

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

WEDNESDAY, THE 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

WP(C).No. 21240 of 2015 (D)

PETITIONER(S):

**THE TIRUR MINICIPALITY,
REPRESENTED BY ITS SECRETARY,
THRIKKANDIYOOR P.O. 676 101, TIRUR,
MALAPPURAM DISTRICT.**

**BY ADVS.SRI.P.K.VIJAYAMOHANAN
SRI.GILBERT GEORGE CORREYA
SRI.NISHIL.P.S.
SRI.ANTONY ROBERT DIAS**

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
LOCAL SELF GOVERNMENT DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.**
- 2. ABDUL SALIM K.C.,
KANAKATH CHIRAYIL HOUSE, THEKKUMMURI - 676 105, TIRUR,
MALAPPURAM DISTRICT.**

**R2 BY ADV. SRI.K.RAMACHANDRAN
R2 BY ADV. SMT.M.C.BINDUMOL
R1 BY GOVERNMENT PLEADER SMT.LILLY LESLIE**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

AD

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P-1: TRUE COPY OF NOTIFICATION NO.B.A. 391/97-98 IN THE GAZETTE DATED 6.10.1998.
- EXT.P-2: TRUE COPY OF COMMUNICATION NO.BA./232/12 DATED 29.10.2012 OF THE MUNICIPALITY TO THE 2ND RESPONDENT
- EXT.P-3: TRUE COPY OF COMMUNICATION NO.PW3. 13586/13-B.A./232/12 DATED 24.5.2013 OF THE MUNICIPALITY TO THE 2ND RESPONDENT
- EXT.P-4: TRUE COPY OF THE NOTICE NO.B.A.232/12 DATED 20.12.2013 OF THE MUNICIPALITY TO THE 2ND RESPONDENT
- EXT.P-5: TRUE COPY OF THE APPEAL MEMORANDUM DATED 16.1.2014 FILED BY THE 2ND RESPONDENT BEFORE THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS.
- EXT.P-6: TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE MUNICIPALITY IN THE APPEAL BEFORE THE TRIBUNAL.
- EXT.P-7: TRUE COPY OF THE ORDER DATED 3.2.2015 OF THE TRIBUNAL IN APPEAL NO.75/2014 FILED BY THE 2ND RESPONDENT

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A TO JUDGE

AD

P.V.ASHA, J.

W.P.(C).No.21240 of 2015

Dated this the 14th day of October, 2015

JUDGMENT

The Municipality has filed this writ petition challenging Ext.P7 order passed by the Tribunal for Local Self Government Institutions, Thiruvananthapuram (for short 'the Tribunal') in Appeal No.75/2014, by which the Municipality is directed to re-consider the application submitted by the 1st respondent for building permit, without reference to its earlier decision.

2. I heard the learned Counsel appearing for the petitioner-Municipality as well as the 1st respondent, who was the applicant for the permit.

3. It is seen that the Tribunal has passed the order, following the judgment dated 15.02.2010 of this Court in W.P(C) No.4672/2010. There the Municipality challenged the order passed by the Tribunal in an appeal against the order rejecting application for building permit on the very same ground i.e based on the resolution taken by the

Municipality not to permit construction of buildings near the trenching ground of its waste disposal plant. This Court did not interfere with the order of the Tribunal. In the present case also, the reason stated for rejection is that the proposed construction is within 200 metres of the trenching ground of the Municipality, as can be seen in Ext.P2 and Ext.P6 proceedings of the Municipality.

4. It is pointed out by the learned Counsel for the respondent that the Municipality has already issued building permit in that case, in implementation of the order passed by the Tribunal, which was affirmed in the judgment in W.P(C) No.4672/2010. Therefore, there is no reason for adopting a different attitude in the case of the respondent herein.

5. The learned Counsel for the Municipality points out that the proposed site is a reclaimed land and is shown as 'Nilam' in the revenue records and the Tribunal has not considered that aspect. However the learned Counsel for the 1st respondent pointed out that in view of

the Act 12 of 2015 in the Kerala Finance (No.2) Act, 2015, published in the gazette dated 29.7.2015, the Kerala Conservation of Paddy land and Wetland Act, 2008 has been amended inserting Section 3A which reads as follows:

“3A. Power to regularise the conversion or reclamation by recovering a fee equal to 25 percent of the fair value of the land notified under Section 28A of the Kerala Stamp Act, 1959.”

Therefore that objection is one which can be resolved in the light of the above provision. What the Tribunal has directed the Municipality in Ext.P7 is to reconsider the application without reference to the decision of the Municipality not to grant permit for construction of building within the limit of the trenching ground. In the above circumstances, I do not find any reason to interfere with the order passed by this Tribunal.

The writ petition is accordingly dismissed.

Sd/-
P.V.ASHA
Judge

AD