

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

W.P.(C).No. 10391 of 2013 (Y)

PETITIONER:

**K.P. DILEEP KUMAR
S/O. KUNHIRAMAN, AGED 52 YEARS,
RESIDING AT POYYERI HOUSE,
P.O. PANNIYANKARA, CALICUT.**

**BY ADVS. SRI. V.V. SURENDRAN
SRI. P.A. HARISH**

RESPONDENT(S):

- 1. THE SECRETARY,
KOZHIKODE CORPORATION, CORPORATION OFFICE,
BEACH ROAD, CALICUT-673032.**
- 2. THE KOZHIKODE CORPORATION,
REPRESENTED BY ITS SECRETARY, CORPORATION OFFICE,
BEACH ROAD, CALICUT-673 032.**
- 3. THE HEALTH OFFICER,
THE KOZHIKODE CORPORATION, CORPORATION OFFICE
BEACH ROAD, CALICUT-673 032.**
- 4. SIDDIQUE HAJI,
S/O. ABDUL KHADER, RESIDING AT 3/483D,
PULLALANANGADATH NEW HOUSE, AREEKODE,
P.O.NALLALAM, CALICUT-673027.**

**R1 TO R2 BY ADV. SRI. P.V. SURENDRANATH
R1 TO R3 BY SRI. K.D. BABU, SC, KOZHIKODE CORPORATION
R4 BY ADVS. SRI.K.M.JAMALUDHEEN
SMT. LATHA PRABHAKARAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24-06-2015,
ALONG WITH W.P.(C). NO. 27292/2014, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE LICENSE DEED EXECUTED BETWEEN THE PETITIONER, THE 4TH RESPONDENT AND HIS WIFE DATED 18-06-08.

EXHIBIT P2 : TRUE COPY OF THE RECEIPT DATED 23-02-12 ISSUED BY 2ND RESPONDENT TO THE PETITIONER.

EXHIBIT P3 : TRUE COPY OF THE APPLICATION DATED 25-02-13 GIVEN BY THE PETITIONER FOR RENEWAL OF LICENSE.

EXHIBIT P4 : TRUE COPY OF THE COVERING LETTER AND THE COPY OF THE DEMAND DRAFT DRAWN OF INDIAN BANK, KALLAI ROAD BRANCH DATED 08-03-2013.

EXHIBIT P5 : TRUE COPY OF THE COMMUNICATION DATED 27-03-13 SENT BY THE 3RD RESPONDENT TO THE PETITIONER.

RESPONDENT(S)' EXHIBITS

EXHIBIT R4(a) : TRUE COPY OF THE REPLY DATED 14.02.2014 GIVEN BY THE CORPORATION OF CALICUT TO 4TH RESPONDENT.

EXHIBIT R4(a) : TRUE COPY OF THE REPLY DATED 04.11.2013 ISSUED TO THE 4TH RESPONDENT UNDER THE RTI ACT.

EXHIBIT R4(c) : THE PHOTOGRAPHS SHOWING THE ILLEGAL CONSTRUCTIONS MADE BY THE PETITIONER.

//TRUE COPY//

P.A. TO JUDGE

A.M.SHAFIQUE, J.

W.P.(C)Nos.10391 of 2013 & 27292 of 2014

Dated this the 24th day of June, 2015

JUDGMENT

These two writ petitions concerns similar issues with reference to the same building and hence the same are decided together.

2. W.P.(C)No.10391/2013 has been filed by the petitioner who is the tenant of the 4th respondent inter alia contending that consent of the land lord was not required to renew the trade license. According to the petitioner, the Corporation cannot refuse grant of trade license for want of consent from the land lord since the petitioner had obtained a trade license for the said business after having taken the rooms based on license deed on 18.06.2008. At the relevant time, the building was situated within the jurisdiction of Cheruvannur-Nallalam Panchayath, which has later merged with the Kozhikode Corporation during 2010. There is no change in circumstances, which require fresh consent from the land lord

and therefore the authorities were not justified in refusing renewal of the license to the petitioner for want of consent from the land lord.

3. It is alleged that the instance of the land lord, the Corporation is taking the steps to demolish the construction which was made at a time when the building was forming part of the Panchayath. At the time of construction the Kerala Municipality Building Rules (for short KMBR) were not made applicable to the Panchayath. Hence it is not open for the Corporation to call upon the petitioner to demolish the said structure. The petitioner submits that the structure is only an enclosure being made by wire mesh for security purposes and cannot be termed as an unauthorized structure.

