

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

WP(C) .No. 16877 of 2010 (H)

PETITIONER(S) :

SUNITHA KUMARI K.P.
KAYANIKONATH KUZHIVILA VEEDU, POWDIKONAM, TRIVANDRUM.

BY ADVS.SRI.R.SUNIL KUMAR
SMT.A.SALINI LAL

RESPONDENT(S) :

1. SECRETARY,
LOCAL SELF GOVERNMENT DEPARTMENT, SECRETARIAT,
TRIVANDRUM.
2. SECRETARY,
SREEKARYAM PANCHAYATH,
SREEKARYAM P.O., TRIVANDRUM.

* ADDL. R3 IMPEADED

R3. CORPORATION OF THIRUVANANTHAPURAM,
REPRESENTED BY ITS SECRETARY, CORPORATION BUILDINGS,
VIKHAS BHAVAN, THIRUVANANTHAPURAM -695 033.

(*ADDL. R3 IS IMPEADED AS PER ORDER DATED 16.07.2013 IN IA 9273/2013.)

BY GOVERNMENT PLEADER SRI.SOJAN JAMES.
ADDL 3 BY ADV. SRI.N.NANDAKUMARA MENON (SR.)
ADDL 3 BY ADV. SRI.P.K.MANOJKUMAR
R2 BY ADV. DR.K.P.SATHEESAN
R2 BY ADV. SRI.K.K.GOPINATHAN NAIR
R2 BY ADV. SRI.M.R.JAYAPRASAD
R2 BY ADV. SRI.P.MOHANDAS (ERNAKULAM)
R2 BY ADV. SRI.MATHEW SUNNY
R2 BY ADV. SRI.ANOOP.V.NAIR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
01-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

EXT.P1: COPY OF THE TAX RECEIPT.
EXT.P2: COPY OF THE LETTER DATED 11/05/2010.
EXT.P3: COPY OF THE LETTER DATED 16/10/09.
EXT.P4: COPY OF THE OWNERSHIP CERTIFICATE DATED 29/10/2008.
EXT.P5: COPY OF THE BUILDING TAX RECEIPT DATED 27/05/08.
EXT.P6: DECISION OF THE PANCHAYATH COMMITTEE DATED 10/12/2008.
EXT.P7: COPY OF THE APPLICATION GIVEN BY THE PETITIONER.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.16877 of 2010

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Dated this the 1st day of September, 2015

JUDGMENT

Under challenge in this writ petition is Exts.P3 and P4 by which, the respondents have decided to recall the loan amount already disbursed to the petitioner for construction of a residential building.

2. The petitioner is having property in Uliyazhathura village. The petitioner's husband died in the year 2000 and she has 2 girl children and is unemployed. Since the petitioner has no home, she applied for constructing a home under the Basic Service to the Urban Poor (B.S.U.P) Scheme. She alleges that under the above scheme, ₹1,20,000/- would be given to selected persons and the same would be allotted at four stages of completion of the building. The petitioner further alleges that she was selected as a beneficiary in the said scheme and she was allotted ₹50,000/- in two installments.

3. The petitioner further alleges that the construction of the building in the property was complete and she is eligible for 3rd and 4th installments of ₹50,000/- and ₹20,000/- respectively. While so, the petitioner was served with a notice from the 2nd respondent requiring her to remit back ₹50,000/- which was received by her as per the above scheme. On enquiry it was revealed that one Ajitha filed a complaint against the petitioner that she has received by the benefit of B.S.U.P Scheme from Thiruvananthapuram corporation and concealing the said fact, she illegally gained the benefit of the scheme from the 2nd respondent panchayat.

4. The petitioner points out that at first same complaint was preferred before the 2nd respondent and the panchayat committee found that the petitioner is entitled for the benefits of the scheme. Again another complaint was filed before the 1st respondent in which, no enquiry was conducted. However, an order was mechanically passed; it is alleged. The petitioner

further alleges that the respondents without giving a copy of the complaint and without calling for an explanation, issued an order to remit back the amount which was given to the petitioner under the above scheme. It is with this background, the petitioner has approached this Court.

5. In the counter affidavit filed by the respondent State, it was contended that as per the records available with the Thiruvananthapuram corporation, the petitioner has already availed ₹40,000/- from the corporation for constructing a residential building under the 'VAMBAY' scheme formulated by the corporation for the year 2002-2003 and she received the entire amount in four installments on 15.10.2004, 3.12.2004, 14.1.2005 and 18.3.2005. Utilising the above amount, she had constructed the house. They further contended that it was hiding the above fact, the petitioner applied for the same benefit under the Sreekariyam Grama Panchayat, who is the 2nd respondent under the B.S.U.P Scheme and without knowing

the fact that the petitioner had already got financial assistance for constructing a house from the Thiruvananthapuram corporation under 'VAMBAY' Scheme, her name was approved by the 2nd respondent and she was selected as the beneficiary under the B.S.U.P Scheme.

6. It was further contended that the enquiry revealed that the petitioner was a native of Sreekariyam Grama Panchayat. After her marriage, she was residing in Thiruvananthapuram corporation and she was selected as the beneficiary of VAMBAY Housing Scheme as she was a member of Triveni Kudumbasree Unit in Thiruvananthapuram corporation. According to the respondent, after taking loan from the respondent corporation she made an application before the 2nd respondent stating that she had completed the basement work and requested to issue the second installment, and she got the second installment of ₹40,000/- on 7.8.2008. After receiving the above amount, she had submitted an application stating

that she had already completed the second stage of work and, therefore, she requested for the release of the third installment. At that time, the Secretary of the respondent panchayat got a complaint from a neighbour stating that the petitioner had received similar benefits from the Thiruvananthapuram corporation. Though the Secretary of the corporation submitted reply to the Secretary of the 2nd respondent, the respondent panchayat, the Sreekariyam Panchayat Committee decided to give the remaining third and fourth installments under the B.S.U.P Scheme. Therefore, they prayed for a dismissal of the writ petition.

7. Arguments have been heard.

8. According to the petitioner, she had completed the construction of the building and is entitled to get third and fourth installments @ ₹50,000/- and ₹20,000/- respectively. The learned counsel for the petitioner would submit that the loan under the VAMBAY Scheme was availed by the

petitioner's father in law and the petitioner being a member of the Kudumbasree unit, the cheque was issued in her name and the same was utilised for constructing a house in the father's property within the local limits of respondent corporation.

9. The learned counsel for the petitioner invited my attention to Ext.P1 which is the copy of the receipt of building tax where the petitioner's name as well as the name of her father in law figures. However, the learned counsel for the 2nd respondent invited my attention to G.O(P) No.2684/09/LSGD dated 19.10.2009 which reveals that one S.Chandralekha, who is the member of the Grama Panchayat, has failed in her duty and that was the reason for releasing the loan to the petitioner.

10. The core issue is whether the amount which has already been released by the Thiruvananthapuram corporation was on the application of the petitioner or by her father-in-law as alleged. If the petitioner has no right over the property in which the building was constructed utilising the money

received from the Thiruvananthapuram corporation, the petitioner cannot be faulted. Therefore, this Court is of the view that the matter requires a re-consideration by the Government after affording the petitioner and the respondent corporation who is the successor in interest of the erstwhile Sreekariyam Grama Panchayat an opportunity of being heard.

In the result, the writ petition is allowed. Exts.P2 and P3 are quashed. The respondents 1 and 2 are directed to reconsider the issue after affording the petitioner and respondent corporation an opportunity of being heard. This shall be done within a period of three months from the date of receipt of a copy of this judgment.

Sd/-
A.V.RAMAKRISHNA PILLAI
JUDGE

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