

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

WP(C).No. 27978 of 2008 (E)

PETITIONERS:

1. THE KAYAMKULAM MUNICIPALITY,
REPRESENTED BY ITS SECRETARY, KAYAMKULAM - 690 502.

2. KAYAMKULAM MUNICIPAL COUNCIL,
REPRESENTED BY ITS CHAIRMAN, KAYAMKULAM MUNICIPALITY
KAYAMKULAM - 690 502.

BY ADVS.SRI.R.RAYA SHENOY
SRI.R.PRASANTH KUMAR

RESPONDENTS :

1. K.D.GOPALAKRISHNAN, S/O.DAMODARAN,
AGED 60, VELIYILVEETIL, ERUVA MURI
PATHIYOOR VILLAGE, ALLEPPEY DISTRICT.

2. THULASI, W/O.K.D.GOPALAKRISHNAN,
AGED 52, VELIYILVEETIL, ERUVA MURI
PATHIYOOR VILLAGE, ALAPPUZHA.

3. THE TRIBUNAL FOR LOCAL SELF
GOVERNMENT INSTITUTIONS, TRIDA BUILDING
MEDICAL COLLEGE P.O., THIRUVANANTHAPURAM - 11.

R1 & 2 BY ADV. SRI.MILLU DANDAPANI
R3 BY GOVERNMENT PLEADER SRI.ABHIJETT LESSIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
17-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS :

EXT.P1 : COPY OF THE ORDER DATED 18.11.06 IN APPEAL NO.374/06 OF THE 3RD RESPONDENT

EXT.P2 : COPY OF THE JUDGMENT DATED 21.02.07 IN WP(C)NO.5877/07-Y OF THIS HIGH COURT.

EXT.P3 : COPY OF THE JUDGMENT DATED 07.09.07 IN CONTEMPT CASE (C) NO.763/2007 OF THIS HIGH COURT

EXT.P4 : COPY OF THE ORDER DATED 08.04.08 OF THE OMBUDSMAN FOR LOCAL SELF GOVERNMENT INSTITUTIONS IN O.P.NO.542/2007

EXT.P5 : COPY OF THE NOTICE DATED 15.02.08 ISSUED BY THE 1ST PETITIONER'S SECRETARY TO RESPONDENTS 1 & 2

EXT.P6 : COPY OF THE ORDER DATED 13.05.08 OF THE 3RD RESPONDENT IN APPEAL NO.138/08 FILED BY RESPONDENTS 1 AND 2

EXT.P7 : COPY OF THE LETTER DATED 7.5.08 OF THE CHAIRMAN OF 1ST PETITIONER TO ITS SECRETARY

EXT.P8 : COPY OF THE PROCEEDINGS OF THE 2ND RESPONDENT DATED 15.05.08 CONTAINING ITS RESOLUTIONS

EXT.P9 : COPY OF THE ORDER DATED 07.06.2008 OF THE 1ST PETITIONER'S SECRETARY REJECTING THE APPLICATION OF RESPONDENTS 1 AND 2 FOR BUILDING PERMIT

EXT.P10 : COPY OF THE APPEAL NO.301/08 FILED BY RESPONDENTS 1 AND 2 BEFORE THE 3RD RESPONDENT

EXT.P11 : COPY OF THE ORDER DATED 30.08.08 IN APPEAL NO.301/08 OF THE 3RD RESPONDENT

RESPONDENTS' EXHIBITS :

ANNEXURE R1(a) : COPY OF THE POWER OF ATTORNEY

ANNEXURE R1(b) : COPY OF THE MINUTES OF THE 2ND PETITIONER DATED 25.7.2006

ANNEXURE R1(c) : COPY OF THE REPORT OF THE SUB COMMITTEE DATED 5.8.2006

ANNEXURE R1(d) : COPY OF THE REPORT OF THE ENGINEER

ANNEXURE R1(e) : COPY OF THE ADVERTISEMENT PUBLISHED BY THE 1ST PETITIONER IN THE MANGALAM DAILY DATED 17.2.2008

/TRUE COPY/

P.S. TO JUDGE

K. SURENDRA MOHAN,J.

W.P(C) NO. 27978 OF 2008

Dated this the 17th March, 2015.

