

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. 20313 of 2015 (L)

PETITIONER(S):

**N.K.DINESHAN, AGED 54 YEARS,
S/O.KARUNAKARAN, RESIDING AT KANJIRAPADATH,
THRIKKAKARA NORTH VILLAGE, KANAYANNUR TALUK,
ERNAKULAM DISTRICT, PIN-682 030.**

**BY ADVS.SRI.K.C.ELDHO
SRI.JIJO THOMAS
SRI.MALLENATHAN M.
SRI.ANEESH JAMES
SRI.ANIL R.NATH**

RESPONDENT(S):

**1. THE THRIKKAKKARA MUNICIPALITY,
KAKKANAD, COCHIN - 682 030,
REPRESENTED BY ITS SECRETARY.**

**2. THE SECRETARY,
THRIKKAKKARA MUNICIPALITY,
KAKKANAD, COCHIN - 682 030.**

*** ADDITIONAL R3 IMPEADED**

**3. MUHAMMED P.M., AGED 51 YEARS,
S/O.MEETHIYAN, RESIDING AT PAZHANGATTU HOUSE,
THENGODE P.O., KAKKANAD, ERNAKULAM DISTRICT.**

*** ADDITIONAL R3 IMPEADED AS PER ORDER DTD.20.7.2015 IN IA.10065/2015.**

**R1&R2 BY ADV. SRI.S.SHANAVAS KHAN
R3 BY ADVS. SRI.K.RAMAKUMAR (SR.)
SRI.S.M.PRASANTH
SRI.C.DINESH
SRI.G.RENJITH**

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

msv/

WP(C).No. 20313 of 2015 (L)

APPENDIX

PETITIONER(S)' EXHIBITS:

P1 : A TRUE COPY OF THE TAX PAID RECEIPT DATED 16-8-2013.

**P2 : A TRUE COPY OF THE BUILDING PERMIT NO.TP1-BA (1479)/2014(195)
DATED 18-8-2014 ISSUED BY THE 2ND RESPONDENT.**

**P3 : A TRUE COPY OF THE APPROVED BUILDING PLAN OF THE RESIDENTIAL HOUSE
OF THE PETITIONER.**

**P4 : A TRUE COPY OF NOTICE NO.TP1/6858/15 DATED 19-6-2015 OF THE
2ND RESPONDENT.**

RESPONDENT(S)' EXHIBITS:

**EXT.R3(a): COPY OF THE COMPLAINT DTD.13.4.2015 SUBMITTED BEFORE THE
SECRETARY, THRIKKAKARA MUNICIPALITY.**

**EXT.R3(b): COPY OF THE PETITION DTD.23.6.2015 SUBMITTED BEFORE THE S.I. OF
POLICE, THRIKKAKARA.**

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 20313 of 2015

Dated this the 20th day of July, 2015.

JUDGMENT

Alleging that the petitioner was not given an opportunity of being heard, while the respondent municipality passed Ext.P4 order of demolition, the petitioner has come up before this Court.

2. The petitioner is a daily wages labourer. The petitioner alleges that he obtained Ext.P2 building permit and Ext.P3 approved plan from the second respondent for constructing a residential house having a total plinth area of 55.52 sq.mts. The petitioner carried out construction of the building strictly in accordance with the approved plan and permit with the financial aid from some good Samaritans of the locality. The structure of the building is complete and plastering works are going on. At this juncture, the petitioner was served with Ext.P4 order issued by the second respondent alleging that the petitioner has constructed the building in

violation of the provisions of KMBR and directing the petitioner to stop the construction of the building and to demolish the portions constructed in violation of the provisions of the KMBR within 15 days. Ext.P4 order has been issued in violation of the principles of natural justice and in violation of the mandatory provisions of the Kerala Municipality Act. The petitioner alleges that he was not given an opportunity of being heard before passing Ext.P4. No provisional order as mandated under Section 406(1) of the Act was served on the petitioner before issuing Ext.P4 order. Moreover, Ext. P4 order is vague. Other than making a bald allegation that the petitioner has constructed his building in violation of the provisions of the KMBR, there is no mention in the impugned Ext.P4 order as to which provisions of the KMBR has been violated by the petitioner or as to what part of the building of the petitioner has been constructed in violation of the provisions of the KMBR. Ext. P4 is illegal and arbitrary; it is alleged.

2. As per I.A.No.10064 of 2015, the third respondent has been impleaded.

3. I have heard the learned counsel for the petitioner, the learned standing counsel for the respondent municipality and the learned Senior Counsel for the additional third respondent in the matter.

4. The learned Senior Counsel for the additional third respondent would submit that the petitioner is making illegal construction and though additional third respondent has brought the issue to the notice of the respondent municipality, the respondent municipality has not taken any action.

As this Court is of the view that the entire matter can be left open to be decided by the respondent municipality, after affording the petitioner and the additional third respondent an opportunity of being heard, the writ petition is disposed of directing the respondent municipality to consider the issue after affording the petitioner and the additional third respondent, an opportunity of being heard, within a period of

three weeks from the date of receipt of a copy of this judgment. The construction now completed by the petitioner shall be subject to the final decision taken by the municipality.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.