4. Counter affidavit has been filed by the respondents 1 and 2 inter alia stating that the petitioner has to avail the alternate remedy of appeal. Further it is stated that when the Panchayath had merged with the Corporation, it was found that there had been illegal unauthorized additional constructions in the above building without permission from the Corporation and

accordingly, proceedings were initiated against the petitioner by issuing notice under Section 406 of the Kerala Municipality Act, 1994. Landlord admitted the construction of unauthorized structures. However, he had indicated that the unauthorized construction on the ground floor was made by the tenant without permission of the landlord and the tenant should be directed to remove the same. In regard to the unauthorised construction on the first floor of the building, which was made by the land lord, it was contended by the land lord that the same was made only to protect the building and it may be regularised in accordance with law. The respondents 1 and 2 further stated that the petitioner was not prepared to demolish and to remove the unauthorised constructions made by him on the ground floor of the building and that he had not permitted the landlord to demolish the said structure. It is in the said circumstances, that the trade license was not renewed.

5. In W.P.(C)No.27292/2014, the landlord of the aforesaid building is the writ petitioner. The writ petition is filed inter alia seeking for a direction to the Corporation to withdraw

the trade license granted in favour of the tenant, who is the third respondent in this writ petition and for a further direction to the Corporation to demolish the room illegally constructed by the third respondent reducing the front yard of the building or in the alternative to direct the respondents 1 and 2 to demolish the said illegal construction made by the third respondent. It is submitted since the illegal construction made by the third respondent is not removed the petitioner's application for regularisation of the construction on the upper floor is not being considered by the Corporation.

6. Counter affidavit has been filed by the Corporation inter alia stating the very same contentions urged in defence of W.P.(C)No.10391/2013 and further indicating that as against Ext.P2 notice dated 12.12.2011 by which the action had been taken by the Corporation under Section 406(3) of the Kerala Municipality Act, the petitioner filed A.S.No.96/2012 before the Tribunal for Local Self Government Institutions. The appeal was closed reserving the right of the petitioner to file an application for regularization of the construction. It is submitted that the

application for regularization was rejected in terms of Ext.P7 as there is serious violation of KMBR.

7. Having regard to the rival contentions urged on behalf of either side, I heard the learned counsel appearing on behalf of the petitioners and the learned counsel appearing for the Corporation.

8. The learned counsel for the Corporation submits that the above building was situated in a Panchayath area during the relevant time, when the petitioner in W.P.(C)No.10391/2013 had taken possession of the premises. The KMBR was made applicable to the said Panchayath in the year 2007. Under such circumstances, he was bound to comply with the KMBR while making additional constructions. On account of the fact that he has not cared to do so, notice was issued under Section 406 of the Act to the land lord, which is in accordance with law and the Corporation is entitled to proceed the same.

9. As far as the claim of the petitioner in W.P.(C) No.10391/2013 is concerned, he cannot be called upon to obtain a further consent from the land lord for the renewal of

the trade license. But when a question arises as to whether he had made additional constructions other than what is permitted by the competent authority, it is for the Corporation to take appropriate steps in accordance with law. Even according to the petitioner, he came into occupation of the premises only by 2008, and he had made some constructions which according to the Corporation is in violation of KMBR. Under such circumstances, there is no legal impediment for the Corporation to take appropriate steps calling upon the land lord or the person in occupation to remove the said unauthorized constructions. If the land lord does not intend to regularize the said construction made by the tenant in the building belonging to him, definitely the tenant will have to remove the said unauthorized construction. As far as the Corporation is concerned, they cannot insist for further consent from the land lord to renew the trade license. But, corporation can enforce the order for demolishing the unauthorized construction. Under such circumstances, I am of the view that W.P.(C) No.10391/2013 can be disposed of with the following directions;

i) That the corporation is at liberty to remove the unauthorized constructions made by the petitioner after issuing notice to the petitioner to remove the same voluntarily within a specified period.

ii) On such removal of the construction, the trade license of the petitioner shall be renewed without any further consent from the land lord.

10. As far as W.P.(C)No.27292 of 2014 is concerned, it is always open for the Corporation to consider the regularization application submitted by the land lord as far as that portion of the building on the upper floor is concerned. It is open for the petitioner to submit a fresh application for regularization, which shall be considered by the Corporation in accordance with the procedure prescribed.

W.P.(C)No.27292/2014 is disposed of as above.

Sd/-
A.M.SHAFIQUE
JUDGE

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P.A. TO JUDGE