

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA, 1937

WP(C).No. 20593 of 2007 (B)

PETITIONERS:

1. E.G. JECCO @ JECCO GEORGE,
ERINJERI HOUSE, PERINGAVU, MITRI NAGAR
THRISSUR-18
2. I.R. JOSE,
INJODIKARAN HOUSE, LOORDUPURAM, THRISSUR-5.
3. K.M. MATHEWS,
KANNAYI HOUSE, NADATHARA P.O., THRISSUR.

BY ADV. SRI.M.P.ASHOK KUMAR

RESPONDENTS:

THRISSUR MUNICIPAL CORPORATION,
REP. BY ITS SECRETARY, THRISSUR.

BY ADVS. SRI.K.P.VIJAYAN
SRI.V.M.SYAM KUMAR
SMT.KRIPA ELIZABETH MATHEWS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
09-11-2015, ALONG WITH WPC. 29425/2008, THE COURT ON 19.11.2015
DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

- P1 : PHOTOCOPY OF THE RESOLUTION DATED 17.10.2003
- P2 : PHOTOCOPY OF THE RESOLUTION DATED 28.05.2003
- P3 : PHOTOCOPY OF THE NOTICE DATED 29.05.2007 ISSUED TO THE 1ST PETITIONER.
- P4 : PHOTOCOPY OF THE NOTICE DATED 29.05.2007 ISSUED TO THE 2ND PETITIONER.
- P5 : PHOTOCOPY OF THE RESOLUTION DATED 14.10.2009.
- P6 : PHOTOCOPY OF THE NOTICE DATED 30.10.2009 ISSUED TO THE 1ST PETITIONER.
- P7 : PHOTOCOPY OF THE NOTICE DATED 30.10.2009 ISSUED TO THE 2ND PETITIONER.
- P8 : PHOTOCOPY OF THE NOTICE DATED 30.10.2009 ISSUED TO THE 3RD PETITIONER.

RESPONDENT'S EXHIBITS: NIL

// TRUE COPY//

P.A TO JUDGE

smv

CR

SHAJI P. CHALY, J.

W.P.(C) No.20593 of 2007

and

W.P.(C) No.29425 of 2008

Dated this the 19th day of November, 2015

JUDGMENT

These Writ Petition are filed by the petitioners seeking to quash Ext.P2 resolution of the 1st respondent Municipal Corporation bearing No.G19-19133/05 dated 29.5.2007. Since the subject matter of these Writ Petitions are one and the same, I think it is only just and proper that both the Writ Petitions are disposed of by a common judgment. I am herewith referring to the facts in W.P.(C) No.20593/2007 and the decision taken by me in the said case will decide the fate of other Writ Petition.

2. Brief facts for the disposal of the W.P.(C) No.20593/2007 are as follows:

3. Petitioners are traders conducting business at Kizhekkekkotta in Thrissur town. The land in which their shops were situated was acquired by the Thrissur Municipal Corporation. In a resolution passed by the Municipality on 12.1.1973 it was decided to construct a municipal shopping

complex within one year and to allot shop rooms to those tenants whose shop rooms were involved in the acquisition proceedings. The land was acquired by the Corporation on an agreement to rehabilitate the petitioners each in the new shopping complex at Kizhakkekota. Along with Kizhekkekkotta similar acquisition were also made by the respondent at Kuruppam road junction, Patturaickal Junction and Chembukkavu. The construction of the said shopping complex was already over and traders were rehabilitated.

4. It is the further contention of the petitioners that the construction of the Municipal shopping complex at Kizhakkekkotta was delayed. After the construction of the shopping complex at Kizhakkekkotta a resolution was passed by the respondent, evident from Ext.P1 on 17.10.2003 to rehabilitate the petitioners and the other tenants in the new shopping complex. Accordingly, petitioners were allotted rooms bearing various numbers. As per Ext.P1 Municipal Council fixed licence fee at the rate of Rs.6 per square feet. While doing so, respondent Municipal Corporation was adopting the same policy which they followed earlier while rehabilitating the evicted tenants in the other shopping complex mentioned supra. It is

also contended that Ext.P1 resolution passed by the Municipality has become final and conclusive.

