

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA**

**THURSDAY, THE 9TH DAY OF JULY 2015/18TH ASHADHA, 1937**

**WP(C).No. 31403 of 2005 (L)**  
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**PETITIONER(S):**  
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- 1. VASUDEVA PANICKER,  
T.C.27/421, OPP. A.K.G. CENTRE, KUNNUKUZHY  
TRIVANDRUM.**
- 2. VENU V., S/O. VASUDEVA PANICKER,  
27/421, OPP. A.K.G. CENTRE, KUNNUKUZHY  
TRIVANDRUM.**

**BY ADV. SRI.R.S.KALKURA**

**RESPONDENT(S):**  
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- 1. STATE OF KERALA,  
REPRESENTED BY THE CHIEF SECRETARY, GOVT.OF KERALA  
SECRETARIAT, TRIVANDRUM.**
- 2. CORPORATION OF TRIVANDRUM,  
REPRESENTED BY ITS SECRETARY, CORPORATION BLDG.  
PALAYAM, TRIVANDRUM.**
- 3. TOWN PLANNING OFFICER,  
CORPORATION OF TRIVANDRUM, CORPORATION BLDG., PALAYAM  
TRIVANDRUM.**

**R1 BY SRI.SOJAN JAMES, SENIOR GOVERNMENT PLEADER  
R2 & R3 BY SRI.N.NANDAKUMARA MENON,SC,TVM CORPN.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-07-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**APPENDIX**

**PETITIONER'S EXHIBITS:**

- P1: COPY OF THE SALE DEED NO.4044/1982
- P2: COPY OF THE ORDER DATED 10.03.2005 ISSUED BY THE 2ND RESPONDENT
- P3: COPY OF THE NOTICE DATED 07.04.2005
- P4: COPY OF THE COMMUNICATION DATED 10.06.2005
- P5: COPY OF THE COMMUNICATION DATED 06.08.2005
- P6: COPY OF THE APPEAL MEMORANDUM ALONGWITH THE ENTIRE SET OF DOCUMENTS SUBMITTED BEFORE THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS
- P7: COPY OF THE APPLICATION TO CONDONE THE DELAY
- P8: COPY OF THE ORDER DATED 26.09.2005 OF THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, TRIVANDRUM.

**RESPONDENTS' EXHIBITS:** N I L

//TRUE COPY//

P.A. TO JUDGE

JV

**ANIL K. NARENDRAN, J.**

**W.P.(C) No.31403 of 2005**

**Dated this the 09<sup>th</sup> day of July, 2015**

**JUDGMENT**

The petitioners who are conducting a tea-shop in building No.TC 13/703 of Vanchiyoor Village have filed this writ petition seeking a writ of certiorari to quash Ext.P8 order passed by the Tribunal for Local Self Government Institutions (hereinafter referred to as 'the Tribunal') dated 26.09.2005 in I.A. No.365/2005 in an unnumbered appeal and seeking a declaration that, the Proviso to Rule 8 of the Tribunal for Local Self Government Institutions Rules, 1999 (hereinafter referred to as 'the Rules') is grossly illegal, inconsistent and repugnant to Section 510 of the Kerala Municipalities Act, 1994 (hereinafter referred to as 'the Act'). The petitioners have also sought for a writ of mandamus commanding the Tribunal to take back on file Ext.P6 appeal filed under Section 509(7) of the Act read with Rules 8 and 15 of the Rules and dispose of the same on merit.

2. Going by the averments in the writ petition, the petitioners are conducting a tea-shop in the building referred to

above in Vanchiyoor Village, which they acquired on the strength of Ext.P1 sale deed No.4044/1982 dated 23.11.1982. While so, the petitioners were issued with Ext.P2 order dated 10.03.2005 of the Secretary of the 2<sup>nd</sup> respondent Corporation to demolish the temporary construction made in front of their building, on the ground that it is an illegal construction. Ext.P2 order was followed by Ext.P3 notice dated 07.04.2005.

