

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

WP(C).No. 31547 of 2012 (P)

PETITIONER:

**N.M.MOHANAN, AGED 53 YEARS
S/O.NARAYANAN, 41/3350, YASORAM VICTORY TOWER
BANERJI ROAD, ERNAKULAM.**

BY ADV. SRI.JOHNSON MANAYANI

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY
DEPARTMENT OF LOCAL SELF GOVERNMENT, SECRETARIAT
TRIVANDRUM.**
- 2. CORPORATION OF KOCHI
O/O.KOCHI CORPORATION, ERNAKULAM 682 011
REPRESENTED BY ITS SECRETARY.**
- 3. SECRETARY
CORPORATION OF KOCHI, O/O.KOCHI CORPORATION
ERNAKULAM 682 011.**
- 4. THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS,
TRIVANDRUM, REPRESENTED BY ITS SECRETARY.**
- 5. SREEDHARA VADHYAR
M/S. YASORAM CONSTRUCTIONS COMPANY, CONVENT JUNCTION
ERNAKULAM.**

**R2,R3 BY ADV. SRI.S.CHANDRASENAN,SC,COCHIN CORPORATIO
R5 BY ADV. SRI.S.R.DAYANANDA PRABHU
BY GOVERNMENT PLEADER SHRI.NOUSHAD THOTTATHIL
BY SRI.P.K.SOYUZ,SC,COCHIN CORPORATION**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21-05-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S) EXHIBITS

- EXHIBIT P1. TRUE COPY OF THE FINAL ORDER OF THE THIRD RESPONDENT DATED 1.11.2004.
- EXHIBIT P2. TRUE COPY OF THE JUDGMENT IN WPC NO.35088 OF 2004 DATED 5.1.2005 OF THE HONOURABLE HIGH COURT.
- EXHIBIT P3. TRUE COPY OF THE ORDER IN APPEAL NO.6 OF 2005 DATED 31.3.2005 OF THE 4TH RESPONDENT.
- EXHIBIT P4. TRUE COPY OF THE ORDER DATED 20.07.2005 OF THE THIRD RESPONDENT.
- EXHIBIT P5. TRUE COPY OF THE ORDER IN APPEAL NO.627 OF 2005 OF THE 4TH RESPONDENT.
- EXHIBIT P6. TRUE COPY OF THE JUDGMENT IN WPC NO.35444 OF 2005 OF THIS HONOURABLE COURT DATED 13.3.2007.
- EXHIBIT P7. TRUE COPY OF THE ORDER OF THE THIRD RESPONDENT DATED 18.6.2009.
- EXHIBIT P8. TRUE COPY OF THE ORDER IN APPEAL NO.609 OF 2009 DATED 22.9.2009.

RESPONDENTS EXHIBITS:

- EXHIBIT R5(A): COPY OF SHOW CAUSE NOTICE DATED 6.3.2013 ISSUED BY COCHIN CORPORATION TO THE PETITIONER.

/TRUE COPY/

P.A. TO JUDGE

SKV

P.V.ASHA, J.

=====

W.P.(C). No.31547 OF 2012

=====

Dated this the 21st day of May, 2015

JUDGMENT

This writ petition is filed by the owner of a shop room No.41/285A(3) in a building complex called Yesoram Victoria Tower. The 5th respondent is the builder of the building who also owns rooms therein. Action was initiated by the Secretary of Cochin Corporation against the petitioner as against the unauthorised constructions, carried out by him, on the eastern side of his shop room. After issuing a show cause notice, Ext.P1 order dated 1.11.2014, was issued under Rule 24(5) of the Kerala Building Rules 1999, directing the petitioner to demolish the same. The petitioner challenged this order before the Tribunal for Local Self Govt Institutions, and thereafter he approached this Court in W.P.(C)No.35088/2004. This Court by Ext.P2 judgment directed the Tribunal to dispose of the appeal filed by the petitioner with notice to all the parties. Thereafter, by Ext.P3 order, the Tribunal for Local Self Government Institutions allowed the appeal with a direction to the Secretary of Corporation of Cochin to take a decision within a period of 30 days after giving

an opportunity of hearing to the petitioner and the 5th respondent herein, who was the additional 2nd respondent therein. It was also directed to consider the possibility of regularisation of the structure invoking powers under the proviso to Section 406(i)(iii) of the Kerala Municipality Act.

