

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

TUESDAY, THE 24TH DAY OF NOVEMBER 2015/3RD AGRAHAYANA, 1937

WP(C).No. 12416 of 2009 (V)

PETITIONER(S) :

THIRUVANANTHAPURAM CORPORATION,
REPRESENTED BY ITS SECRETARY, CORPORATION BUILDINGS
M.G. ROAD, THIRUVANANTHAPURAM -33

BY ADV. SRI.N.NANDAKUMARA MENON (SR.)

RESPONDENT(S) :

1. SAVITHRI AMMA,
T.C. NO. 13/2071, SREE NILAYAM,
ATTARA LANE, KANNAMMOOLA, MEDICAL COLLEGE P.O.,
THIRUVANANTHAPURAM 695 011.
2. S.GOPALAKRISHNAN POTTI,
SRI KAILAS, T.C. 13/2019 -3, KOYIKKAL LANE
MEDICAL COLLEGE P.O., THIRUVANANTHAPURAM -11.
3. THE TRIBUNAL FOR LOCAL SELF
GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM.
4. THE OMBUDSMAN FOR LOCAL SELF
GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM.

R1 BY ADV. SRI.K.P.SUJESH KUMAR
R2 BY ADV. SRI.A.M.MUKTHAR
R2 BY ADV. SRI.K.RAJESH KANNAN
R3 BY ADV. SRI.JAMES KURIAN
R4 BY ADV.SRI.P.P.PADMALAYAN, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
24-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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WP(C).No. 12416 of 2009 (V)

APPENDIX

PETITIONER(S) EXHIBITS :

- EXT.P1. : COPY OF THE PROVISIONAL ORDER NO.T.P. 4/55308/2007 DATED 14.01.2008 ISSUED BY THE SECRETARY, TRIVANDRUM CORPORATION, TO THE 1ST RESPONDENT.**
- EXT.P2. : COPY OF THE FINAL ORDER NO.TP4/55308 DATED 08.04.2008 ISSUED BY THE SECRETARY, CORPORATION OF TRIVANDRUM, TO THE 1ST AND 2ND RESPONDENTS.**
- EXT.P3. : COPY OF THE ORDER DATED 11.06.2008 APPEAL NO.195 OF 2008 PASSED BY THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM.**
- EXT.P4. : COPY OF THE NOTICE NO.TP1/TP4/55308/08 DATED 19.08.2008 ISSUED BY THE DEPUTY SECRETARY, IN CHARGE OF SECRETARY, CORPORATION OF TRIVANDRUM, TO THE 1ST RESPONDENT.**
- EXT.P5. : COPY OF THE IMPEADING PETITION FILED BY THE SECOND RESPONDENT DATED 20.09.2008 APPEAL NO.455/2008 BEFORE THE HON'BLE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM.**
- EXT.P6. : COPY OF THE AFFIDAVIT FILED BY THE SECOND RESPONDENT DATED 20.09.2008 APPEAL NO.455/2008 BEFORE THE 3RD RESPONDENT.**
- EXT.P7. : COPY OF THE WRITTEN STATEMENT FILED BY THE SECOND RESPONDENT BEFORE THE 3RD RESPONDENT DATED 23.09.2008 APPEAL NO.455/2008.**
- EXT.P8. : COPY OF THE WRITTEN STATEMENT FILED BY THE CORPORATION APPEAL NO.455/2008 BEFORE THE 3RD RESPONDENT DATED 14.10.2008.**
- EXT.P9. : COPY OF THE ORDER DATED 20.10.2008 APPEAL NO.455/2008 PASSED BY THE 3RD RESPONDENT TRIBUNAL.**

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**EXT.P10. : COPY OF THE ORDER DATED 02.02.2009 APPEAL NO.605/2008
PASSED BY THE 4TH RESPONDENT.**

RESPONDENTS EXHIBITS :

**EXT.R1A : COPY OF THE JUDGMENT IN O.S.NO.339/1993 ON THE FILE OF
THE MUNSIFF'S COURT, THIRUVANANTHAPURAM
DATED 30.11.1996.**

**EXT.R1B : COPY OF THE JUDGMENT IN A.S.NO.154/1997 ON THE FILE OF
THE FIRST ADDITIONAL DISTRICT COURT,
THIRUVANANTHAPURAM DATED 31.03.2004.**

**EXT.R2A : COPY OF RESURVEY SKETCH OF PROPERTY OF 1ST
RESPONDENT AND C4(a) PLAN PRODUCED AT THE TRIAL
COURT.**

/TRUE COPY/

PA.TO JUDGE

AMV

ANU SIVARAMAN, J.