3. Aggrieved by Exts.P2 and P3, the petitioners approached the Government by way of a representation dated 08.06.2005. The Government by Ext.P4 letter dated 10.06.2005 directed the 2<sup>nd</sup> respondent Corporation to grant sufficient time to the petitioners, in accordance with law, so as to enable them to approach the Tribunal for appropriate relief. Pursuant to Ext.P4, the petitioners were informed vide Ext.P5 notice dated 06.08.2005 issued by the 3<sup>rd</sup> respondent, the Town Planning Officer in the Corporation, that thirty days' time is granted so as to enable them to obtain appropriate orders from the Tribunal.

4. According to the petitioners, they were under the bonafide belief that by Ext.P5 notice, the 2<sup>nd</sup> respondent Corporation has permitted them to file an appeal before the Tribunal within a period of one month from the date of that

notice. Therefore, the petitioners filed Ext.P6 appeal before the Tribunal on 06.09.2005, enclosing therewith a copy of Ext.P2 order dated 10.03.2005, Ext.P4 Government letter dated 10.06.2005 and Ext.P5 notice dated 06.08.2005. Later, the petitioners filed Ext.P7 application dated 22.09.2005 before the Tribunal, for condonation of delay of 149 days in filing Ext.P6 appeal. The Tribunal by Ext.P8 order dated 26.09.2005, dismissed Ext.P7 application holding that Ext.P6 appeal filed beyond the period of limitation cannot be entertained by condoning delay, since going by the Proviso to Rule 8(3) of the Rules, the Tribunal has no authority to condone the delay of more than one month. Consequently, Ext.P6 appeal being barred by limitation was also returned to the petitioners. It is aggrieved by Ext.P8 order, the petitioners are before this Court in this writ petition seeking various reliefs.

5. Originally, the Proviso to Rule 8(3) of the Rules was not under challenge in the writ petition. Later, a challenge to the aforesaid Rule was incorporated by way of an amendment sought for, which was allowed by order dated 14.02.2006 in I.A. No.2072/2006.

6. I heard the arguments of the learned counsel for the

petitioner, the learned Senior Government Pleader appearing for the 1<sup>st</sup> respondent and also the learned Standing Counsel appearing for respondents 2 and 3.

7. The issues that arise for consideration in this Writ Petition are (i) whether the Proviso to Rule 8(3) of the Rules has to be declared as illegal and inconsistent or repugnant to Section 510 of the Act and (ii) the legality or otherwise of Ext.P8 order passed by the Tribunal by which Ext.P7 application for condonation of delay in filing Ext.P6 appeal was rejected on the ground that under the Proviso to Rule 8(3) of the Rules, the Tribunal has no authority to condone the delay of more than one month.

8. Ext.P6 appeal is one filed under Section 509(7) of the Act, challenging Ext.P2 order dated 10.03.2005 of the 2<sup>nd</sup> respondent Corporation. Though the petitioners were served with a copy of Ext.P2 order on 10.03.2005, Ext.P6 appeal was filed before the Tribunal only on 06.09.2005. The said fact is not in dispute.

9. Section 509 of the Act deals with appeal and revision. Going by Section 509(7), an appeal may be preferred to the Tribunal against any decision passed by the Council or any order

or notice issued by the Chairperson or Secretary on the basis of such decision on any matter provided under Section 310 to 508 of the Act, other than Sections 390, 391, 395, 406 and 408 or the rules, bye-laws or regulations made therein, within thirty days from the date of passing such decision, order or notice. Admittedly, Ext.P2 order dated 10.03.2005 is one issued by the Secretary of the 2<sup>nd</sup> respondent Corporation in exercise of his powers under Section 406(3) of the Act, which squarely falls within the sweep of an appealable order under Section 509(7) of the Act, for which the time limit prescribed for filing appeal is thirty days from the date of passing of such order.

10. Section 510 of the Act, which deals with limitation of time for appeal provides that, where in any case in which no time limit for presentation of an appeal has been provided under the Act, such appeal shall subject to the provisions of Section 5 of the Limitation Act, 1963, shall be presented (a) where appeal is against an order granting a licence or permission, within thirty days after the date of publication of the order on the notice-board of the office of the Municipality; and (b) in other cases, within thirty days after the date of the receipt of the order or proceedings against which the appeal is made. A bare reading of

Section 510 of the Act makes it explicitly clear that, the provisions contained therein have application only in case in which no time limit for presentation of an appeal has been provided under the Act.

