IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

WP(C).No. 34392 of 2014 (Y)

PETITIONER :

C.P. SIVARAJ, AGED 63 YEARS,
S/O. C.K ANANDAN, SIVASAKTHI, KAKKAD P.O.,
KANNUR.

BY ADV. SRI.L.RAJESH NARAYAN

RESPONDENT(S):

1. **STATE OF KERALA,**
   REPRESENTED BY SECRETARY
   LOCAL SELF GOVERNMENT DEPARTMENT, SECRETARIAT,
   THIRUVANANTHAPURAM -695 001

2. **DISTRICT COLLECTOR, KANNUR-670 001**

3. **VILLAGE OFFICER, KANNUR- 670 001**

4. **KANNUR MUNICIPALITY**
   REPRESENTED BY SECRETARY
   MUNICIPAL OFFICE, P.B NO.32, KANNUR -670 001

5. **SECRETARY,**
   KANNUR MUNICIPALITY, MUNICIPAL OFFICE,
   P.B NO.32, KANNUR- 670 001

6. **TOWN SURVEYOR,TALUK OFIFCE,**
   KANNUR- 670 001

7. **TAHSILDAR,**
   TALUK OFFICE, KANNUR-670 001

8. **P.T SAFIYA, D/O.ABDULRAHIMANKUTTY,**
   THOTTATHIL HOUSE,THAYATHERU ROAD,
   KANNUR- 670 001

R1 TO R3, R6 & R7 BY SR GOVERNMENT PLEADER SRI.VIJU THOMAS
R4 & R5 BY SRI.K.K.CHANDRAN PILLAI,SENIOR ADVOCATE
ADVS. SRI.THOMAS JAMES MUNDACKAL
SMT.K.V.SHENU
SRI.ARUN ANTONY
R8 BY ADVS. SRI.SHAJI THOMAS
SRI.K.BABU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sts

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 TRUE COPY OF JENMOM ASSIGNMENT DEED NO.3789/2009 DATED 3-12-2009 OF SRO,KANNUR

EXHIBIT P2 TRUE COPY OF THE BASIC TAX RECEIPTS DATED 22-2-2010

EXHIBIT P3 TRUE COPY OF THE BASIC TAX RECEIPTS DATED 25-7-2013

EXHBIIT P4 TRUE COPY OF THE POSSESSION CERTIFICATE DATED 10-1-2011

EXHIBIT P5 TRUE COPY OF THE PERMIT BEARING NO.E3/21878/13 ALONG WITH THE SKETCH DATED 24-08-2013

EXHIBIT P6 TRUE COPY OF THE REPLYD ATED 12-09-2013

EXHIBIT P7 TRUE COPY OF THE ORDER BEARING NO.E3-21878/13 DATED 22-10-2013

EXHIBIT P8 TRUE COPY OF THE COMMUNICATION DATED 26-12-2013

EXHIBIT P9 TRUE COPY OF THE COMMUNICATION DATED 16-1-2014

EXHIBIT P10 TRUE COPY OF THE ORDER DATED E3-21878/13 DATED 16-1-2014

EXHIBIT P11 TRUE COPY OF THE REPORT DATED 14-2-2014 ALONG WITH SKETCH

EXHIBIT P12 TRUE COPY OF THE OBJECTION DATED 5-4-2014

EXHIBIT P13 TRUE COPY OF THE REPORT OF THE 7TH RESPONDENT DATED 3-10-2014

EXHIBIT P14 TRUE COPY OF THE NOTICE BEARING NO.E3-21878/13 DATED 15-11-2014

EXHIBIT P15 TRUE COPY OF THE OBJECTION DATED 9-12-2014

RESPONDENT(S)' EXHIBITS

EXHIBIT R4(A) COPY OF THE PLAN AND PERMIT ISSUED TO THE PETITIONER DATED 24/08/2013

EXHIBIT R4(B) COPY OF THE NOTICE ISSUED TO THE PETITIONER DATED 4/11/2013

EXHIBIT R4(C) COPY OF THE COMPLETION CERTIFICATE DATED 8/11/13 SUBMITTED BY THE PETITIONER.

