

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 20TH DAY OF JULY 2015/29TH ASHADHA, 1937

WP(C).No. 13299 of 2015 (J)

PETITIONER :

**RAJITH, AGED 49 YEARS,
S/O.RAMAN, THERUPARAMBIL, WADAKKANCHERY,
THRISSUR DISTRICT, PIN 680582**

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS :

- 1. THE STATE OF KERALA
REP. BY THE SECRETARY TO THE GOVT.
LOCAL SELF GOVERNMENT DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM 695001**
 - 2. THE DISTRICT COLLECTOR,
COLLECTORATE, AYYANTHOLE, THRISSUR 680001**
 - 3. THE TAHSILDAR,
TALUK OFFICE, WADAKKANCHERY 680582**
 - 4. THE VILLAGE OFFICER,
WADAKKANCHERY VILLAGE OFFICE,
THRISSUR DISTRICT 680582**
 - 5. THE WADAKKANCHERY GRAMA PANCHAYATH,
REP. BY ITS SECRETARY, WADAKKANCHERY P.O.
THRISSUR 680582**
 - 6. BENNY
S/O.KUNALIL THOMAS, KUMARANELLUR, OTTUPURA,
INCHALODI, THRISSUR DISTRICT, PIN 680590**
- R1 TO R4 BY GOVERNMENT PLEADER SMT. ANITHA RAVEENDRAN
R5 BY ADVS. SRI.SANTHOSH P.PODUVAL
SMT.R.RAJITHA
R6 BY ADVS. SRI.A.X.VARGHESE
SRI.A.V.JOJO**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 20-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: A TRUE COPY OF THE SKETCH PREPARED BY THE PETITIONER DATED NIL.
- P2: A TRUE COPY OF THE JUDGMENT IN WPC.NO.21637/2012 DATED 06.03.2013 BY THE LEARNED SINGLE JUDGE OF THIS HONOURABLE COURT.
- P3: A TRUE COPY OF THE BUILDING PERMIT GRANTED TO THE SIXTH RESPONDENT DATED 21.02.2015.
- P4: A TRUE COPY OF THE COMPLAINT BY ONE KABEER DATED 01.03.2015 BEFORE THE FIFTH RESPONDENT.
- P5: A TRUE COPY OF THE STOP MEMO ISSUED BY THE FIFTH RESPONDENT WITH OTHER DETAILS DATED 03.03.2015.
- P6: A TRUE COPY OF THE SITE INSPECTION REPORT BY THE FIFTH RESPONDENT DATED 03.03.2015.
- P7: A TRUE COPY OF THE COMMUNICATION OF THE FIFTH RESPONDENT DATED 03.03.2015
- P8: A TRUE COPY OF THE COMMUNICATION OF THE FIFTH RESPONDENT DATED 16.03.2015
- P9: A TRUE COPY OF THE ORDER PASSED IN IA.NO.521/2015 IN APPEAL NO.226/2015 DATED 06.03.2015 BY THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTION

RESPONDENT(S)' EXHIBITS :

- EXT.R6(a): COPY OF THE JUDGMENT DT 6/3/2013 IN WPC 21637/2012.
- EXT.R6(b): COPY OF THE JUDGMENT DT 9/3/2015 IN WA 1274/2013.
- EXT.R6(c): COPY OF THE SALE DEED BEARING NO. 2266/2014.
- EXT.R6(d): COPY OF THE LAND TAX REMITTANCE DT 31/1/2015.
- EXT.R6(e): COPY OF THE POSSESSION CERTIFICATE DT 30/1/2015.
- EXT.R6(f): COPY OF THE BUILDING PERMIT ALONG WITH THE PLAN DT 21/2/2015.
- EXT.R6(g): COPY OF THE COMPLAINT DT 1/3/2015.
- EXT.R6(h): COPY OF THE INTERIM ORDER DT 9/4/2015 IN WPC 6732/2015.
- EXT.R6(i): COPY OF THE COMPLAINT GIVEN BY THE PETITIONER DT 22/4/2015.
- EXT.R6(j): COPY OF THE COMMUNICATION DT 28/4/2015.
- EXT.R6(k): COPY OF THE COMMISSION REPORT DT 8/4/2015.

//TRUE COPY//

P.A. TO JUDGE

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.13299 of 2015

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Dated this the 20th day of July, 2015

JUDGMENT

The petitioner is aggrieved by Ext.P9 order of stay granted by the Tribunal for Local self Government Institutions.

2. The petitioner is aggrieved by the illegality perpetrated by the 6th respondent as it is on a fraudulent misrepresentation that the 6th respondent obtained permit for constructing a commercial building, about 2.644 cents of land. The 5th respondent local authority passed an order directing the 6th respondent to stop the construction; it is alleged.

3. Challenging this, the 6th respondent filed an appeal before the Tribunal for Local Self Government Institutions and there is an order of stay granted by the Tribunal. In the meantime, the revenue authorities have reached a conclusion that it is the Government property that is encroached upon by the 6th respondent and by

creating fraudulent documents, the building permit was obtained.

4. The grievance of the petitioner is that under the guise of the interim order granted by the Tribunal, the 6th respondent is attempting to proceed with the construction in question. It is with this background, the petitioner has come up before this Court.

5. The 6th respondent has filed a counter affidavit opposing the allegations in the writ petition. Along with this counter, he has also produced Exts.R6(a) to R6(k) in support of his contentions.

6. Arguments have been heard.

7. What can be discerned from the submissions made is that an appeal is pending consideration before the Tribunal. It was submitted by the learned counsel for the petitioner that on the basis of the impugned order, the 6th respondent is continuing with the construction.

8. However, this Court is of the view that as the Tribunal which is a fact finding authority has entertained the appeal and granted a

stay, the proper course open is to direct the Tribunal for Local Self Government Institutions to consider and pass final orders on the appeal within a time frame after hearing both sides.

Therefore, the writ petition is disposed of directing the Tribunal for Local Self Government Institutions to consider and pass final orders on Appeal No.226 of 2015 after affording the petitioner, the respondent panchayat and the 6th respondent an opportunity of being heard and to adduce evidence. This shall be done within one month from the date of receipt of a copy of this judgment.

Any construction carried out by the 6th respondent on the strength of the impugned order shall be subject to the final outcome of the appeal.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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