11. The appellate and revisional powers of the Tribunal are governed by sub-rules (5), (6) and (7) of Section 509 of the Act, which reads thus;

- "(5) An appeal under sub-section (1) or sub-section (2) shall be filed within thirty days from the date of receipt of the order and dispose of the same by the Council or the Standing Committee, as the case may be, in the manner as it deems fit, within sixty days from the date of its receipt.
- (6) Any person may file an appeal against any notice issued or any order passed by the Secretary under Sections 390, 391, 395, 406 and 408 to the Tribunal constituted for the Local Self Government Institutions under Section 271S of the Kerala Panchayat Raj Act, 1996 (13 of 1994), within thirty days from the date of passing of such order.
- (7) An appeal may be preferred to the Tribunal, against any decision passed by the Council or any order or notice issued by the Chairperson or Secretary on the basis of such decision or any matter provided in Sections 310 to 508 other than Sections 390, 391, 395, 406 and 408 or the rules, bye-laws or regulations made thereunder, within thirty days

from the date of passing of such decisions, order or notice."

A bare reading of sub-sections (6), (7) and (8) of Section 509 of the Act make it explicitly clear that, in the case of an appeal or revision that has to be filed before the Tribunal, the time limit prescribed is thirty days from the date of order or date of its receipt, as the case may be. When the time limit for filing an appeal or revision before the Tribunal is specifically provided under sub-rules (6), (7) and (8) of Section 509 of the Act, the provisions under Section 510 of the Act cannot be made applicable or extended to such appeals or revisions.

12. It is in exercise of the powers conferred by Section 254 of the Act read with Sections 271S and 279U thereof and Section 509 of the Act, the Government have made the Tribunal for Local Self Government Institutions Rules, 1999. Rule 8 of the Rules deals with petitions to the Tribunal. Going by Rule 8(1), the petition submitted before the Tribunal shall be an appeal or revision against notice, order or proceedings of the Village Panchayat, or Municipality or its Standing Committee for Finance or the Secretary in respect of any matter specified in the schedule appended to the Rules or added to the said schedule by

the Government from time to time by notification. Rule 8(2) provides further that, if the concerned Village Panchayat or Municipality or the Standing Committee for Finance or the Secretary has not taken any decision within the prescribed time limit in case where time limit has been prescribed in the Panchayat Raj Act or the Municipality Act or in the Rules, the affected party may, in this respect, file an appeal before the Tribunal. Rule 8(3) provides further that, petitions under Rules 8 (1) and 8(2) shall be in Form 'C' and the same shall be submitted before the Tribunal within thirty days from the date of notice or the order or proceedings against which the petition is filed or within ninety days in cases where decision has not been taken within sixty days of filing appeal before the Local Self Government Institutions. The Proviso to Rule 8(3) empowers the Tribunal to admit a petition submitted within one month after the said time limit, if the Tribunal is satisfied that there is sufficient reason for not submitting the petition within the time limit.

13. As I have already noticed, the provisions under Section 510 of the Act have application only in case in which no time limit for presentation of an appeal has been provided under the

Act. When the time limit for filing an appeal or revision before the Tribunal is specifically provided under sub-rules (6), (7) and (8) of Section 509 of the Act, the provisions under Section 510 of the Act cannot be made applicable or extended to such appeals or revisions. Therefore, Section 510 of the Act and the Proviso to Rule 8(3) of the Rules operate in different fields. When the provisions under Section 510 of the Act have no application in an appeal or revision filed before the Tribunal under Section 509 (6), (7) and (8) of the Act, the petitioner cannot contend that, the Proviso to Rule 8(3) of the Rules is illegal, inconsistent or repugnant to Section 510 of the Act and liable to be declared as unconstitutional. In such circumstances, the challenge made in this regard can only be repelled.

