

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 6TH DAY OF MARCH 2015/15TH PHALGUNA, 1936

WP(C).No. 7125 of 2015 (M)

PETITIONER:

SATHYABHAMA, W/O LATE BALAKRISHNAN,
MANCHADIVILA VEEDU, ERATHU CHERRY,
CHATHANNOOR, KOLLAM.

BY ADV. SRI.B.MOHANLAL

RESPONDENTS:

1. THE PARAVOOR MUNICIPALITY, PARAVOOR P.O.,
KOLLAM REP. BY ITS SECRETARY PIN 691 301.
2. THE PARAVOOR MUNICIPAL COUNCIL,
PARAVOOR P.O., KOLLAM REP. BY ITS
CHAIRMAN PIN 691 301.

BY SRI.C.S.AJITH PRAKASH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
06-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC 7125/2015

PETITIONER'S EXHIBITS:

EXT. P1 THE TRUE COPY OF THE TAX RECEIPT ISSUED BY THE VILLAGE OFFICER, PARAVOOR TO THE PETITIONER FOR THE YEAR 2014-15 AND ITS ENGLISH TRANSLATION

EXT. P2 THE TRUE COPY OF THE APPLICATION DATED 23.02.2015 FILED BY THE PETITIONER BEFORE THE FIRST RESPONDENT, ITS RECEIPT AND ENGLISH TRANSLATION

EXT. P3 THE TRUE PHOTOGRAPH OF THE WATER CHANNEL

EXT. P4 THE TRUE COPY OF JUDGMENT IN WPC 13462/2011 OF THIS HON'BLE COURT

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.7125 of 2015 M

Dated this the 6th day of March, 2015

JUDGMENT

Heard the learned counsel for the petitioner and the learned Standing Counsel for the 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 admission stage itself.

2. Briefly stated, the petitioner, a widow and a senior citizen, having succeeded to her late husband's property, which is a residential house, has a grievance that the respondent Municipality has been laying a canal just adjacent to her property causing structural damage thereto. Ventilating her grievance, the petitioner is said to have submitted Exhibit P2 complaint before the first respondent. Complaining of the inaction on the part of the first respondent, the petitioner has filed the present writ petition.

3. The learned counsel for the petitioner has submitted, in my view candidly, that though Section 544 of the Kerala Municipality Act provides an alternative remedy of approach to the civil court, in the light of the embargo imposed therein as to the prior notice, the petitioner could not avail herself of the benefit of the said provision.

4. In elaboration of his submissions, the learned counsel has submitted that in terms of Section 544, it is mandatory that the petitioner has to wait for two months after notice in writing to the Municipality concerning what is said to be the illegal and precipitous action of the Municipality. If one is to wait till the prescribed period, the position, according to the learned counsel, becomes irreversible. The learned counsel therefore urges this Court to entertain the writ petition and issue an interim direction restraining the respondent Municipality from proceeding with the construction of the canal.

5. It is evident from Section 544 of the Act that notwithstanding the clear embargo against filing a suit without prior notice with two months time gap, sub-section (2) thereof provides an exception. It is profitable to extract Section 544 to the extent relevant and it reads as follows:

“544. Institution of suits against municipal authorities, officers and other employees.- (1) No suit shall be instituted against a Municipality or any Municipal authority or any officer or other employee of a Municipality or against any person acting under the order or direction of a Municipal Authority or any officer or employee of a Municipality in respect of any act done or purported to have been done, in pursuance of this Court or any rule, regulation or bye-law made thereunder until the expiration of two months after notice in writing to the Municipality and, in the case of such officer, employee or person, unless notice in writing has also been delivered to him in person or at his office or place of residence, and unless such notice states explicitly the cause of action, the nature of the relief sought, the amount of compensation, claimed and the name and place of residence of the intending plaintiff, and unless the plaint contains a statement that such notice has been so delivered.

(2) Nothing in sub-section (1) shall be deemed to apply to a suit in which the only

relief claimed is an injunction which object would be defeated by the giving of the notice or the postponement of the institution of the suit."

6. Indeed, it is very evident from a perusal of the above provision, especially sub-section (2) that nothing in sub- section (1) shall apply to a suit in which the only relief claimed is an injunction which object would be defeated if a prior notice is to be given or institution of the suit is postponed.

7. The singular contention of the petitioner is that the respondent is to be restrained from laying the canal and any delay in judicial intervention will prejudicially affect the petitioner. I am of the considered opinion that sub-section (2) of Section 544 eminently takes care of the issue.

8. In the facts and circumstances, I hold that the petitioner has not only an alternative remedy but also an efficacious remedy to approach a competent civil court having the necessary jurisdiction to determine the issue.

This Court, therefore, dismisses the writ petition leaving it open for the petitioner to take appropriate remedial steps concerning the cause he has espoused in the present writ petition. Needless to observe that the observations, if any, made presently while dismissing the writ petition shall not be taken as an expression of opinion on merits by this Court on the issue pleaded by the petitioner.

Dama Seshadri Naidu, Judge

tkv