2. Thereafter by Ext.P4 order dated 20.7.2005, the Secretary, Cochin Corporation issued fresh orders directing the petitioner to demolish the unauthorised construction within a period of 7 days. The petitioner again approached the Tribunal for Local Self Government Institutions in Appeal No.627/2005. By Ext.P4 order dated 1.11.2005, the appeal was dismissed. Aggrieved by these orders, the petitioner approached this Court in W.P.(C) No.35444/2005 and this Court by Ext.P6 judgment dated 13.3.2007 dismissed the Writ Petition, upholding the orders passed by the Corporation. While dismissing the writ petition, this Court directed that the Secretary of the Corporation shall issue notice, with respect to the other unauthorised constructions/violations, to all persons who have acquired ownership over different portions of Victoria Towers including the writ petitioner and the original land owner. Thereafter the Corporation issued another order on 18.6.2009 which is

produced as Ext.P7, after hearing all the affected parties. By Ext.P7 order, the Corporation again directed the petitioner to demolish the unauthorised constructions. Simultaneously, the 5th respondent as well as one Smt.Subi Brown –another occupant, were also directed to demolish the unauthorised constructions carried out by them as mentioned therein. By Ext.P8 order, the Tribunal partly allowed the appeal. The operative portion of Ext.P8 judgment reads as follows:–

“The challenge against Exhibit P11 will fail and the writ petition will stand dismissed declining the reliefs sought for. However, as regards the violations which have been reported to this court as per the report dated 7.7.2006 (Exhibit R2(a), even as I dismiss the writ petition, there will be a direction to the Secretary of the Corporation of Cochin to issue notice not only to the builder but also to all persons who have acquired ownership over different portions of Victoria Towers including the writ petitioner and the original land owner who was the appellant before the Tribunal for Local Self Government Institutions and take a decision. It is open to the 4th respondent to file application for regularisation regarding those constructions and decision will be taken by the Secretary of the Corporation on that application also with notice to all the above persons. Decision as directed above will be taken within 6 months of receiving copy of the judgment”.

3. Order No. MOPI/24425/04 dated 20.7.2005 of the Secretary, Cochin Corporation, is the order which is produced as Ext.P5 in this writ petition and stated to have become final,

consequent to the dismissal of Appeal 627/2005 and W.P.(C) No.35444/2005

4. The petitioner has approached this Court, praying for a declaration to the respondents not to proceed against him pursuant to Ext.P7 order, in view of Ext.P8 order of the Tribunal.

5. The corporation has filed counter affidavit saying that they are taking action in compliance of the directions issued by the Tribunal. It is stated that since the 5th respondent and Smt.Subi Brown have made unauthorised construction on the front portion, rear portion, and side portion of the building, corporation initiated steps to remove them. It is further stated that petitioner has made unauthorised construction on the eastern side of the building within the space of 2 Metres breadth and 2.8 Metres height, a tress work with sealing and also fitted with rolling shutter and utilised it as a sales counter of road farma, in violation of Rule 24(5) of the Kerala Municipal Building Rules 1999; the Corporation is taking earnest efforts to remove all illegal constructions. At the time of admission of this writ petition this court passed an interim staying demolition of construction and the same continues to be in force.

6. In the counter affidavit of the 5th respondent it is

stated that the building occupied by the petitioner is part of the building viz., Yesoram Victoria Tower, which consists of ground plus 6 floors. It is stated that as per the plan of the Cochin Corporation it is mandatory to leave vacant area on all four sides of the building. The said area is left as common areas for common access and use of all the occupant/owners of building; common areas left on northern and western side is absolutely necessary for free flow of vehicles; the petitioner unauthorisedly constructed a structure having 1.60m height, 21.10m length and 2m width on the eastern side of the building in the open space. It is also stated that the 5th respondent has already complied with the directions issued by the Corporation and demolished the constructions which was unauthorised by the Corporation.

7. I heard the learned counsel Shri. Johnson Maniyani, for the petitioner; Sri. Noushad Thottathil the learned Govt. Pleader for 1st respondent and Sri. S.R. D. Prabhu for 5th respondent. According to the petitioner he has been subjected to discriminatory treatment, by taking action against him alone, while the unauthorised activities and violations by others continue. On the other hand learned counsel for the 5th respondent pointed out that pursuant to the notice issued to

them, they have already demolished the unauthorised constructions. At the same time it is pointed out that the petitioner has been continuing in the unauthorised construction on the strength of the interim order passed by this court. 5th respondent has produced R5(a) by which the corporation issued show cause notice directing to demolish certain constructions carried out by him for scooter parking and toilet.

8. When the order passed by the Corporation directing to demolish the unauthorised construction, has been upheld in Ext.P5 order of the Tribunal in Appeal No.627/2005 and by this court in W.P.(C)No.35444/2005 and when there is a further direction by the Tribunal for Local Self Government Institutions to execute Ext.P4 Order (MOP1/24425/04 of the Secretary), the petitioner cannot continue to retain the unauthorised constructions. The petitioner does not have any right to have the facilities for unauthorised constructions. The appropriate authorities have already found statutory violation in the constructions which are directed to be demolished. In case there are other violations at the instant of others, it is up to the Corporation to take action in case there is any further violation, in accordance with law. Such violations, if any will not enable the

petitioner to escape from the orders for demolition.

In these circumstances, no relief can be granted to the petitioner. The writ petition fails and is dismissed.

Sd/-
P.V.ASHA, JUDGE

SKV