

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

WP(C).No. 15928 of 2007 (U)

PETITIONER(S):

**THE ERNAKULAM THIRUMALA DEVASWOM,
T.D.ROAD, ERNAKULAM, REPRESENTED BY ITS
MANAGING ADHIKARIES.**

**BY ADVS.SRI.R.D.SHENOY (SR.)
SRI.R.LAKSHMI NARAYAN
SMT.R.RANJINIE**

RESPONDENT(S):

1. DISTRICT COLLECTOR, ERNAKULAM

2. TAHSILDAR, KANAYANNUR TALUK

3. VILLAGE OFFICER, ERNAKULAM

**4. CORPORATION OF KOCHI, PARK AVENUE ROAD,
ERNAKULAM, REPRESENTED BY ITS SECRETARY.**

**R4 BY ADV. SRI.K.ANAND, SC, COCHIN CORPN.
R1-R3 BY SRI.P.V.ELIAS, GOVERNMENT PLEADER**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01-07-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

- P1 : COPY OF THE PLAN SUBMITTED TO THE CORPORATION
- P2 : COPY OF THE REQUEST LETTER DATED 20.07.2004 SUBMITTED BY THE PETITIONER TO THE CHAIRMAN TOWN PLANNING COMMITTEE OF THE 4TH RESPONDENT
- P3 : COPY OF THE REQUEST LETTER DATED 13.12.2003, SUBMITTED TO THE MAYOR OF THE 4TH RESPONDENT
- P4 : COPY OF THE ABOVE SAID NOTICE DATED 22.05.2007
- P5 : COPY OF THE LETTER SUBMITTED BY THE PETITIONER
- P6 : COPY OF THE NOTICE DATED 23.05.2007
- P7 : COPY OF THE DECISION DATED 30.11.2004

RESPONDENTS' EXHIBITS: N I L

//TRUE COPY//

P.A. TO JUDGE

JV

ANIL K. NARENDRAN, J.

W.P.(C) No.15928 of 2007

Dated this the 1st day of July, 2015

JUDGMENT

The petitioner has filed this writ petition seeking a writ of certiorari to quash Exts.P4 and P6 notices issued by the 2nd respondent and seeking an order to stay all further proceedings pursuant to the aforesaid notices and also demolition of the 'Alankara Gopuram' and eviction from the land on which the Gopuram is erected.

2. Going by the averments in the writ petition, on an application made by the petitioner, the 4th respondent Corporation permitted it to construct an 'Alankara Gopuram' at the eastern end of T.D. East Sannidhi Road facing M.G.Road. According to the petitioner, the southern pillar of this Gopuram is erected in the property of Sri. Kanthi Lal Prabhu and the northern pillar in the property of one Sathish Pai, who are members of their community. The petitioner would contend that, necessary sanction for the construction of Gopuram as per Ext.P1 plan was given by the Corporation Council in its meeting held on 30.11.2004, in which the application submitted by the

petitioner (MOP 5/3449/04) was approved unanimously. Relying on Exts.P2 and P3 communications, the petitioner would further contend that, the construction of the aforesaid 'Alankara Gopuram' was with notice to the 2nd respondent Corporation as well as its officials.

3. On 22.05.2007, the 2nd respondent served Ext.P4 notice on the petitioner, under the provisions of the Kerala Land Conservancy Act, requiring it to vacate the land having an extent of 0.02 M² in survey No.2671 of Ernakulam Village, within 24 hours, as the projections in the Gopuram is protruding into the said extent of land, which according to the 2nd respondent is Government Puramboke. On receipt of Ext.P4 notice, the petitioner submitted Ext.P5 representation before the 1st respondent, requesting that permission may be granted to retain the projections complained of, to be intact, as the area is very negligible and any demolition may hurt the religious feelings of the devotees. It was also requested that, in case the 1st respondent is not inclined to accede to the above request, sufficient time may be given to the petitioner to remove the projection, as the dismantling of idols requires skilled labour. Subsequent to Ext.P5, the petitioner was issued with another notice dated 23.05.2007 of the 2nd respondent requiring it to

demolish the entire 'Alankara Gopuram' within 24 hours, stating that the petitioner has constructed the same after encroaching to an extent of 7.8 M² of area. It was in such circumstances, the petitioner has approached this Court in this writ petition seeking various reliefs.

