

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE

TUESDAY, THE 23RD DAY OF JUNE 2015/2ND ASHADHA, 1937

W.P.(C).No. 40408 of 2003 (I)

PETITIONER:

**RAY CONSTRUCTIONS LTD.,
ENGINEERS & CONTRACTORS,
RAY BHAVAN, N.H. BYE-PASS,
THYKODAM, KOCHI - 682 019.**

**BY ADVS. SRI. JOSE PALLATTUKARAN
SRI. VELLAYANI SUNDARARAJU**

RESPONDENT:

**SECRETARY,
ALUVA MUNICIPALITY,
MUNICIPAL OFFICE, ALUVA.**

**BY ADV. SRI. V. M. KURIAN
SRI. A.V. THOMAS
SRI. MATHEW B. KURIAN
SRI. K.T. THOMAS**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P-1: TRUE COPY OF DEMAND NOTICE DATED 19.05.2003 ISSUED BY THE RESPONDENT TO THE PETITIONER.

EXT.P-2: TRUE COPY OF REPLY DATED 27.05.2003 SENT BY THE PETITIONER.

EXT.P-3: TRUE COPY OF THE DEMAND NOTICE DATED 03.06.2003 SENT BY THE RESPONDENT TO THE PETITIONER.

EXT.P-4: TRUE COPY OF THE REPLY TO EXT.P3 SENT BY THE PETITIONER TO THE RESPONDENT.

EXT.P-5: TRUE COPY OF NOTICE NO. E14948/03 DATED 11.11.2003 ISSUED BY THE RESPONDENT.

EXT.P-5(a): TRUE COPY OF ESTIMATE OF PROPOSED WORK DATED 13.11.2003 ISSUED BY THE 1ST RESPONDENT.

EXT.P-6: TRUE COPY OF APPEAL DATED 22.11.2003 FILED BY THE PETITIONER BEFORE THE APPELLATE AUTHORITY.

EXT.P-6(a): TRUE COPY OF THE STAY PETITION DATED 22.11.2003 FILED ALONGWITH EXT. P6 APPEAL.

RESPONDENT(S)' EXHIBITS - NIL

//TRUE COPY//

PA TO JUDGE

A.M.SHAFFIQUE, J.

W.P.(C)No.40408 of 2003

Dated this the 23rd day of June, 2015

JUDGMENT

The petitioner is a company engaged in the business undertaking contract works. They challenged Exts.P1, P3 and P5 demand notice is issued by the Aluva Municipality alleging that certain roads have been damaged on account of use of heavy vehicles. The petitioner also submitted that they have preferred an appeal before the Municipal Council which was pending consideration. During the pendency of the appeal, steps were taken to recover the amount demanded. Hence this writ petition is filed seeking to quash the demand notices and for a declaration that the respondent Municipality has no power or authority to make such demands.

2. Counter affidavit has been filed by the respondent inter alia stating that the roads were substantially damaged on

account of heavy vehicles being used by the petitioner. A joint inspections have been conducted, the damage portions of the road have been measured and the cost of repairs and damages have been computed by the Municipality in the presence of officers of the petitioner company. The officers of the petitioner also had agreed to compensate the Municipality for the damage caused by the use of heavy vehicles through the said road.

3. The learned counsel submits the appeal Ext.P6 has already been dismissed long back. Since the demand notice has become final on account of dismissal of the appeal filed by the petitioner, I do not think that this Court will be justified in interfering with the demand notice at this stage of proceedings. The petitioner's remedy was to challenge the appellate order. As matters stand now, there is no challenge to the subsequent appellate order.

4. In regard to the right of the Municipality to demand the amount are concerned the learned counsel refers to Section 358 of the Municipality Act. I am not going to decide on the

right of the Municipality to recover the said amount in terms of the demand notices especially on account of the fact that the appeal filed by the petitioner stands dismissed.

In the result, there is no merit in the above writ petition. Therefore, this writ petition is dismissed.

Sd/-
A.M.SHAFFIQUE
JUDGE

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//TRUE COPY//

P.A. TO JUDGE