

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 27TH DAY OF JULY 2015/5TH SRAVANA, 1937

WP(C).No. 22504 of 2015 (K)

PETITIONER(S) :

**MR.JOJO N.J,
THE MANAGER, M/S.SML MOTORS,
SML BUILDING, TOLL JUNCTION, POOKATTUPADI ROAD,
EDAPPALLY, COCHIN- 682 024.**

BY ADV. SRI.B.S.SURESH KUMAR

RESPONDENT(S) :

**THE SECRETARY,
KALAMASSERY MUNICIPALITY,
ERNAKULAM DISTRICT- 682 022.**

BY ADV. SRI.M.K.ABOOBACKER, S.C

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 27-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

WP(C).No. 22504 of 2015 (K)

APPENDIX

PETITIONER(S)' EXHIBITS :

**EXHIBIT P1: TRUE COPY OF THE VACATION NOTICE NO.TP 4066/2015
DATED 08.07.2015 ISSUED BY SECRETARY KALAMASSERY
MUNICIPALITY.**

**EXHIBIT P2: TRUE COPY OF THE NOTICE DATED 09.06.2015 IS ISSUED TO
THE PETITIONER SCHEDULING THE HEARING ON 16.06.2015.**

**EXHIBIT P3: TRUE COPY OF THE CONFIRMATION ORDER DATED 16.05.2015
ISSUED BY SECRETARY KALAMASSERY MUNICIPALITY.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No.22504 of 2015

Dated this the 27th day of July, 2015.

JUDGMENT

The petitioner is aggrieved by Ext.P1 by which the petitioner was asked to vacate the premises where he is conducting business within a period of seven days.

2. The petitioner herein is functioning as a vehicle distributor in the address shown in this petition. The petitioner alleges that as per Ext.P1, the petitioner is directed to demolish the unauthorized construction made close to compound wall of the property owned by one Mr. Abdul Sathar in 10 meters length using G.I. Sheet restricting free flow of air and also the toilet constructed close to the said compound wall. The petitioner further points out that the alleged compound wall is not owned by Mr. Abdul Sathar. The petitioner points out that the complaint was filed without impleading William Varghese, the original owner of the property, wherein the petitioner is running the vehicle

distributing business. From Ext.P1 order, itself it could be seen that the hearing dated is scheduled on 16.06.2015, it is alleged. However, the confirmation order was passed on 16.05.2015 ie, prior to the date of hearing. The petitioner alleges that on receipt of the interim order dated 04.04.2015, the petitioner submitted an objection dated 16.04.2015 stating the above facts. Since the hearing was not conducted, a representation was given on 2.06.2015 to solve the issue. Thereafter Ext.P2 notice dated 09.06.2015 was issued to the petitioner scheduling the hearing on 16.06.2015. The petitioner appeared before the Secretary of the Kalamassery Municipality and appraised the above said facts and requested him to direct the said Abdul Sathar to implead the original owner of the property in the complaint. The petitioner was directed to file an application to that effect and he was informed that the next date of hearing would be intimated. The copy of the complaint was not given. The Secretary of the respondent municipality has informed that the same would be

served on next hearing date. Later, the above said order dated 08.07.2015 was served upon the petitioner on 17.07.2015 along with Ext.P3 confirmation order dated 16.05.2015. After getting the impugned order the petitioner approached the Secretary Kalamassery Municipality and sought for the records pertaining to the said order such as copy of the complaint and other documents produced by the complainant to substantiate his claim. Since the Secretary refused to give the reason, the petitioner has filed an application under the provisions of RTI Act to obtain the same. However, the same also did not evoke any response. The order which was issued is a vague as to survey Number, Village name, extent of land and the number of the building etc. The petitioner further alleges that he was given to understand that the above said Mr. Abdul Sathar who is having political support and money power by using his influence has managed to issue the above said illegal order. The petitioner points out that either the secretary or the officer in charge of the office is supposed to

enquire into the true facts and circumstances before passing the order. The title, possession and ownership of the alleged compound wall were not ascertained by the Secretary. The petitioner alleges that he is functioning in the said building from the year 2000. He also alleges that he has not made any alterations, additions, modifications to the existing building. The owner of the building has purchased the property with the existing building. The building was constructed prior to 2000. It is also alleged that Kerala Municipality Building Rules has been enacted in the year 1999 and it was notified to Kalamassery Municipality much after that. Therefore, KMBR is not applicable to the petitioner's building. As per section 509 (6) the Kerala Municipality Act, 1994 a person aggrieved by the notice or order passed by the Secretary under section 406 of the said Act can file an appeal against the same before the Tribunal for Local Self Government Institutions under section 271 S of the Kerala Panchayath Raj Act, 1996 within 30 days from the date of passing of the such order. In this regard it is

stated that Ext.P1 notice was passed on 8.07.2015 and was communicated on 17.07.2015. As per the statute, the petitioner is having time till 17.08.2015 to challenge the same. However, the respondent has threatened the petitioner with demolition of the same within 7 days from 17.07.2015. The same is illegal and arbitrary. The principles of natural justice was violated. It is with this background that the petitioner has come up before this Court.

3. I have heard the learned counsel for the petitioner and the learned standing counsel for the respondent municipality in the matter.

4. The learned counsel for the petitioner would admit that the impugned order is appealable and the petitioner is intending to file an appeal. However, he has approached this Court only on account of the time limit prescribed in Ext.P1.

Therefore, the writ petition is disposed of permitting the petitioner to approach the competent forum against Ext.P1 within the time specified. As there is imminent threat against

the petitioner, the operation of Ext.P1 shall be kept in abeyance till the petitioner approaches the competent forum within the period of limitation.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.