4. Alongwith I.A.No.7365/2007, the petitioner has produced Ext.P7 decision dated 30.11.2004 of the Corporation Council by which the Corporation has permitted it to construct 'Alankara Gopuram' at the eastern end of T.D. East Sannidhi Road facing M.G.Road.

5. Though notice in this writ petition was issued as early as on 25.05.2007, none of the respondents have chosen to file any counter affidavit. It is submitted by the learned counsel for the petitioner that, subsequent to Ext.P5, the petitioner has also not received any reply from the 1st respondent on the request made in Ext.P5 representation.

6. I heard the arguments of the learned counsel for the petitioner, the learned Government Pleader appearing for respondents 1 to 3 and also the learned Standing Counsel for the 4th respondent Corporation.

7. One of the main contention raised by the learned counsel for the petitioner is that, as per Section 207 of the

Kerala Municipalities Act, all public roads, streets, lanes and paths shall vest with the Municipality unless it is notified by a Government notification issued in terms of Section 207(2). Therefore, according to the learned counsel, when the petitioner has constructed the Gopuram after obtaining sanction from the 4th respondent Corporation, respondents 1 to 3 have no authority to evict or dispossess it, by invoking the provisions under the Kerala Land Conservancy Act. According to the learned counsel, if the road in question is vested with the Municipality, then the provisions under Section 376 of the Act has to be invoked.

8. Per contra, the learned Government Pleader appearing for the respondents would contend that the proceedings initiated against the petitioner under the provisions of the Kerala Land Conservancy Act are perfectly legal and therefore, there is absolutely no illegality in Ext.P4 and P6 notices.

9. It is alleging that the 'Alankara Gopuram' has been constructed by encroaching puramboke land, proceedings were initiated against the petitioner by Ext.P4 and P6, by invoking the provisions under the Kerala Land Conservancy Act. On receipt of Ext.P4, the petitioner has submitted Ext.P5 representation before the 1st respondent pointing out that the encroachment alleged is very negligible and if that portion of the Gopuram has

to be demolished, they may be given a reasonable time to remove the projections with a skilled labour. Now, in the writ petition, the petitioner has also raised a contention that, since the land is vested with the Municipality, the provisions under the Kerala Land Conservancy Act could not have been invoked by respondents 1 to 4. Relying on Ext.P7, the petitioner would also contend that, the construction in question is with the permission of the 4th respondent Corporation and in which event it cannot be termed as an unauthorized construction.

10. But, in the absence of any counter affidavit filed by the respondents, this Court not in a position to decide this issue on merits. The learned counsel for the petitioner would point out that, immediately on receipt of Ext.P4 notice, the petitioner has submitted Ext.P5 representation before the 1st respondent. But, subsequent to the filing of the writ petition, no further proceedings have been taken pursuant to Ext.P4 and P6 notices. Therefore, the learned counsel for the petitioner would submit that, the petitioner shall submit a detailed representation before the 1st respondent supplementing Ext.P5, and the 1st respondent may be directed to take the decision on the aforesaid representation within a time limit that may be fixed by this Court, with notice to the petitioner.

11. In such circumstances, considering the facts and circumstances of the case, I deem it appropriate to disposed of the writ petition with the following directions:

Within one month from the date of receipt of a certified copy of this judgment, the petitioner shall submit a detailed representation before the 1st respondent, supplementing Ext.P5, which the 1st respondent shall consider and pass appropriate orders thereon, with notice to the petitioner and also to respondents 2 and 4.

All the contentions raised by the petitioner are left open and it will be open for the petitioner to raise all such contentions before the 1st respondent. It is also made clear that this Court has not expressed anything on the merits of the claim/contentions made by the petitioner and it is for the 1st respondent to take an appropriate decision on the matter, strictly in accordance with law.

SD/-
ANIL K. NARENDRA,
JUDGE

JV