5. That apart, it is contended by the petitioners that, due to political reasons and other extraneous consideration in the Council Meeting held on 28.05.2007 respondent cancelled Ext.P1 resolution and thereupon the licence fee was enhanced to Rs.25 per square feet from Rs.6 per square feet as evident from Ext.P2. In pursuance to Ext.P2, notices were issued to the petitioners to execute agreement within 24 hours and remit the licence fee for 6 months as deposit at the enhanced rate and notice thus issued to the 1st and 2nd petitioners are produced as Exts.P3 and P4. The petitioners were also threatened with cancellation of allotment if they are refusing to sign the papers. Under such threat, petitioners were compelled to sign the documents with the Municipality. It is the further contention of the petitioners that, Ext.P2 resolution passed by the respondent is without authority and sanction of law and therefore illegal. It is the further contention of the petitioners that Government alone is vested with power under Section 57 of the Municipality Act to cancel or amend the resolution passed by the Municipal Council under the circumstances specified thereunder. Even

while exercising powers under Section 57 of the Act, Government is bound to refer the matter for consideration of the Ombudsman constituted under Section 271(g) of the Kerala Panchayat Raj Act or to the Tribunal for the Local Self Government Institutions constituted under Section 271(s) of the said Act.

6. It is contended that respondent has cancelled Ext.P1 resolution without the involvement of circumstances contemplated under Section 57 of the Act and therefore bad under law. It is also contended that the Municipality is not vested with any power to suo motu cancel an earlier resolution and therefore the action of the Municipality is violative of Article 14 of the Constitution of India. It is the further contention of the petitioners that now the Municipality has passed Ext.P5 resolution dated 14.10.2009 to enhance the licence fee to Rs.25 per square feet. Thereafter, petitioners were issued with notices on 30.10.2009 to remit amounts of Rs.1,87,892/-, 2,54,405/- and Rs.2,54,405 respectively evident from Exts.P6 to P8 notices. Therefore, petitioners contend that Exts.P2 and P5 resolutions are illegal, irregular and liable to be interfered with by this Court. It is under such circumstances,

the petitioners have approached this Court.

7. Respondent has entered appearance and filed counter affidavit contending that the actions initiated by the Municipality pursuant to Exts.P2 and P5 are in order and in accordance with law and no interference is called for in the said actions of the respondent. It is also the case of the respondent that, few tenants have approached this Court by filing various writ petitions under similar circumstances and directions were issued by this Court to pass fresh orders in allotment of rooms after considering the objections of the petitioners. It is also contended that, petitioners are liable to pay the licence fee fixed by the Municipality in accordance with Ext.P2 and P5 resolutions. It is also the contention of the respondent that, the petitioners are not legally entitled to secure any such benevolent scheme but as a compassionate measure only the respondent has launched such a scheme to rehabilitate the petitioners and other tenants and therefore, the petitioners are not entitled as of right to make any claim to the benevolent scheme extended by the Municipality.

8. Heard Sri.M.P. Ashok Kumar and Sri. C.D. Dileep learned counsel for the petitioners and learned Standing Counsel

for the Municipal Corporation.

9. The point that was raised by the learned counsel for the petitioners is that, Ext.P2 resolution passed by the Municipality cancelling Ext.P1 resolution by which the petitioners and other evictees were ordered to be rehabilitated is bad for more than one reason. It is the contention of the learned counsel Sri. M.P. Ashok Kumar that once a resolution is passed by the Municipality, the same can be suspended or cancelled as per Section 57 of the Kerala Municipality Act which reads thus:

“57. Power to suspend and cancel resolution etc.--(1) The Government may, suo motu or on a reference by the Chairperson, the Secretary or a Councilor of the Municipality or on a petition received from a citizen, cancel or amend a resolution passed or a decision taken by the council, which in their opinion,-

- (a) has not been legally passed or taken; or
- (b) is in excess or abuse of the powers conferred by this Act or any other law; or
- (c) is likely to endanger human life, health safety, communal harmony or public peace, or is likely to lead to a riot or quarrel; or
- (d) has violated the guidelines issued by the Government in the matter of implementation of plans, schemes or programmes or the conditions of grants.

