

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 18TH DAY OF MARCH 2015/27TH PHALGUNA, 1936

WP(C).No. 8582 of 2015 (W)

PETITIONER:

R.PARAMESWARAN,
TEMPLE TREE APARTMENT,
T.C.35/4250,
PAZHAYANADUKKAVU, TRICHUR.

BY ADV. SRI.B.KRISHNA MANI

RESPONDENTS:

1. THE CORPORATION OF THRISSUR,
CORPORATION OFFICE, THRISSUR - 680 001,
REPRESENTED BY THE SECRETARY.
2. THE EXECUTIVE ENGINEER,
CORPORATION OF THRISSUR,
THRISSUR - 680 001.
3. THE TOWN PLANNING OFFICER,
CORPORATION OF THRISSUR,
THRISSUR - 680 001.

R1&2 BY ADV. SRI.K.P.VIJAYAN, SC
R1&2 BY ADV. SRI.V.N.HARIDAS

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
18-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1 : TRUE COPY OF THE BUILDING PERMIT ISSUED BY THE
THRISSUR CORPORATION BEARING
NO.DW3/PW7/BK/12/0607 DATED 11.05.2006.
- EXT.P2 : TRUE COPY OF THE PROCEEDING DATED 09.01.2015
ISSUED BY THE SECOND RESPONDENT.
- EXT.P2(a) : TRUE COPY OF THE ENGLISH TRANSLATION OF EXHIBIT
P2.
- EXT.P3 : TRUE COPY OF THE NOTICE DATED 20.02.2015.
- EXT.P3(a) : TRUE COPY OF THE ENGLISH TRANSLATION OF EXHIBIT
P3.
- EXT.P4 : TRUE COPY OF THE NOTICE DATED 20.02.2015.
- EXT.P4(a) : TRUE COPY OF THE ENGLISH TRANSLATION OF EXHIBIT
P4.

RESPONDENTS' EXHIBITS:

//TRUE COPY//

P.A. TO JUDGE

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 8582 of 2015 (W)

Dated this the 18th day of March, 2015.

JUDGMENT

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent Corporation, apart from perusing the record.

2. Briefly stated, the petitioner, the Managing Partner of a construction company, has a grievance that the respondent Corporation issued Exts.P2 to P4 notices, presumably under Section 406(1) of the Kerala Municipality Act, 1994, without following due process. Apprehending that the residential apartment constructed by the petitioner may be subjected to demolition in the wake of Ext.P4, the petitioner has filed the present writ petition.

3. The learned counsel for the petitioner has submitted that Ext.P4 notice was issued by the Corporation Engineer/Town Planning Officer instead of the Secretary, who, according to the learned counsel, is the competent authority.

This contention has been quickly countered by the learned counsel for the respondent Municipality by drawing my attention to Section 50(2) thereof to demonstrate that the Secretary of the Municipality is empowered to delegate all or any of his functions.

4. The learned counsel for the petitioner has, in the alternative, submitted that Ext.P2 reveals that prior to the issuance of the notice, the Building Inspector submitted a report on 08.01.2015 ostensibly based on an inspection conducted by him. According to the learned counsel, at no point of time has the petitioner been put on notice concerning the alleged inspection by the said Building Inspector. In sum and substance, the contention of the learned counsel for the petitioner is that Ext.P4 cannot be sustained in the face of lack of opportunity of hearing to the petitioner.

5. The learned Standing Counsel for the respondent Municipality has submitted that Ext.P4 read with Exts.P2 and P3 is only a show cause notice. In statutory terms, the respondent

Municipality will not take any precipitous steps unless it allows the petitioner the time prescribed under the notice. Only when the explanation is not satisfactory or when no explanation has been submitted by the petitioner will the respondent Municipality proceed further.

6. Under the totality of circumstances, I find considerable force in the contention of the learned counsel for the respondent Municipality. Indisputably, Ext.P4 read with Exts.P2 and P3 is only a show cause notice granting 7 days' time to the petitioner to submit his explanation why the alleged illegal structures put up by the petitioner should not be demolished in terms of Section 406 of the Act.

7. There is no gainsaying the legal principle that no writ against show cause notice shall lie. In the facts and circumstances, this Court is not inclined to interfere with Ext.P4. It is, however, to be observed that the petitioner seems to have rushed to the Court instead of replying to Ext.P4; in the meanwhile, the time granted in Ext.P4 has come to an end. In these

circumstances, to subserve the cause of justice, this Court is inclined to grant the petitioner 7 more days' time from today for his submitting the necessary explanation in response to Ext.P4. Till the expiry of seven days' time thus granted, the respondent Municipality shall not take any precipitous steps.

With the above observation, this writ petition stands closed.

sd/- DAMA SESHADRI NAIDU, JUDGE.

rv

