

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 28TH DAY OF JULY 2015/6TH SRAVANA, 1937

WP(C) .No. 15752 of 2009 (L)

PETITIONER(S) :

BANERJI MEMORIAL CLUB,
ROUND NORTH,
TRICHUR-680 001,
REP. BY ITS SECRETARY P.V.THOMAS.

BY ADV. SRI.MILLU DANDAPANI.

RESPONDENT(S) :

1. CORPORATION OF THRISSUR,
THRISSUR,
REP. BY ITS SECRETARY.

2. THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS,
THIRUVANANTHAPURAM.

R1 BY ADV. SRI.K.P.VIJAYAN,
R1 BY ADV. SRI.V.M.SYAM KUMAR,
R1 BY ADV. SMT.KRIPA ELIZABETH MATHEWS &
R1 BY ADV. SRI.V.N.HARIDAS.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
28-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXT.P1: PHOTOCOPY OF LETTER NO.G-1-1686/21 DATED 29/10/1953 OF THE 1ST RESPONDENT TO THE PETITIONER.
- EXT.P2: PHOTOCOPY OF LETTER NO.G-1-1686/21 DATED 26/09/1956 OF THE 1ST RESPONDENT TO THE PETITIONER.
- EXT.P3: PHOTOCOPY OF NOTICE NO.B8/BA1376/03-04 DATED 13/07/2004 BY THE TOWN PLANNING OFFICER TO THE PETITIONER.
- EXT.P3 (A) : PHOTOCOPY OF REPLY SUBMITTED BY THE PETITIONER BEFORE THE SECRETARY & TOWN PLANNING OFFICER OF THE 1ST RESPONDENT, DATED 16/07/2004.
- EXT.P4: PHOTOCOPY OF ORDER NO.P.W8/13509/04 DATED 17/07/2004 ISSUED BY 1ST RESPONDENT TO THE PETITIONER.
- EXT.P5: PHOTOCOPY OF JUDGMENT OF THIS HONOURABLE COURT DATED 07/03/2008 REDERED IN WP(C)NO.21905/2008 G.
- EXT.P6: PHOTOCOPY OF ORDER NO.DW3/PW8/13509/04 DATED 05/11/2008 ISSUED BY 1ST RESPONDENT TO THE PETITIONER.
- EXT.P7: PHOTOCOPY OF APPEAL, DATED 02/12/2008 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
- EXT.P8: PHOTOCOPY OF WRITTEN STATEMENT DATED 28/01/2009 SUBMITTED BY THE 1ST RESPONDENT IN APPEAL NO.696/2008 BEFORE THE 2ND RESPONDENT.
- EXT.P9: PHOTOCOPY OF ORDER DATED 04/02/2009 TENDERED BY THE 2SND RESPONDENT IN APPEAL NO.696/2008.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

K. VINOD CHANDRAN, J.

W.P.(C) No. 15752 of 2009 (L)

Dated this the 28th day of July, 2015

J U D G M E N T

The petitioner is aggrieved with Ext.P9 order insofar as the Municipality has been directed to initiate fresh proceeding under Section 406 of the Kerala Municipality Act, 1994 (for brevity the 'Act'), without delay.

2. The brief facts to be noticed are that the petitioner, a Club within Thrissur Town, was proceeded against for some unauthorised construction, specifically an indoor badminton court constructed in the premises. Proceedings were initiated and Ext.P6 order was passed directing removal of the unauthorised construction. A reading of Ext.P6 order would indicate the levity with which the Secretary dealt with the matter. The Secretary has, in fact, referred to item no.2 and stated that there was a regularisation made of the construction, and against that

the petitioner had approached the High Court. However, item no.2 referred to is the judgment in W.P.(C) No.21905/2004, in which the challenge made was to Ext.P6 order passed by the Municipality, followed by Ext.P7 order of demolition. The petitioner also contended before Court that the entire issue has been given a quietus by the decree of the Munsiff Court, Thrissur, in O.S. No.2289/2003. Hence, there was a direction in Ext.P5 judgment to consider the matter afresh. The Secretary, in Ext.P6, also referred to a decision of the High Court with respect to the taking over of the entire property by the Government. However, no details are provided therein. In any event, Ext.P6 is found to be an order passed without any application of mind.

3. The petitioner filed an appeal from Ext.P6 before the Tribunal for Local Self Government Institutions, which found the proceedings to be bad and set it aside. The Tribunal found infirmities in the order passed insofar as no

specific violation as to any provision of the Kerala Building Rules was alleged and that the entire proceedings were vitiated for non application of mind. This Court has also found Ext.P6 to be so. Further, the Tribunal in Ext.P9 also found that the petitioner could also move for regularisation, but however, directed proceedings under Section 406 of the Act.

4. The direction insofar as initiation of proceedings under Section 406 of the Act shall, at the moment, stand vacated. The petitioner would be entitled to file an application for regularisation before the Municipality, which shall be consider in accordance with law. Such an application shall be filed within a period of one month from the date of this judgment. If regularisation is permissible and the same is allowed, necessarily no further proceedings shall be taken. But, however, if the regularisation is not allowed, then the petitioner shall be issued with a

communication in writing listing out the reasons for rejecting such an application. In such circumstance, the Municipality would also be entitled to take any proceedings under Section 407 of the Act.

The writ petition would stand disposed of with the above observation.

Sd/-
K.VINOD CHANDRAN,
JUDGE