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W.P.(C) No.12416 of 2009

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Dated this the 24th day of November, 2015

JUDGMENT

This writ petition is filed by the Corporation of Thiruvananthapuram challenging Exts.P9 and P10 orders issued by the Tribunal for Local Self Government Institutions and the Ombudsman for Local Self Government Institutions respectively.

2. It is submitted that the 1st respondent had constructed a compound wall in Survey No. 672 of Pattom village. The 2nd respondent, who was the owner of the adjacent property, had submitted a complaint stating that the compound wall was being constructed blocking his way. It was stated that the 1st respondent and her deceased husband had purchased 15½ cents of property in Survey No.672 of Pattom village by Sale deed No.1341/1977. 2 cents of such property was lying on the eastern side of the Attara lane with standing coconut trees and other crops. 0.6 cents out of the 2 cents was alienated and the remaining 1.4 cents on the eastern side of the Attara lane is in the ownership and possession of the 1st respondent. It is stated that O.S.No.399/1993 was filed by the 1st respondent, which was decreed declaring the 1st respondent's title and possession over the properties and restraining the 2nd respondent from

trespassing into the properties and from creating any pathway in it. This was confirmed in A.S.No.154/1997 by judgment dated 31.03.2004. It is stated that the said appellate decree has become final as no second appeal was filed against it.

3. It was the case of the 1st respondent that, the retaining wall was constructed by him and therefore the Corporation has no rights over the property or the retaining wall. However, the Corporation had issued provisional and final orders under Section 406 of the Kerala Municipalities Act, 1994 [for short, 'the Act'], which were challenged by the 1st respondent before the Tribunal in the first instance. By Ext.P3 order dated 11.06.2008, the Tribunal had noticed the contentions of the parties and had held that the nature of the property was to be identified and no details for specific identification of the property are available. The impugned order was set aside and the Corporation was directed to make a proper enquiry as to whether it is a case of the unauthorised occupation of property belonging to or vested in the Corporation or whether it is only a case of unauthorised construction over private property and to initiate fresh proper proceedings, if any, under Section 376 or under Section 406 of the Act as the case may be. Thereafter the Corporation had issued Ext.P4 notice dated 19.08.2008 purportedly under Section 376 and Section 406 of the Act. However, the specific contention of the Corporation in the notice was that the land belonged to the

Corporation, and therefore, the notice could only have been under Section 376 of the Act. This order was taken in appeal by the 1st respondent before the Tribunal. The 2nd respondent was impleaded as a party to the appeal. All the parties were heard and the documents produced were examined by the Tribunal. The Tribunal on examination of the evidence and the materials produced before it, came to the conclusion that the property in question was the property covered by Exts.R1(a) and R1(b) decree and appellate decree of the competent civil court and therefore the title of the 1st respondent to the property stood declared.

4. The contention of the 2nd respondent that the decree was obtained by fraud was also not accepted by the Tribunal since there was no material to substantiate such a contention. In the above circumstances, the Tribunal found that the property belonged to the 1st respondent and what could have been issued was only a notice under Section 406 and therefore the appeal was maintainable. However, the Tribunal went on to hold that there was maladministration on the part of the petitioner and held that proper relief can be sought by the affected parties from the Hon'ble Ombudsman.
5. It is submitted by the learned counsel for the petitioner that on the basis of the said observation in Ext.P9 order the 2nd respondent approached the Ombudsman and Ext.P10 order has

now been invoked as against the petitioner. These orders are under challenge in this writ petition.

