

Sunil Kumar I.V vs the Koothuparamba Municipality

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Court : Kerala

Decided On : May-31-2023

Judge : Honourable Mr.Justice N.Nagaresh

Appeal No. : WP(C)/17399/2023

Appellant : Sunil Kumar I.V

Respondent : The Koothuparamba Municipality

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE N.NAGARESH
WEDNESDAY, THE 31ST DAY OF MAY 2023 / 10TH JYAISHTA, 1945
WP(C) NO. 17399 OF 2023 PETITIONERS: 1 SUNIL KUMAR I.V AGED
45 YEARS, S/O CHATHUKUTTI NAIR, MANGATTIDAMAMSOM,
KOYILODU DESAM, SHANKARANELLUR POST, KANNUR DISTRICT,
PIN - 670 643 2 REJISHA A.V AGED 39 YEARS, W/O SUNIL KUMAR
I.V, MANGATTIDAMAMSOM, KOYILODU DESAM,
SHANKARANELLUR POST, KANNUR DISTRICT, PIN - 670 643 BY
ADVS. K.N.ABHILASH SUNIL NAIR PALAKKAT BABU THOMAS
(PAZHAYATHOTTATHIL) RITHIK S.ANAND RISHI VARMA T.R. ANU
PAUL SREELAKSHMI MENON P. RESPONDENTS: 1 THE

KOOTHUPARAMBA MUNICIPALITY REPRESENTED BY ITS SECRETARY, KOOTHUPARAMBA, KANNUR DISTRICT, PIN - 670 643 2 THE SECRETARY KOOTHUPARAMBA MUNICIPALITY, KOOTHUPARAMBA, KANNUR DISTRICT, PIN - 670 643 3 JYOTHI DARSHAN K.K AGED 49 YEARS, S/O NAROTH BHARATHAN, CHAITHANYA HOUSE, PURAKKULAM, KOOTHUPARAMBA AMSOM, NARAVUR DESOM, KOOTHUPARAMBA, KANNUR, PIN - 670 643 BY ADV SHRI.K.P.HARISH, SC, KOOTHUPARAMBA MUNICIPALITY THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 31.05.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 31st day of May, 2023 The grievance of the petitioners, who are owners/licence holders of the building in the 1 st respondent Municipality, arises from Ext.P4 order. The petitioners state that Ext.P4

order directs the petitioners to demolish a portion of their

building. Ext.P4 has been issued without prior notice. Prior to demolition order under Section 406 of the Municipalities Act, a provisional order ought to have been issued which has not been done. Therefore, Ext.P4 is liable to be set aside.

2. Standing Counsel entered appearance on behalf of

respondents 1 and 2 and submitted that Ext.P4 was not preceded by a provisional order. However, Ext.P4 can be treated as a provisional order and if the petitioners submit their objections, the same can be considered in accordance with law.

3. I have heard the learned counsel for the petitioners

and the learned Standing Counsel representing respondents 1 and 2. In view of the nature of the relief to be granted in this writ petition, notice to the 3rd respondent is dispensed with.

4. It is clear from the pleadings in the writ petition and

arguments made at the Bar that Ext.P4 was not preceded by a provisional order and the petitioners were not granted an opportunity of hearing in the matter, before ordering demolition of their building. In the circumstances, it would be only just and proper that respondents 1 and 2 treat Ext.P4

order as a provisional order.

The writ petition is accordingly disposed of directing respondents 1 and 2 to consider Ext.P4 order as a provisional

order under Section 406 of the Kerala Municipalities Act. The

petitioners may file their objection against Ext.P4 within a period of four weeks. The respondents shall consider the objections filed by the petitioners and take appropriate decision thereon in accordance with law. Respondents 1 and 2 shall take a decision independently in the matter, in accordance with the Kerala Municipalities Act and Rules. Sd/- N.NAGARESH JUDGE ded APPENDIX OF WP(C) 17399/2023 PETITIONER EXHIBITS Exhibit-P1 THE TRUE COPY OF THE COMMUNICATION DATED 30.12.2022 ISSUED BY THE 1ST RESPONDENT TO THE 1ST PETITIONER Exhibit-P2 THE TRUE COPY OF THE REPLY DATED 17.01.2023 SUBMITTED BY THE 1ST PETITIONER BEFORE THE 1ST RESPONDENT Exhibit-P3 THE TRUE COPY OF THE LICENSEE DATED 24.02.2023 ISSUED BY THE 1ST RESPONDENT TO THE 2ND PETITIONER Exhibit-P4 THE TRUE COPY OF THE NOTICE DATED 17.03.2023 ISSUED BY THE 1ST RESPONDENT TO THE 1ST PETITIONER Exhibit-P5 THE TRUE COPY OF THE NOTICE DATED 27.03.2023 ISSUED BY THE 1ST RESPONDENT TO THE 2ND PETITIONER

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