NO. 7225/2015 AND WPC.NO.13052/2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P-1: COPY OF THE CONCURRENCE DATED 27.9.2012 ISSUED BY THE PANCHAYAT.
- EXT.P-2: COPY OF THE JUDGEMENT OF THIS HON'BLE COURT DATED 7.8.2013 IN WPC NO.19318/2013
- EXT.P-3: COPY OF ORDER NO.A2-1317/12 DATED 4.10.2013 ISSUED BY THE PANCHAYAT ALONG WITH ENGLISH TRANSLATION
- EXT.P-4: COPY OF THE ORDER DATED 22.1.2014 IN APPEAL NO.933/2013 PASSED BY THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM.
- EXT.P-5: COPY OF ORDER NO.A2.1317/12 DATED 31.1.2014 ISSUED BY THE PANCHAYATH ALONG WITH ENGLISH TRANSLATION.
- EXT.P-6: COPY OF NOTICE NO.A2-1317/12 DATED 3.2.2014 ISSUED BY THE PANCHAYATH TO THE IST RESPONDENT ALONG WITH ENGLISH TRANSLATION
- EXT.P-7: COPY OF APPEAL NO.156/2014 FILED BY THE IST RESPONDENT BEFORE THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM.
- EXT.P-8: COPY OF APPEAL NO.167/2014 FILED BY THE IST RESPONDENT BEFORE THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM.
- EXT.P-9: COPY OF STAY ORDER DATED 7.2.2014 IN I.A.NO.268/2014 IN APPEAL NO.156/2014 PASSED BY THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM.
- EXT.P-10: COPY OF STAY ORDER DATED 12.2.2014 IN I.A.NO.300/14 APPEAL NO.167/2014 PASSED BY TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM.
- EXT.P-11: COPY OF WRITTEN STATEMENT DATED 22.5.2014 IN APPEAL NO.156/2014 FILED BY THE PETITIONERS BEFORE THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM.
- EXT.P-12: COPY OF WRITTEN STATEMENT DATED 22.5.2014 IN APPEAL NO.167/2014 FILED BY THE PETITIONERS BEFORE THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM.
- EXT.P-13: COPY OF THE COMMUNICATION NO.PCB/KTM/COMP/G/47/2012 DATED 28.2.2014 OF THE POLLUTION CONTROL BOARD ALONG WITH ENGLISH TRANSLATION.

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- EXT.P-14: COPY OF JUDGEMENT DATED 4.2.2014 OF THIS HON'BLE COURT IN WRIT PETITION (C) NO.14843/2013
- EXT.P-15: COPY OF I.A.NO.2090/2014 IN APPEAL NO.156/2014 FILED BY THE IST RESPONDENT BEFORE THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM.
- EXT.P-16: COPY OF I.A.NO.2091/2014 IN APPEAL NO.156/2014 FILED BY THE IST RESPONDENT BEFORE THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM.
- EXT.P-17: COPY OF I.A.NO.2258/2014 IN APPEAL NO.156/2014 BEFORE THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM.
- EXT.P-18: COPY OF COMMON ORDER DATED 31.12.2014 IN APPEAL NOS.156/2014 AND 167/2014 PASSED BY THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM.
- EXT.P-19: COPY OF ORDER DATED 31.12.2014 IN I.A.NO.2090/2014 IN APPEAL NO.156/2014 PASSED BY THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM.
- EXT.P-20: COPY OF ORDER DATED 31.12.2014 IN IA NO.2091/2014 AND IA NO.2258/2014 AND APPEAL NO.156/2014 PASSED BY THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

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A.M.SHAFFIQUE, J

W.P.C.No.6679, 7225 & 13052 of 2015

Dated this the 9th day of October 2015

J U D G M E N T

These three writ petitions concern a telecommunication tower proposed to be constructed by M/s.Indus Towers Limited and hence they are heard and decided together.

2. W.P.C.No.6679 of 2015 has been filed by the Grama Panchayat challenging the common order dated 31/12/2014 of the Tribunal for Local Self Government Institutions in Appeal Nos.156 & 167 of 2014 and order dated 31/12/2014 in I.A.No.2090/2014, filed at the instance of M/s.Indus Towers Limited, the 1st respondent herein. By the impugned order, the notice issued by the Panchayat is set aside. 1st respondent was directed to file objection to the notice and the local authority was directed to pass appropriate orders. 1st respondent had also filed I.A.No.2090/2014 seeking for extension of permit. The permit given to the 1st respondent expired on 26/09/2014. The 1st respondent had a case that the period of litigation from 07/02/2014 has to be excluded for calculating the period of permit. The Tribunal, while allowing the application re-opened

the appeal, by a separate order and allowed the application and the period of litigations, that is between 07/02/2014 till 31/12/2014 was exempted from calculating the period of permit No.82, 1317 dated 27/09/2012. The main contention urged on behalf of the petitioner is that there was no justification for the Tribunal to have extended the time limit for the building permit which had already expired after the second renewal, on 26/09/2014. It is contended that when Rule 130(7) of the Kerala Panchayat Building Rules clearly indicates that extension of building permit can be given only on one occasion, the Tribunal has no jurisdiction to extend the period of building permit.

