

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

WP(C) .No. 19894 of 2012 (J)

PETITIONERS:

SUSY ANTONY,
AGED 50 YEARS, W/O.LATE ANTONY, KOTTUNGAL HOUSE,
NEAR ST.ANTONY'S CHURCH, VADUTHALA P.O., KOCHI-23.

BY ADV. SMT.M.A.ZOHRA

RESPONDENTS:

1. CORPORATION OF KOCHI,
REPRESENTED BY SECRETARY, KOCHI CORPORATION,
KOCHI-682 111.

2. VIJAYAMMA, W/O.RAJAN PILLAI,
VIJAYA NIVAS, 47/1425, KUNNUMMEL ROAD,
ERNAKULAM, KOCHI-6820 23.

R1 BY ADV. SRI.BABU KARUKAPADATH,
SC,COCHIN CORPORATION
ADV. SRI.P.K.SOYUZ,SC,COCHIN CORPORATION
R2 BY ADV. SRI.K.RAVEENDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY
HEARD ON 09-11-2015, ALONG WITH WPC. 19838/2014, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P. (C) NO.19894 OF 2012

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 - TRUE COPY OF THE G.O.(Rt) NO.1880/2003/LSGD DATED 28/5/2003.

EXT.P2 - TRUE COPY OF THE ORDER IN R.P.72/2008 DATED 3/9/2008 IF TGE TRUVYBAK FIR KICAK SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM.

EXT.P3 - TRUE COPY OF THE ORDER DATED 20/4/2009 IN APPEAL 165/2009 OF THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM.

EXT.P4 - TRUE COPY OF THE ORDER IN APPEAL 982/2010 DATED 28/2/2011 OF THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM.

EXT.P5 - TRUE COPY OF THE JUDGMENT DATED 13/10/2011 IN W.P. (C) NO.21260/2011 OF THIS HON'BLE COURT.

EXT.P6 - TRUE COPY OF THE ORDER DATED 20/1/2012.

EXT.P7 - TRUE COPY OF THE ORDER DATED 10/2/2012.

EXT.P8 - TRUE COPY OF THE ORDER DATED 23/6/2012 IN APPEAL NO.130/2012 OF THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM.

EXT.P9 - TRUE COPY OF THE INFORMATION OBTAINED UNDER RIGHT TO INFORMATION ACT DATED 8/6/2012.

EXT.P10 - TRUE COPY OF THE ORDER IN I.A.NO.4011/2012 IN O.S.NO.635/2008 DATED 25/7/2012 OF THE PRINCIPAL MUNSIF COURT, ERNAKULAM.

RESPONDENTS' EXHIBITS"

EXT.R2(a) - TRUE COPY OF THE APPLICATION FOR REGULARISATION DATED 1/3/2012.

EXT.R2(b) - TRUE COPY OF THE ORDER DATED 3/1/2013 IN THE CONTEMP OF COURT CASE C.C.C.NO.1670/2012 (S).

.....

EXT.R2(c) - TRUE COPY OF THE LETTER DATED 17/4/2013
ISSUED FROM COCHIN CORPORATION.

EXT.R2(d) - TRUE COPY OF THE REPORT DATED 1/3/2013 BY
REGIONAL JOINT DIRECTOR, URBAN AFFAIRS DEPARTMENT TO THE
GOVERNMENT SECRETARY, LOCAL SELF GOVERNMENT,
THIRUVANANTHAPURAM.

EXT.R2(e) - TRUE COPY OF THE STAY ORDER NO.1915/2014
DATED 27/5/2014 ISSUED BY THE HON'BLE CHIEF MINISTER,
KERALA STATE.

//true copy//

P.S. to Judge

K. HARILAL, J.

**W.P. (C) Nos.19894 of 2012 &
19838 of 2014**

Dated this the 9th day of November, 2015

JUDGMENT

The parties and the matter in issues in these writ petitions are common. Therefore, these writ petitioners are heard together and disposed of accordingly. The parties are referred to as shown in W.P.(c) No.19838/14. The petitioner is the owner in possession and enjoyment of 2.350 cents of property wherein she has made certain constructions allegedly without required permit under the Kerala Municipality Building Rules (for short 'the Rules'). The 4th respondent is the complainant alleging violation of the building rules filed against the petitioner herein. Even though, the complaint was filed by the 4th respondent much earlier

in the year 2002, the dispute between the petitioner and the 4th respondent has not been resolved so far, despite several rounds of litigations reached before this Court. The matter in dispute involved in these writ petitions was that whether the petitioner has converted or changed the roof of a tiled building in violation of Rules 4(2), 62(1) and (2) of the Rules. Even though, the ground open space as required with an extent of 1.80 Mtrs. is available in the front open space, an open stair was constructed occupying that space and thereby the petitioner has violated Rule 62 (2) of the Rules also. Earlier, Ext.P6 order was passed setting aside the demolition order passed by the Municipality against the petitioner and directing the Secretary to conduct a proper site inspection by himself and to consider the records in O.S.No.635/08 as directed in paragraphs-10 and 11 of the order in Appeal No.982/10 and thereafter, issue fresh proper confirmation order if satisfied about the violations of the Building Rules and the nature of unauthorised

constructions, without any unnecessary delay.

2. This order remitting the case back to the 2nd respondent was challenged in the first Original Petition i.e., W.P.(C) No.19894/12 by the 4th respondent. But, thereafter, since no stay was granted by this Court, the 2nd respondent has proceeded under Ext.P6 order and thereafter passed Exts.P10 and P11 orders. Thus, the challenge under Ext.P6 order in W.P.(c) No.19894/12 has become infructuous and as the same stands culminated into Exts.P10 notice and P11 order irrespective of the pendency of W.P.(c) No.19894/12 before this Court. Now, pursuant to the direction in Ext.P6 order, the 2nd respondent heard the parties and passed Ext.P11 order strictly in compliance with the direction in Ext.P6 order. By Ext. P11 demolition order, now the petitioner is directed to demolish the unauthorised construction, which is specifically described in Ext.P11 order. This Writ Petition is filed challenging Ext.P11 order passed by the 2nd respondent.

2. Heard the learned counsel for the petitioner, the learned counsel for the 4th respondent and the learned standing counsel for the 2nd respondent.

3. Whether the petitioner has made construction in violation of Kerala Building Rules, Rule 62(1) is a disputed question, which is being considered, since the last more than one decade. However, I am of the opinion that the matter, in issue, is based on a disputed fact, for which a statutory remedy is specifically provided under Rule 160 of the Kerala Municipality Building Rules. The jurisdiction and power provided under Art.226 of the Constitution of India cannot be exercised to resolve disputed facts. So also, I do not find any special reason or circumstances, to invoke the jurisdiction under Art.226 of the Constitution of India, when the statutory remedies are provided to the petitioner under the Kerala Municipality Building Rules, 1999.

4. Having regard to the above facts, the petitioner is relegated to the Appellate Authority

under the Kerala Municipality Building Rules, 1999 and the petitioner is allowed to file an appeal within a period of two months from today and if the appeal is filed within two months today, the Appellate Authority shall dispose of the same within a period of six months from the date of receipt of a copy of Memorandum of Appeal, considering the fact that the matter in issue was pending for the consideration of different forums, since the last more than one decade. It is made clear that Ext.P11 shall be kept in abeyance for two months from today.

These writ petitions are disposed of accordingly.

Sd/-

(K. HARILAL, JUDGE)

Nan/

//true copy//

P.S. to Judge