EXHIBIT R4(D) COPY OF THE COMPLAINT DATED 7/9/2013 SUBMITTED BY SMT. SAFIA BEFORE THE MUNICIPALITY

EXHIBIT R4(E) COPY OF THE LETTER ISSUED FROM THE LOCAL SELF GOVERNMENT DEPARTMENT DATED 26/12/2013

EXHIBIT R4(F) COPY OF THE REPORT REFERRED IN EXT.R4(E) RECEIVED BY THE MUNICIPALITY DATED 6/11/2013

EXHIBIT R4(G) COPY OF THE COMMUNICATION ISSUED TO THE PETITIONER BY THE MUNICIPALITY DATED 16/1/14

EXHIBIT R4(H) COPY OF THE REPLY GIVEN BY THE TAHSILDAR DATED 23/10/2014

EXHIBIT R4(J) COPY OF THE NOTICE DATED 15/11/2014 ISSUED TO THE PETITIONER

EXHIBIT R4(K) COPY OF THE PROCEEDINGS DATED 20/7/2015 PASSED BY THE SECRETARY OF THE MUNICIPALITY

EXHIBIT R4(L) COPY OF THE OCCUPANCY CERTIFICATE PREPARED IN RESPECT OF THE UNAUTHORIZED CONSTRUCTION OF THE PETITIONER.

EXHIBIT R8(A) COPY OF THE PARTITION DEED NO.1078/1973 OF SRO, KANNUR

EXHIBIT R8(B) COPY OF THE DOCUMENT NO.1541/1924

EXHIBIT R8(C) COPY OF THE DOCUMENT NO.1144/1945

EXHIBIT R8(D) COPY OF THE JENM DEED DATED 12/05/69 VIDE NO.920/1969 OF SRO, KANNUR

EXHIBIT R8(E) COPY OF THE DECREE DATED 20/12/2003 IN O.S.NO.786/1999 OF THE MUNSIFF COURT, KANNUR

EXHIBIT R8(F) COPY OF THE JUDGMENT IN O.S.NO.786/1999 OF ADDITIONAL MUNSIFF COURT, KANNUR

EXHIBIT R8(G) COPY OF THE DECREE DATED 07/02/2012 IN A.S.NO.170/2004 OF THE ADDITIONAL DISTRICT COURT, KANNUR

EXHIBIT R8(H) COPY OF THE JUDGMENT IN A.S.NO.170/2004

EXHIBIT R8(I) COPY OF THE DOCUMENT NO.2291/1939

EXHIBIT R8(J) COPY OF THE DOCUMENT NO.176/1980

/TRUE COPY/

P.A.TO JUDGE

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A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 34392 of 2014

Dated this the 9th day of November, 2015

J U D G M E N T

The petitioner is the owner in possession of 3 cents of land in T.S.No.438/1 in Ward II Block 7 of the respondent municipality as evidenced by Exts.P1 to P4. The petitioner alleges that even though the petitioner had purchased 3 cents vide Ext.P1, 1 cent of the property was acquired for the purpose of construction of road by the 4th respondent. For putting up a shed in the property, in pursuance of the application submitted by the petitioner, the 5th respondent granted Ext.P5 permit. In furtherance of the same, the petitioner completed construction of the shed in September, 2013. The petitioner alleges that permission for construction of the shed in the property was issued to the petitioner after verifying all the valid original documents of the property owned by the petitioner. The 8th respondent, who owns a shed in the property adjacent to that of the petitioner in Sy.No.439, preferred a complaint and the 4th

respondent had initiated proceedings to cancel the permit issued to the petitioner. The complaint submitted by the 8th respondent was enquired into by the 5th respondent; and after hearing the petitioner as well as the 8th respondent, after giving opportunity the parties to adduce evidence to substantiate their contentions, the complaint preferred by the 8th respondent was dismissed by Ext.P7 order. The petitioner points out that Exts.P11 and P13 reports also find that the petitioner is the owner of the property in Sy.No.48/1. The petitioner's grievance is that in spite of all these, now, he has been issued with Ext.P14 notice calling upon him to remove the shutters, which have been unauthorizedly put up by the petitioner within three days and report, failing which, the same is threatened to be removed forcibly. It is with this background, the petitioner has come up before this Court.

2. Separate counter affidavits have been filed by the respondent municipality and the 8th respondent.

3. Heard both sides.

Considering the entire facts and circumstances of the

case, this writ petition is disposed of permitting the petitioner to approach the respondent municipality with an application for regularization. In the event of submitting the application within a period of one month from today, the same shall be disposed of after affording the petitioner and the 8th respondent an opportunity to adduce evidence and of being heard. It is hereby made clear that this Court did not touch anything on merits. It is open to the municipality to take a decision of its own in accordance with law. The party, aggrieved by the decision so taken, can seek appropriate remedies through appropriate proceedings. The entire exercise shall be completed within a period of three months from the date of receipt of a copy of this judgment.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-