14. The next issue that arises for consideration is as to the legality or otherwise of Ext.P8 order passed by the Tribunal. The reasons stated by the Tribunal in Ext.P8 order, in order to reject Ext.P7 application for condonation of delay is that, Ext.P6 appeal is one filed with a delay beyond 30 days, which alone can be condoned by the Tribunal in exercise of its powers under the Proviso to Rule 8(3). The petitioners would contend that, though Ext.P2 order was served on 10.03.2005, they have submitted a

representation dated 08.06.2005 before the Government, based on which, the Government by Ext.P4 letter have directed the 2<sup>nd</sup> respondent Corporation to grant them sufficient time, in accordance with law, so as to enable them to approach the Tribunal. Accordingly, the 2<sup>nd</sup> respondent Corporation by Ext.P5 notice informed the petitioners that, if no stay is obtained from the Tribunal within a period of 30 days, the Corporation will proceed with the demolition of the construction. Therefore, the petitioners would contend that, they were under the bonafide belief that 30 days time is granted from the date of Ext.P5 notice dated 06.08.2005 and accordingly, Ext.P6 appeal was filed before the Tribunal on 06.09.2005. Later, they have also filed Ext.P7 interlocutory application to condone the delay of 149 days in filing Ext.P6 appeal.

15. Admittedly, Ext.P6 appeal filed by the petitioners is one filed under Section 509(7) of the Act, which provides that, an appeal against any decision passed by the Council or any order or notice issued by the Chairperson or Secretary on the basis of such decision on any matters provided in Sections 310 to 508 of the Act other than Sections 390, 391, 395, 406 and 408 or the rules, bye-laws or regulations made therein, shall be preferred

within thirty days from the date of passing of such decision, order or notice. Therefore, the only order that can be challenged in an appeal filed under Section 509(7) of the Act is Ext.P2 order dated 10.03.2005, which is an order passed by the Secretary of the 2<sup>nd</sup> respondent Corporation in exercise of his powers under 406(3) of the Act. Neither Ext.P4 Government letter dated 10.06.2005, by which the Government have directed the 2<sup>nd</sup> respondent Corporation to grant time, in accordance with law, to the petitioners to move the Tribunal nor Ext.P5 notice issued by the 2<sup>nd</sup> respondent Corporation dated 06.08.2005, by which the petitioners were informed that, if they fail to obtain an order of stay from the Tribunal within a period of 30 days, the Corporation will proceed with the demolition process, will fall within the sweep of an appealable order under Section 509(7) of the Act. If the delay in filing the appeal is calculated with reference to Ext.P2 order passed by the 2<sup>nd</sup> respondent Corporation dated 10.03.2005, Ext.P6 appeal filed by the petitioners is one filed with a delay of 149 days, which is beyond the condonable limit provided under the Proviso to Rule 8(3) of the Rules.

16. A Division Bench of this Court in **Rermal**

**Padmanabhan v. Tribunal for Local Self Government Institutions, Tvm and another (2015 (3) KHC 406)** held that, the Tribunal for Local Self Government Institutions is not empowered to entertain an appeal after condoning the delay in excess of the period prescribed under the Proviso to Rule 8(3) of the Rules. It was also held that, it is impermissible to extend the period of limitation on equitable grounds if the statute does not permit so. Paragraph 20 of the judgment reads thus:

"**20.** In yet another decision in 'Popat Bahiru Govardhane and Others v. Special Land Acquisition Officer and Another', the Hon'ble Supreme Court emphasized the need for strict compliance with the statutory scheme and held that it is not permissible to extend the period of limitation on equitable grounds if Statute does not permit the same. Taking into account the facts, circumstances and law involved in the case before us, we are of the considered opinion that the order passed by the learned Tribunal, refusing to condone the delay in excess of the period prescribed under the proviso to Rule 8(3) and the affirmation of the same by the learned Single Judge is correct and no interference is called for."

17. In the case on hand, Ext.P7 application filed for condonation of delay in filing Ext.P6 appeal was rejected on a specific finding that, the delay sought to be condoned exceeds

the permissible period as provided under the Proviso to Rule 8(3) of the Rules. The reasoning of the Tribunal in this regard is neither arbitrary or perverse and hence, no interference on Ext.P8 order passed by the Tribunal is warranted.

In the result, this writ petition fails and the same is dismissed. No order as to costs.

sd/-  
**ANIL K. NARENDRA,**  
**JUDGE**

JV