IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

MONDAY, THE 22ND DAY OF JULY 2024 / 31ST ASHADHA, 1946

WP(C) NO. 33931 OF 2023

PETITIONER/S:

C.M.MUHAMMED,AGED 75 YEARS
S/O. CC MEERANNAN,PRESIDENT,
ERATTUPETTA BLOCK BUILDING OWNERS' ASSOCIATION,
AL-FALAH TOURIST HOME, NEAR POLICE STATION,
ERATTUPETTA, PIN - 686121

BY ADVS.
A.MUHAMMED MUSTHAFA
M.P.SREEKRISHNAN

RESPONDENT/S:

1. **ERATTUPETTA MUNICIPALITY,**
   REPRESENTED BY ITS SECRETARY, ERATTUPETTA MUNICIPAL OFFICE, KOTTAYAM, PIN - 686121
2. **THE SECRETARY,ERATTUPETTA MUNICIPALITY,**
   ERATTUPETTA MUNICIPAL OFFICE, KOTTAYAM, PIN - 686121
3. **THE DIRECTOR OF URBAN DEVELOPMENT,**
   DIRECTORATE OF URBAN DEVELOPMENT, SWARAJ BHAWAN,
   NANTHANCODE, THIRUVNANTHAPURAM, PIN - 695006
4. **THE STATE OF KERALA,**
   REPRESENTED BY ITS SECRETARY TO THE DEPARTMENT OF LOCAL SELF GOVERNMENT INSTITUTIONS, GOVERNMENT SECRETARIATE,
   THIRUVANANTHAPURAM, PIN - 696001
5. **THE MUNICIPAL COUNCIL - ERATTUPETTA MUNICIPALITY,**
   REPRESENTED BY ITS CHAIRMAN,ERATTUPETTA MUNICIPAL OFFICE, KOTTAYAM, PIN - 686121

   BY ADV SHRI.SUNIL V.MOHAMMED, SC, ERATTUPETTA MUNICIPALITY
   SMT. K.R. DEPA, SPL. GP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner has approached this Court, being aggrieved by the fact that Exts.P5 and P6 resolutions adopted by the 1st respondent-Municipality regarding reduction of property tax is not being implemented on account of the fact that the Government has not sanctioned the same. It is the case of the petitioner that since no amounts have been paid from the fund of the Municipality for implementation of the PMAY Scheme and since the loan is being repaid from the plan fund of Local Self Government Institutions, the *Proviso* to Sub Section (3) of Section 231 of the Kerala Municipality Act, 1994 (hereinafter referred to as 'the Act') is not applicable, and the sanction of the Government is not required to implement the decision contained in Exts.P5 and P6.

2. Learned Standing Counsel appearing for the 1st respondent Municipality would submit that the resolutions of the Municipality, as contained in Exts.P5 and P6 can be implemented only after getting sanction of the Government in terms of the *proviso* to Section 231(3) of the Act.

3. Learned counsel appearing for the petitioner would submit that the petitioner has a contention that the *Proviso* to Sub Section (3) of Section 231 of the Act would not be attracted in the facts and circumstances of this case. Learned counsel appearing for the petitioner would also refer to Ext.P13 to contend that the availing of funds for the PMAY Scheme cannot be treated as an outstanding loan from the Government for the purposes of applying the *Proviso* to Sub Section (3) of Section 231 of the Act.

4. Learned Special Government Pleader appearing for the official respondents would submit that the Government is yet to take a decision on the request made by the Municipality and such a decision can be taken in accordance with the law.

5. Having Heard the learned counsel appearing for the petitioner, learned Standing Counsel appearing for the Municipality and the learned Special Government Pleader appearing for the official respondents, this writ petition will stand disposed of, directing the 4th respondent (Secretary to the Government, Department of Local Self Government Institutions) to take a decision on Exts.P5 and P6 resolutions of the 1st respondent-Municipality in terms of the provisions contained in

Sub Section (3) of Section 231 of the Act, after affording an opportunity of hearing to the petitioner and the 2nd respondent. While considering the same, the 4th respondent shall also consider the contention taken by the petitioner that the funds sanctioned to the Municipality for the purposes of the PMAY Scheme cannot be treated as an outstanding loan for the purposes of applying the *Proviso* to Sub Section (3) of Section 231 of the Act. The 4th respondent shall take a decision in the matter as directed above, within a period of two months from the date of receipt of a certified copy of this judgment.

Sd/-
GOPINATH P.
JUDGE

ajt

APPENDIX OF WP(C) 33931/2023

PETITIONER EXHIBITS

Exhibit P1	**A TRUE COPY OF THE G.O.(A) NO. 17/2011/LSGD, DATED 14.01.2011**
Exhibit P2	**A TRUE COPY OF THE NOTIFICATION ISSUED BY THE ERATTUPETTA MUNICIPALITY U/S. 233(3)**
Exhibit P3	**A TRUE COPY OF THE REPRESENTATION, DATED 18.11.2019 SUBMITTED BY THE ERATTUPETTA BOLCK BUILDING OWNERS ASSOCIATION BEFORE THE 2ND RESPONDENT**
Exhibit P4	**A TRUE COPY OF THE REPRESENTATION, DATED 18.06.2021 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT**
Exhibit P5	**A TRUE COPY OF THE RESOLUTION OF THE MUNICIPAL COUNCIL, ERATTUPETTA, DATED 23.11.2019**
Exhibit P6	**A TRUE COPY OF THE DECISION NO. 29 TAKEN IN THE MEETING HELD ON 28.11.2022**
Exhibit P7	**A TRUE COPY OF THE COMMUNICATION, DATED 31.03.2020 ISSUED BY THE SECRETARY OF THE 1ST RESPONDENT MUNICIPALITY TO THE PRINCIPAL SECRETARY, LOCAL SELF GOVERNMENT**
Exhibit P8	**A TRUE COPY OF THE COMMUNICATION, DATED 01.08.2022 ISSUED BY THE 2ND RESPONDENT TO THE 3RD RESPONDENT**
Exhibit P9	**A TRUE COPY OF THE COMMUNICATION, DATED 07.12.2022 ISSUED BY THE 2ND RESPONDENT TO THE 3RD RESPONDENT**
Exhibit P10	**A TRUE COPY OF THE APPLICATION, DATED 03.06.2023 MADE UNDER THE RTI ACT**
Exhibit P11	**A TRUE COPY OF THE REPLY TO EXHIBIT P9 ISSUED UNDER THE RTI ACT, 2005**
Exhibit P12	**A TRUE COPY OF THE AGREEMENT EXECUTED BETWEEN KURDFC AND THE 1ST RESPONDENT, DATED 27.09.2018 FOR THE PURPOSE OF FACILITATING THE SCHEME**
Exhibit P13	**A TRUE COPY OF THE GOVERNMENT ORDER NO. G.O. (MS) NO. 100/2018/LSGD. DATED 30.07.2018 PRESCRIBING CONDITIONS BY THE LOCAL SELF GOVERNMENT (DB) DEPARTMENT FOR AVAILING BENEFITS UNDER THE SCHEME**