

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 23RD DAY OF JULY 2015/1ST SRAVANA, 1937

WP(C).No. 12209 of 2015 (A)

PETITIONER(S):

1. GOPAKUMAR V, AGED 44 YEARS,
S/O. V.K. GANGADHARAN MENON, (DOOR NO.18/644-16),
3D 'GANGOTHRI', BADHRADEEPAM APARTMENTS, D.P.O ROAD,
PALAKKAD - 678 014.
2. BEENA RAJEEV, AGED 58 YEARS
W/O. RAJEEV ANAND, (DOOR NO.18/644-41), 7G,
BADHRADEEPAM APARTMENTS, D.P.O ROAD, PALAKKAD-678 014.
3. SANDEEP G. AGED 28 YEARS,
S/O. P. GOPINATH, 7B, BHADRADEEPAM APARTMENTS,
(DOOR NO.18/644-38), DPO ROAD, PALAKKAD-678 014.
4. KUTTISANKARAN NAIR, AGED 69 YEARS,
S/O. LATE M.KRISHNAN NAIR, 6B, BHADRADEEPAM APARTMENTS,
D.P.O ROAD, PALAKKAD-678 014.

BY ADV. SRI. P.K.MOHANAN(PALAKKAD)

RESPONDENT(S):

1. THE SECRETARY,
PALAKKAD MUNICIPALITY, PALAKKAD - 678 001.
2. PALAKKAD MUNICIPALITY,
REPRESENTED BY ITS SECRETARY, PALAKKAD - 678 001.
3. STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

R1& R2 BY ADV. SRI. T.C.SURESH MENON

R1&2 BY ADV. SRI.P.S.APPU

R3 BY SENIOR GOVERNMENT PLEADER SMT. ANITHA RAVINDRAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 : A TRUE COPY OF THE RECEIPT DATED 06.11.2012 ISSUED TO THE 1ST PETITIONER BY PALAKKAD MUNICIPALITY EVIDENCING COLLECTION OF OWNERSHIP CHANGE FEES.

EXT.P1(a): A COPY OF THE RECEIPT DTD. 22.01.2013 ISSUED TO THE 2ND PETITIONER AND HER DAUGHTER SARITHA RAJEEV EVIDENCING COLLECTION OF OWNERSHIP CHANGE FEES BY PALAKKAD MUNICIPALITY.

EXT.P1(b): A COPY OF THE RECEIPT DTD. 19.11.2012 ISSUED TO THE 3RD PETITIONER EVIDENCING COLLECTION OF OWNERSHIP CHANGE FEES BY PALAKKAD MUNICIPALITY.

EXT.P1(c): A COPY OF THE RECEIPT DTD. 02.11.2012 ISSUED TO THE 4TH PETITIONER EVIDENCING COLLECTION OF OWNERSHIP CHANGE FEES BY PALAKKAD MUNICIPALITY.

EXT.P2 : A COPY OF THE REQUEST MADE BY THE FIRST PETITIONER DTD. 26.12.2013 TO THE 1ST RESPONDENT.

EXT.P3 : A COPY OF THE REQUEST MADE BY THE 3RD PETITIONER DTD. 27.1.2014 TO THE 1ST RESPONDENT.

EXT.P4 : A COPY OF THE REQUEST MADE BY THE 4TH PETITIONER DTD. 02.01.2014.

RESPONDENT(S)' EXHIBITS - NIL

//TRUE COPY//

P.A. TO JUDGE

SHAJI P. CHALY, J.

W.P. (C) No. 12209 of 2015

Dated this the 23rd day of July, 2015

JUDGMENT

This writ petition is filed seeking to issue direction to respondents 1 and 2 to refund the amount of Rs.25,000/- collected from each of the petitioners allegedly towards ownership change fees with 12% interest.

2. The contention put forth by the petitioners are that there is no such enabling provision under the Municipal Laws for charging fees for Change of ownership of apartments and therefore the collection so made by the Municipality is illegal. Petitioners 1, 3 and 4 have filed Exts.P2 to P4 before the Municipality seeking the very same relief and the learned Standing Counsel appearing for the Municipality submits that the same is pending consideration and the Municipality may be provided with an opportunity to take a decision on the same. It is also

contended by the counsel for the petitioner that 2nd petitioner has also filed a similar application seeking refund.

3. Therefore, the counsel for the petitioner contended that the petitioners will be satisfied if a direction is issued to the 1st respondent to take a decision on Exts.P2 to P4 applications submitted by petitioner Nos. 1,3 and 4, and the application of the 2nd petitioner for refund of the amount charged by the Municipality towards ownership change fee. Needless to say, the Municipality will take into account the contentions raised by the petitioners that there is no enabling provision under any of the Municipal laws to recover an amount as ownership change fee. If there is no such provision, then imposition of the said fee by the Municipality is illegal.

4. In such circumstances, there will be a direction to the 1st respondent to take a decision on Exts. P2 to P4 applications submitted by petitioner Nos.1,3 and 4,

respectively, and the application submitted by the 2nd petitioner, taking into account the observations made above and in accordance with law. This shall be done within a period of one month from the date of receipt of a copy of this judgment and after affording an opportunity of hearing to the petitioners.

The writ petition is disposed of accordingly.

Sd/-
SHAJI P. CHALY
JUDGE