(2) Before cancelling or amending a resolution

or decision under sub-section (1), the Government shall refer the matter for the consideration of the Ombudsman constituted under Section 271G of the "Kerala Panchayat Raj Act", 1994 (13 of 1994) or to the Tribunal for the Local Self Government Institutions constituted under Section 271S of the said Act and the Tribunal shall, after giving the Municipality an opportunity of being heard, furnish a report to the Government with its finding based on which the Government may cancel, amend or approve that resolution or decision.

(3) The Government shall not entertain any petition for cancellation or amendment of any resolution or decision of the council if an alternate redressal is available to the petitioner through the Tribunal under Section 509.

(4) Where the Government are of opinion that a resolution or a decision of the Council shall be cancelled or amended under sub-section (1), they may temporarily stay the implementation of such resolution or decision and may direct the council to keep its implementation in abeyance till it is finally disposed of by completing the procedure under sub-section (2)."

10. On a reading of the said section, it is categoric and clear that the power to suspend and cancel the resolution will arise under the specified circumstances mentioned thereto. The

respondent is not having a case that any of the circumstances specified in Section 57 existed while passing Ext.P2 resolution cancelling Ext.P1 resolution passed on 17.10.2003. Therefore, according to the learned counsel for the petitioners Ext.P2 resolution cannot be sustained under law for want of circumstances mentioned under Section 57 of the Act. Furthermore, learned counsel has invited my attention to Rule 13 of the Kerala Municipality (Procedure for Meeting of Council) Rules 1995 which reads thus:-

“13. Cancellation or modification of resolution – No resolution of a Council shall be modified or cancelled except through a resolution passed in a meeting of the Council specially convened for the purpose within three months of passing such resolution, by a support of not less than one half of the sanctioned number of members.”

11. Taking cue from the said Rule, learned counsel contended that if the Council had any power to suo motu cancel or modify the resolution, the same will have to be done in a meeting convened for the said purpose specially and that too within a period of three months of passing such resolution with support of not less than one half of the sanctioned number of members. Admittedly Ext.P1 resolution is passed on 17.10.2003

and Ext.P2 resolution is passed cancelling Ext.P1 only on 29.05.2007. Therefore, on the ground of the limitation prescribed under Section 13 itself the suo motu resolution of the respondent cancelling Ext.P1 resolution cannot be sustained.

12. Learned counsel for the petitioners also invited my attention to Rule 215 of the Municipality Act wherein the power of the Municipality to acquire and dispose of property is prescribed. Sub-section of 2(c) of the said provision reads thus:

“In all cases except renewal of licence or rehabilitation of a licensee, licence shall be granted only by public auction or tender”

13. Relying on the said provision, learned counsel for the petitioners contended that by virtue of Section 215(2)(c), a rehabilitation scheme is taken care of by the said provision of the statute and therefore, the action of rehabilitation taken by the respondent can never be said to be an action which is not susceptible to a challenge. It is also contended by the learned counsel for the petitioners that the petitioners who are evictees of Kizhakkekotta alone are singled out by enhancing the licence fee by cancelling Ext.P1 resolution and the other evictees belonging to other shopping complex are not served with any

such notice. To the said contention raised by the learned counsel for the petitioners, learned Standing Counsel contended that actions were initiated in same terms against the other evictees of other areas also and such actions are also under challenge before this Court in various writ petitions.

14. On the other hand, learned counsel for the Municipality contended that by passing Ext.P2 resolution, the Municipality did not intend to cancel Ext.P1 resolution but their attempt was to enhance the licence fee as contemplated under sub-section 2 (a) of Section 215 and therefore, the petitioners are not entitled to get Ext.P2 quashed. Moreover, learned counsel contended that the licence fee demanded as per the notice is only prospective and not retrospective from the date of Ext.P2 resolution. Learned counsel has invited my attention to Ext.P4 and contended that the Municipality has not stipulated payment of enhanced licence fee retrospectively. Moreover, the learned counsel contended that the petitioners have not paid any licence fee in pursuance to their induction in the new shopping complex. Therefore, learned counsel for the Municipality submitted that the writ petitions have no legal sustenance and therefore the same are to be dismissed.

