

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 8TH DAY OF APRIL 2015/18TH CHAITHRA, 1937

WP(C).No. 8088 of 2014 (I)

PETITIONER:

M.P.NARAYANAN NAMBISAN,
S/O.P.KRISHNAN NAMBISAN,
AGED 71 YEARS, KOUSTHUBAM,
VENGERI P.O., KOZHIKODE-673 010.

BY ADVS.SRI.NIRMAL. S
SMT.VEENA HARI

RESPONDENTS:

1. KOZHIKODE CORPORATION REP.BY
ITS SECRETARY, KOZHIKODE-673 001.
2. V.RADHAKRISHNAN NAIR,
VAZHAYIL HOUSE, VENGERI P.O.,
KOZHIKODE-673 010.

BY SRI.K.D.BABU

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
08-04-2015 ALONG WITH WPC. 5045/2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 8088 of 2014 (I)

PETITIONER'S EXHIBITS:

EXHIBIT-P1: TRUE COPY OF THE APPEAL NO.280/2011.

EXHIBIT-P2: TRUE COPY OF THE JUDGMENT IN WP(C) NO.3404/2013 DATED 23.10.2013.

EXHIBIT-P3: TRUE COPY OF THE ORDER IN APPEAL NO.280/2011 DATED 09.01.2014.

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)Nos.8088 of 2014 I
& 5045 of 2015 E

Dated this the 8th day of April, 2015

COMMON JUDGMENT

Since the issue is common, involving the same set of respondents, this Court has proposed to dispose of the writ petitions through a common judgment.

2. Briefly stated, when the second respondent constructed a building in violation of the sanctioned plan, the petitioner complained to the respondent Corporation, which in turn issued a notice dated 26.04.2010 under Section 406(3) of the Kerala Municipality Act. Assailing the said notice, the second respondent filed a statutory appeal in Appeal No.456/2010 before the Tribunal for Local Self Government Institutions, Thiruvananthapuram. Eventually, when the said appeal was dismissed, the second respondent filed W.P.(C)No.35736/2010 before this Court, which in turn

disposed of the writ petition directing the second respondent to submit an application to the respondent Corporation for regularisation of the building.

3. Having considered the application for regularisation, the respondent Corporation rejected it. Aggrieved thereby, the second respondent once again approached the learned Tribunal by filing Appeal No. 280/2011, which also came to be dismissed on 09.01.2014. Soon thereafter, the petitioner filed W.P.(C)No.8088/2014 seeking enforcement of the initial notice issued under Section 406(3) of the Act by the respondent Corporation, in the wake of dismissal of the appeal by the learned Tribunal.

4. Before the respondent Corporation could proceed further based on its notice dated 26.04.2010 issued under Section 406(3) of the Act, keeping in view the dismissal of the statutory appeals by the learned Tribunal, the Government came up with a new policy for regularisation,

namely, Kerala Building (Regularisation of Unauthorised Construction) Rules, 2010 through G.O.(Ms)No.39/2014/LSGD dated 14.02.2014. Under these changed circumstances, taking advantage of the new policy decision concerning unauthorised construction, the second respondent is said to have submitted an application for regularisation.

5. Apprehending that the respondent Corporation may take precipitous steps before the application for regularisation could be considered, the second respondent filed W.P.(C)No.34658/2014. This Court, having considered the issue, disposed of the said writ petition directing the respondent Corporation to pass appropriate orders on the second respondent's application for regularisation based on the newly introduced scheme of the Government before any steps could be taken regarding the second respondent's construction. Once again, ventilating his grievance that the second respondent filed W.P.(C)No.34658/2014 behind his

back and obtained a judgment, the petitioner filed W.P.(C) No.5045/2015.

6. The learned counsel for the petitioner has contended that the second respondent has taken recourse to sheer abuse of process. In elaboration of her submissions, she has submitted that the learned Tribunal, the statutory appellate authority, on two occasions consistently negated the claim of the second respondent for regularisation. Under those circumstances, without laying challenge against the order dated 09.01.2014 in Appeal No.280/2011, the second respondent filed W.P.(C)No.34658/2014 and obtained orders, more particularly without arraying the petitioner as a party. The learned counsel has also submitted that beginning from the notice dated 26.04.2010, all further proceedings have been taken by the respondent Corporation at the behest of the petitioner. Under these circumstances, the second respondent ought not to have

filed W.P.(C)No.34658/2014 without arraying the petitioner as a party. She has thus concluded by saying that if at all the respondent Corporation is to consider the second respondent's application for regularisation under the new scheme of amnesty introduced by the Government, the petitioner may be heard.

7. The learned counsel for the second respondent has submitted that indisputably the order dated 09.01.2014 in Appeal No.280/2011 has attained finality. In view of the conclusive finding that there is violation, the second respondent could not avail himself of any benefit under Chapter XII of the Act, inasmuch as the process of regularisation provided therein is confined only to the powers of the second respondent. According to him, since the Government has come up with a new policy, there is no embargo even in the orders of the appellate tribunal against the second respondent taking advantage of the new policy,

which was not in existence by the time the statutory adjudication took place. At any rate, the learned counsel has agreed that the petitioner is at liberty to file his objections and agitate the issue when the respondent Corporation considers the second respondent's application for regularisation.

8. In the facts and circumstances, this Court directs the respondent Corporation to hear the petitioner when it takes up for consideration the second respondent's application for regularisation in the light of the scheme introduced by the Government through G.O.(Ms)No. 39/2014/LSGD dated 14.02.2014.

With the above direction, the writ petition stands disposed of. No order as to costs.

Dama Seshadri Naidu, Judge

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