JUDGMENT

The petitioner, Kayamkulam Municipality has filed this writ petition challenging Ext.P11 order of the Tribunal for Local Self Government Institutions ('Tribunal' for short), Thiruvananthapuram in Appeal No: 301/2008. As per the impugned order the Tribunal has set aside Ext.P9 proceedings of the Secretary of the Municipality rejecting an application for building permit submitted by respondents 1 and 2. The reason stated in Ext.P9 is that, the Municipal Council had taken a decision to acquire the property in question for establishing the Municipal Central Private Bus Stand. It is also stated that, preliminary steps for acquiring the land had also been initiated. As per Ext.P11, Ext.P9 has been set aside and the Secretary has been directed to issue the building

permit sought for by respondents 1 and 2 within a period of fifteen days. It is the said order that is under challenge in this writ petition.

2. According to Adv.Raya Shenoï who appears for the petitioner, the proposal to acquire the particular property for establishing the Central private bus stand of the Municipality initiated for the first time in the year 2006. Provision was also made in the budget of the Municipality for the said purpose. However, subsequently, due to paucity of funds, the Municipality decided to drop the proposal. The decision of the Municipality was the subject matter of challenge before the Tribunal, in appeal No:74/2006. By Ext.P1 order, the property of respondents 1 and 2 was also directed to be considered while proceeding with the proposal to establish the bus stand. Ext.P1 order was passed, on an appeal filed by one of the local residents of the Municipality.

3. In the meantime another resident had moved this Court by filing WPC 5877/2007. The said writ petition was

disposed of by Ext.P2 judgment, directing the present property also to be considered while proceeding with the proposal to establish the bus stand. It was in the above circumstances that the property was purchased by respondents 1 and 2.

4. After purchase of property, respondents 1 and 2 sought for permission to make a construction. The same was rejected by Ext.P5. As per Ext.P6 order in appeal 138/2008, the Tribunal set aside Ext.P5 and directed fresh consideration of the application for building permit. However, immediately after Ext.P6 order the Municipality by Ext.P8 took a decision to acquire the property of respondents 1 and 2 for establishing the bus stand. It was also decided to reject the application for building permit submitted by respondents 1 and 2. It was in accordance with Ext.P8 resolution that Ext.P9 was issued.

5. Heard. This writ petition was admitted on 20.10.2008. According to the counsel for the Municipality, no building permit has been issued to respondents 1 and 2 as

directed in Ext.P11. It is not in dispute that, no notification has been issued under the Land Acquisition Act, to acquire the property of respondents 1 and 2. Since no proceedings for acquisition of the land have been initiated till date, there is no justification for the contention that the Panchayat is proposing to acquire the property of respondents 1 and 2. It has been held by the Hon'ble Supreme Court that though it is permissible for local bodies to identify properties for implementation of development projects, unless such properties are acquired by prompt follow up land acquisition proceedings no restriction on user of such land could be placed on the ground that the property is proposed to be acquired. The decisions in *Giri v. State of Kerala* 2013(2)KLT 443(DB) and *Hassan v. Corporation of Calicut* [1996(2)KLT 839] are also to the same effect. In view of the settled position of law, I do not find any grounds to interfere with Ext.P11 order of the Tribunal or to set aside the same as sought for in this writ petition. The counsel for the

petitioners submits that, they have been pursuing efforts to purchase the property of respondents 1 and 2 by negotiated purchase. They may do so.

In view of the above, I do not find any grounds to grant any of the reliefs sought for in this writ petition. The same is therefore dismissed.

Sd/-
K. SURENDRA MOHAN
Judge

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