

Sajitha. vs the Secretary,

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Court : Kerala

Decided On : Sep-21-2023

Judge : Honourable Mr. Justice Bechu Kurian Thomas

Appeal No. : WP(C)/30962/2023

Appellant : Sajitha.

Respondent : The Secretary,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS THURSDAY, THE 21ST DAY OF SEPTEMBER 2023 / 30TH BHADRA, 1945 PETITIONER : SAJITHA, AGED 46 YEARS, D/O.SOMARAJAN, RESIDING AT SAJEEV BHAVAN, KOLLAM DISTRICT, PIN - 6913 33 BY ADVS. B.KRISHNA MANI N.V.SANDHYA DHANUJA M.S RESPONDENTS : 1 THE SECRETARY, PUNALUR MUNICIPALITY, PUNALUR, KOLLAM DISTRICT, PIN - 691 305 2 SUBHADRA, AGED 65 YEARS, D/O.KOCHAN, RESIDING AT VENGAVILA VEEDU, KOLLAM DISTRICT, PIN - 691 333 BY SRI.MANOJ RAMASWAMY, SC THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 21.09.2023, THE COURT ON THE

SAME DAY DELIVERED THE FOLLOWING:

BECHU KURIAN THOMAS, J.

W.P.(C) No.30962 of 2023 Dated this the 21st day of September, 2023

JUDGMENT

Petitioner challenges Ext.P8 which is only a hearing notice dated 26.08.2023 proposing to hear the petitioner on 05.09.2023.

2. The genesis of the dispute relates to an alleged unauthorised

construction carried out by the petitioner in the first floor of her building. After obtaining Ext.P4 occupancy certificate on 26.04.2023, for the ground floor the building, petitioner is alleged to have carried out additional constructions apart from constructing the first floor to the building. Therefore, Ext.P7 was issued under Section 406 of the Kerala Municipalities Act on 26.08.2023 directing to stop the construction. Thereafter, Ext.P8 notice was issued, giving an opportunity to the petitioner to be heard.

3. Sri. B.Krishnamani, the learned counsel for the petitioner

contended that Ext.P8 is illegal and no opportunity has been granted to the petitioner. Sri.Manoj Ramaswamy, the learned Standing Counsel for the respondent Municipality, upon instructions, submitted that petitioner appeared pursuant to Ext.P8 and she was even heard on 05.09.2023 and a statement has already been taken from the petitioner.

4. Petitioner is alleged to have carried out unauthorised constructions as alleged in Ext.P7. Though petitioner appeared pursuant to Ext.P7, she has not filed any objection.

5. Having considered the submissions of the learned counsel for the

petitioner as well as the learned Standing Counsel, I am of the view that since the petitioner contends that she was not able to file an objection, but had only

appeared pursuant to Ext.P8, an opportunity to file an objection can be granted as a measure of leniency, however, within a specified time limit, especially since no orders have been passed yet.

6. Considering the aforesaid circumstances, I direct the first respondent to rehear the petitioner and the 2 nd respondent on 05.10.2023 pursuant to Ext.P7, provided the petitioner files an objection to Ext.P7 on or before 29.09.2023. After hearing the parties, as directed above, an

order shall be passed, in accordance with law.

The writ petition is disposed of with the above observations. Sd/- BECHU KURIAN THOMAS, JUDGE RKM APPENDIX OF WP(C) 30962/2023 PETITIONER'S EXHIBITS : Exhibit-P1 A TRUE COPY OF THE SALE DEED DATED 30-06-2023 Exhibit-P2 A TRUE COPY OF THE TAX RECEIPT DATED 05-05-2023 Exhibit-P3 A TRUE COPY OF THE APPROVED PLAN BA NO. E3/99/21-22 DATED 02-12-2021 BY THE PUNALUR MUNICIPALITY. Exhibit-P4 A TRUE COPY OF THE OCCUPANCY CERTIFICATE MUNICIPALITY DATED NIL. Exhibit-P5 A TRUE COPY OF THE RECEIPT DATED MUNICIPALITY Exhibit-P6 A TRUE COPY OF THE RECEIPT DATED MUNICIPALITY Exhibit-P7 A TRUE COPY OF THE ORDER DATED 26-08-2023 MUNICIPALITY. Exhibit-P8 A TRUE COPY OF THE NOTICE DATED 26/8/2023

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