3. The very same contention has been urged on behalf of the petitioner in W.P.C.No.7225/2014 who also challenges the orders passed by the Tribunal. In addition to the aforesaid contentions in these two writ petitions, it is also contended that though there was a direction by the Tribunal by which the 1st respondent was directed to file their objections to the show cause notice, 1st respondent did not submit any objection and therefore the proceedings could not be finalised. The issue that had been taken up by the petitioner in W.P.C.No.7225/2015 is regarding pollution that is being caused on account of the

telecommunication tower being put up by the 1st respondent in the area in question.

4. The facts involved would reveal that four building permits were issued by the Panchayat on 26/09/2012. Subsequently, stop memos were issued by the Panchayat on the allegation of pollution made by the local inhabitants of the Panchayat. The matter was taken up before the Tribunal and every time stop memos had been stayed and later on set aside by the Tribunal. This appears to be the third round of litigation in the matter which is decided by the Tribunal.

5. W.P.C.No.13052/2015 has been filed by the petitioner in W.P.C.No.7225/2015 inter alia contending that during the period when other writ petitions were pending, the Contractor had approached this court by filing writ petition seeking for a direction to the District Telecom Committee (DTC) to consider his application for police protection. Though directions were issued by this Court to the DTC to consider the request of the Contractor, after notice to the affected parties, without issuing any such notice to the petitioner, the DTC had directed the police to give adequate protection to the petitioner by Ext.P22, which is under challenge in this writ petition.

6. These writ petitions have been opposed by the learned counsel for the 1st respondent inter alia contending that it might be correct that the Panchayath need not extend time in view of Rule 130(7) of the Kerala Panchayat Building Rules. But, the petitioner was unable to carry on any construction on account of the stop memos issued and also interference by the local people. However, there is justification on the part of the Tribunal to have excluded the period between the date of filing the appeal and the date of the order and therefore there is no reason why the Panchayat and the writ petitioner should challenge the said direction. It is also contended that despite such directions being issued, though the petitioner had carried out certain constructions, the entire construction could not be completed.

7. The learned counsel for the 1st respondent also relied upon various judgments of the Supreme Court and this Court to indicate that the Tribunal is vested with appropriate powers to extend the validity of the permit, as the 1st respondent was unable to complete the construction during the pendency of the lis, and that no party shall be deprived of the benefit of the judgment.

8. Having regard to the aforesaid factual issues and considering the present situation, it is evident that even the time excluded by the Tribunal in the matter relating to building permit has expired. The actual expiry date was 26/09/2014. Even if the period between 07/02/2014 and 31/12/2014 is excluded by adding 11 months, taking into account the last date as 26/09/2014, still building permit has expired in August 2015.

9. Having regard to the aforesaid fact, I do not think that there will be any necessity to consider all the issues raised in the present writ petition. As far as the contention of the Panchayat as well as private writ petitioner with reference to the power of Tribunal to extend the period is concerned, I do not think that there is any embargo on the Tribunal to pass appropriate orders taking into consideration the factual circumstances involved in the case. Therefore, I do not think that the orders of the Tribunal can be set aside on that ground.

10. In regard to W.P.C.No.13052/2015, the contention of the petitioner is that he was not heard before Ext.P22 order was passed. Perusal of Ext.P22 order would show that certain persons in the locality have already been informed about the said order. However, as already indicated, since the period for which

the petitioner had obtained building permit has expired, Ext.P22 order to that extent can be enforced only after the building permit is renewed at the instance of the 1st respondent.

11. The learned counsel for the 1st respondent submits that already an application for renewal, Ext.R6(a) has been submitted to the Panchayat, which is pending consideration. If such renewal is granted and if there is any further objection from the side of the petitioner in W.P.C.No.13052/2015, he is entitled to approach the DTC for review of Ext.P22 order and the said authority shall pass appropriate orders after hearing the writ petitioner as well as other affected parties.

In the light of the aforesaid observations, these writ petitions are disposed of. 1st respondent is permitted to file fresh application for carrying out further constructions and if such application is filed, Panchayat shall consider the same and do the needful in accordance with law.

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

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PA to Judge

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