6. Heard both sides.

7. It is the specific contention of the 1st respondent that his title to the 1.4 cents of property in question stands declared by competent civil court. In the face of such declaration of title, the Corporation which was also a party to the judgment could only have invoked Section 406 of the Act as against the 1st respondent. Therefore, it is contended that the appeal preferred before the Tribunal was well within its jurisdiction.

8. The learned counsel appearing for the petitioner would contend that the notice issued to the 1st respondent was under Section 376 of the Act. The Corporation had conducted necessary enquiry and had come to the conclusion that 1.4 cents of property in question was in fact a land belonging to the Corporation, and therefore, had issued orders for demolition of the construction made over the retaining wall, which according to the Corporation is constructed by it. No provisional order need have been issued in the facts and circumstances of the case since it was a specific contention of the Corporation that the property was belonging to the Corporation and the retaining wall was constructed by it. It was further contended that going by Section 509 of the Act, an appeal from an order under Section 376 of the Act would lie at the first instance to the Corporation council and it is only against the

decision of the council that the parties could have approached the Tribunal. The learned counsel appearing for the 2nd respondent could also support the submissions made by the learned counsel for the petitioner.

9. After having considered the contentions advanced by the parties at length and on examination of the impugned order it is seen that the Tribunal had considered the contention raised by the petitioner that the impugned order is one rendered under Section 376 of the Act and therefore the appeal would not directly lie to the Tribunal. The Tribunal had considered the evidence and the materials produced before it as well as the statutory provisions and the precedents cited. It had also noticed that the order/notice impugned in the appeal was one styled as issued under Section 376 read with Section 406 of the Act. The Tribunal also found on an examination of the material produced before it that the 1.4 cents of property, which forms the subject matter of the appeal before it was the property which was covered by Ext.R1(a) decree of the competent civil court as confirmed in Ext.R1(b) judgment decree in A.S.No.154/1997. It is stated by the Tribunal that the decrees and judgments have been produced before it. It is specifically stated in the appeal memorandum before the Tribunal that the 1.4 cents of property is the property covered by the said decrees. It is also noticed that this has not been denied either by the Corporation or by the 2nd respondent.

The contentions advanced by the 2nd respondent against the decree have also been dealt with by the Tribunal. The Tribunal, therefore, came to the conclusion that the property was 1.4 cents of property over which the title of the 1st respondent stood declared by competent civil court. In the above circumstances, the notice issued by the Corporation could only have been under Section 406 of the Act. Considering the above facts and circumstances, the Tribunal assumed that it had jurisdiction to deal with the matter and accordingly dealt with the same.

10. This, in my considered opinion, being completely dependant on a finding on a question of fact which has been dealt with by the Tribunal after adverting to the contentions of all the parties and on examination on the evidence placed before it, is not amenable to re-appreciation in a writ petition under Article 226 of the Constitution of India. The order of the Tribunal, in as much as it assumes jurisdiction on the finding that the order is one rendered under Section 406 of the Act, does not suffer from any illegality or irregularity. However at paragraph No.13 of the impugned order, the Tribunal had gone on to hold that the manner in which the impugned order was passed by the Corporation appears to be maladministration and proper relief can be sought by the affected from the Hon'ble Ombudsman. This observation made by the Tribunal does not appear to be supported by any pleadings or materials placed before it. The party respondents in the instant

case also do not support the said finding of the Tribunal or the consequential action taken by the Ombudsman in Ext.P10.

11.In the above circumstances, the writ petition is disposed of, upholding Ext.P9 order, but expunging the remarks contained in the first two sentences of paragraph No.13 thereof. Since the basis for Ext.P10 order was the observation contained in paragraph No.13 of Ext.P9 order, Ext.P10 also stands set aside. In all other respects Ext.P9 order shall stand.

The 1st respondent shall make an application for regularisation of the construction already made on the retaining wall existing in his property, which shall be considered by the Corporation within a period of two months from the date of receipt of a copy of this judgment in accordance with law.

Sd/-
ANU SIVARAMAN, JUDGE

AMV/25/11/15