

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 28TH DAY OF OCTOBER 2015/6TH KARTHIKA, 1937

WP(C).No. 29686 of 2014 (I)

PETITIONER(S) :

1. **ABDUL KALAM, AGED 59 YEARS,
S/O.ABDUL RAHIMAN, CHANDATHOPPIL HOUSE, MANJALI
MANNAM P.O., NORTH PARUR, ERNAKULAM DISTRICT.**
2. **SABITHA MOHAMMEDALI, AGED 38 YEARS
W/O.MOHAMMADALI, AZHIKKAKATHU HOUSE, ALANTHURUTHU,
VADAKKEKARA P.O., NORTH PARUR, ERNAKULAM DISTRICT.**

**BY ADVS.SRI.R.MURALEEKRISHNAN
SMT.T.M.RESHMY**

RESPONDENT(S) :

1. **NORTH PARUR MUNICIPALITY
REPRESENTED BY ITS SECRETARY, NORTH PARUR P.O.,
ERNAKULAM-683 513.**
2. **THE SECRETARY
NORTH PARUR MUNICIPALITY, NORTH PARUR P.O.,
ERNAKULAM-683 513.**
- * **Addl.R3. IMPEADED**
3. **STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT
LOCAL SELF GOVERNMENT DEPARTMENT (LSGD)
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM
PIN - 695 001.**
- * **ADDL.R3 IMPEADED AS PER ORDER DATED 12.01.2015 IN IA 266/15.**

**R1 & R2 BY ADV. SRI.C.S.AJITH PRAKASH,SC,PARAVUR MUNICIPALITY
R3 BY SRI.R.PADMARAJ, SR. GOVERNMENT PLEADER**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
28-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

AMV

WP(C).No. 29686 of 2014 (I)

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXT.P1. : COPY OF THE LICENSE FEE RECEIPT DATED 28/2/2014 ISSUED TO THE 1ST PETITIONER.**
- EXT.P2. : COPY OF THE LICENSE FEE RECEIPT DATED 28/2/2014 ISSUED TO THE 2ND PETITIONER.**
- EXT.P3. : COPY OF THE RENT RECEIPT DATED 13/10/2014 ISSUED TO THE 1ST PETITIONER.**
- EXT.P4. : COPY OF THE RENT RECEIPT DATED 13/10/2014 ISSUED TO THE 2ND PETITIONER.**
- EXT.P5. : COPY OF THE ORDER DATED 11/5/2001 ISSUED TO THE 1ST PETITIONER.**
- EXT.P6. : COPY OF THE ORDER DATED 11/5/2001 ISSUED TO THE 2ND PETITIONER.**
- EXT.P7. : COPY OF THE NOTICE DATED 10/10/2014 ISSUED TO THE 1ST PETITIONER.**
- EXT.P8. : COPY OF THE REPLY DATED 20/10/2014 SUBMITTED TO THE 2ND PETITIONER.**
- EXT.P9. : COPY OF THE NOTICE DATED 7/11/2014 ISSUED TO THE 1ST PETITIONER.**

RESPONDENT(S)' EXHIBITS :

- EXT.R1(a) : COPY OF THE CIRCULAR NO.60203/RA1/2014/LSG DATED 18.10.2014.**

/TRUE COPY/

PA.TO JUDGE

AMV

A.M.SHAFFIQUE, J.

.....
W.P.(C) No.29686 of 2014 (I)

.....
Dated this the 28th day of October, 2015

JUDGMENT

The petitioners have approached this Court challenging Exts.P7 and P9 notices issued by the 2nd respondent, demanding the demolition of certain unauthorised construction, which the petitioners have constructed in building No.V/574.

2. The main contention urged on behalf of the petitioners is that earlier there was a similar demand regarding this matter. At that time, they preferred an appeal before the Government and have obtained an interim order of status quo (marked as Exts.P5 and P6 dated 11.05.2001). According to them the appeal is still pending and under such circumstances, the Municipality is not entitled to proceed with demolition of this structures.

3. Perusal of Ext.P9 indicates that petitioners have relied upon Exts.P5 and P6, and contended that since the appeal is not disposed of so far, no further action could be taken in the matter. It is despite such contention that Ext.P9 came to be issued.

4. The learned counsel appearing for the Municipality submits that the petitioners have made unauthorised construction in their building, which is liable to be demolished at the earliest. The construction had been made without permission and without complying with the provisions of the Kerala Municipality Building Rules. With reference to Exts.P5 and P6, it is submitted that their enquiry did not reveal pendency of any such appeal and so far they have not received any notice regarding the said appeal or the stay order and no documents have been given by the petitioners in that regard.
5. Though, the learned Government Pleader was asked to file a statement regarding the pendency of the appeal before the Government by virtue of an interim order dated 22.01.2015, the learned Government Pleader submits that, he is helpless in the matter as no such information is received.
6. Having regard to the aforesaid factual situation, I am of the view that, the appeals which are referred in Exts.P5 and P6 having been pending for the last 13 or 14 years, no useful purpose will be served to the petitioners to prosecute the said appeal and it has to be treated the appeal had become otiose and therefore no rights can accrue to the petitioners based on Exts.P5 and P6. However, having regard to the fact that, the Municipality has a

contention that the petitioners have made unauthorised constructions, it shall be open for the Municipality to take fresh steps against the petitioners, after giving proper notice to them in accordance with the procedure prescribed. In the result, this writ petition is allowed as under :

- i. Exts.P7 and P9 are set aside.
- ii. Appeals referred in Exts.P5 and P6 are declared to be otiose and there is no necessity to prosecute the matter.
- iii. It shall be open for the Municipality to issue fresh notice to the petitioners for any unauthorised construction and take necessary steps in accordance with law.
- iv. It is made clear that, sufficient opportunity should be given to the petitioners to file objection, if any, and take other steps in accordance with law.