15. Having considered the rival submissions, I am of the considered opinion that, a resolution passed by the Municipal Council can be cancelled under the circumstances mentioned in Section 57 of the Kerala Municipality Act. But in order to cancel a resolution there should be specified circumstances as contemplated under the said provision. Here in this case, while cancelling Ext.P1 resolution pursuant to Ext.P2 resolution nothing is discernible from Ext.P2 resolution that the circumstances mentioned under Section 57 existed. Therefore, the suo motu power can be gathered by the Municipality only by resorting to Rule 13 of the Rules specified above under which the resolution placed for cancellation of an earlier resolution should have been done within a period of three months and in accordance with other stipulations contained under the said Rules. On an appreciation of Section 57 of the Act and Rule 13 of the Rules specified above, it is implicit, specific and clear that the action of cancellation of Ext.P1 resolution of rehabilitation by providing rooms to the petitioners at Rs.6/- per square feet by the Municipality by Ext.P2 resolution is without authority of law or rather the respondent has exceeded its jurisdiction, as provided under the law.

16. When a public authority whether elected or otherwise is invested with power under a statute to do an act in a particular manner, that public authority is bound to act within the scope of the power conferred on it. Whenever that power conferred is exercised in excess, it exceeds jurisdiction and therefore will become invalid, void and ultravires and thus becomes arbitrary and unfair. So also the action of the public authority shall be just, fair and reasonable. When an action is initiated by the Municipality and accordingly the Council has launched a scheme, it can only be presumed to be done by exercising its power conferred under the provisions of the Kerala Municipality Act. So far as Ext.P2 resolution is concerned, it can only be legally presumed to be issued under Section 51 or 52 of the Municipalities Act. If that is the situation, when a decision was taken by the Municipal Council by Ext.P1 resolution, the beneficiaries were accrued with the statutory benefit/rights under the law and has thereby acquired a legal right which can only be taken away by resorting to a legal method. Once a statutory right is vested with the petitioner under law, it can only be taken away by providing reasonable opportunity of hearing to the affected persons, if not the same violates the principles of

natural justice. Testing these legal principles against the facts and circumstances of the case, it can be seen that the respondent Municipality has not resorted to any action contemplated under law and therefore, the action of the Municipality by cancelling Ext.P1 resolution is in absolute violation of the principles of natural justice.

17. Apart from this, Section 51 of the Municipalities Act casts duty on the Municipality to prepare development plans taking into account the 12th Schedule of the Constitution which is the creation of Article 243-W of the Constitution of India and therefore, any scheme launched by the Municipality can only be presumed to be taking into account the Article and 12th Schedule of the Constitution also. Viewed in that manner, respondent Municipality has implemented the scheme taking into account the social justice that is mentioned under the 12th Schedule and therefore, the scheme launched by the Municipality to provide alternative accommodation to the tenants evicted, thus created the constitutional right on the allottees by virtue of Ext.P1 resolution. Taking stock of these legal aspects, factual circumstances and other settled principles of law, the actions of the Municipality pursuant to Ext.P2 resolution cannot be

sustained under law.

18. Learned counsel for the Municipality thereupon submitted that as provided under sub-section 2(a) of Section 215 the power of Municipality to enhance the licence fee periodically may not be interdicted in the guise of cancellation of Ext.P2 resolution. It is true that Municipality is vested with power under sub-section 2(a) of Section 215 for periodical enhancement of the licence fee. The Municipality is at liberty to proceed to enhance the licence fee in accordance with law.

19. It is also contended by the learned counsel for the Municipality that, petitioners have not paid the licence fee payable to the Municipality ever since the pendency of the writ petition. It is only just and proper that a direction is issued to the petitioners to pay the licence fee in accordance with Ext.P1 resolution.

20. Therefore, in the cumulative circumstances mentioned above and on consideration of entire facts, circumstances, law involved and the pleadings made by the rival parties, I am of the considered opinion that Ext.P2 cannot be sustained under law and therefore, the same is quashed, leaving open the liberty of the respondent Municipality to enhance the licence fee as

provided under sub-section 2(a) of Section 215 in accordance with law.

21. In view of the foregoing findings, W.P.(C) No.29425 of 2008 will stand allowed and the directions contained above will apply to the petitioners in the said writ petition also.

Writ petitions are allowed accordingly.

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.A. To Judge

smv
09.11.2015