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**Ashokan Vs. the Branch Manager**

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**SooperKanoon Citation** : sooperkanoon.com/1097319

**Court** : Kerala

**Decided On :** Nov-11-2013

**Judge** : Honourable Mr.Justice N.K.Balakrishnan

**Appellant** : Ashokan

**Respondent** : The Branch Manager

**Judgement** :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN MONDAY, THE11H DAY OF NOVEMBER201320TH KARTHIKA, 1935 WP(C).No. 27621 of 2013 (C) ---------- PETITIONER: ---------- M/S. SUBHADRA SAW MILL, KILIKOLLOOR P.O, KOLLAM - 691 008, REPRESENTED BY ITS PROPRIETOR. BY ADVS.SRI.V.JAYAPRADEEP SRI.ABE RAJAN RESPONDENTS: ---------- 1. KOLLAM CORPORATION REPRESENTED BY ITS SECRETARY, CORPORATION OFFICE, KOLLAM.

2. A.FEMINA, "SHIFAH", UNIVERSAL NAGAR184 NEAR SBT, 3RD MILE STONE, KILIKOLLOOR, KOLLAM - 691 004. R1 BY ADV. SRI.M.K.CHANDRA MOHAN DAS,SC,KOLLAM CORPORATION R2 BY ADV. SRI.T.RAJASEKHARAN NAIR THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON1111-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).No. 27621 of 2013 (C) A P P E N D I X PETITIONER'S EXHIBITS EXT.P1: COPY OF THE

JUDGMENT
IN WPC.15770 OF 2013 DT.30.3.13 OF THIS COURT. EXT.P2: COPY OF THE

JUDGMENT
DT.12.7.13 IN WPC.12242/13 OF THIS COURT. EXT.P3: COPY OF THE MEMORANDUM OF COUNTER AFFIDAVIT FILED BY THIS PETITIONER IN WPC.NO.12242/13. EXT.P4: COPY OF THE

ORDER
DT.22.10.13 OF R1. EXT.P5: COPY OF THE APPLICATION DT.4.11.13 TO R1. EXT.P6: COPY OF THE RECEIPT DT.4.11.13 FROM R1. /TRUE COPY/ P.A TO JUDGE K.SURENDRA MOHAN, J.

---------- W.P(c) No.27621 of 2013-C ---------- Dated this the 11th November, 2013

## JUDGMENT

The petitioner challenges Ext.P4 order directing demolition of an unauthorised construction put up by him. The order has been passed pursuant to Ext.P1 judgment of this Court in W.P(c) No.15770 of 2013.

2. The contention of Sri Jayapradeep, who appears for the petitioner is that, the 2nd respondent had filed the Writ Petition, W.P(c) No.15770 of 2013, during the pendency of another Writ Petition, WP(c) No.12242 of 2013 filed by the very same person. As per Ext.P2 judgment, the said Writ Petition was closed, in the light of the statements made in the counter affidavit of the petitioner herein, who was also one of the respondents. It is contended that, Ext.P2 judgment had been passed without issuing notice to or hearing the petitioner.

3. Advocate T.Rajasekharan Nair enters appearance for the 2nd respondent. Advocate M.K.Chandramohandas appears for the 1st respondent.

4. Heard. A perusal of Ext.P2 judgment shows that the W.P(c) No.27621 of 2013-C2complaint therein was regarding the nuisance caused by the running of the

petitioner Saw mill. It was found that, the Kerala State Pollution Control Board having issued a consent to the petitioner, there was no reason to interdict the petitioner from conducting the Saw mill. Therefore, Ext.P2 judgment has been passed for the reason that the petitioner was possessed of all the statutory licences and permissions required for conducting the Saw mill.

5. The case in Writ Petition No.15770 of 2013 that culminated in Ext.P1 was regarding an alleged unauthorised construction put up by the petitioner herein. What I have directed in the said judgment is only a consideration of the said objections. In Ext.P1, no finding has been entered regarding any of the contentions raised. The 1st respondent has passed Ext.P4 pursuant to the direction issued by this Court in Ext.P1. Therefore, it is clear that the Writ Petitions culminated in Exts.P1 and P2 were instituted on the basis of different complaints. Therefore, I do not find anything wrong with the conduct of the 2nd respondent in instituting them. W.P(c) No.27621 of 2013-C36. As per Ext.P4, though the petitioner has been directed to demolish an unauthorised construction put up by him, he has also been informed that he had a right to seek regularisation of the construction by preferring a proper application for such purpose. According to the learned counsel for the petitioner, Ext.P5 is the application for regularisation. Advocate M.K.Chandramohandas, who appears for the 1st respondent, submits that Ext.P5 is not a proper application. The learned counsel for the petitioner offers to submit a proper application. In view of the above, this Writ Petition is disposed of permitting the petitioner to submit a proper application for regularisation of his construction, after complying with all the necessary formalities. If a proper application is submitted within a period of 7 days from today, the 1st respondent shall consider the same and shall pass appropriate orders thereon in accordance with law, as expeditiously as possible and at any rate, within a period of three weeks of submission of such application. If no such application is submitted, the 1st respondent shall take necessary steps to implement Ext.P4. If the construction is not capable of regularisation also, W.P(c) No.27621 of 2013-C4appropriate action shall be taken by the respondents to implement Ext.P4. Sd/- (K.SURENDRA MOHAN, JUDGE) rtr/

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