
(2021) 01 KL CK 0287

In the High Court Of Kerala

Case No : Writ Petition (C) No. 28417 Of 2020

N.K. Unnikrishnan

APPELLANT

Vs

Thrikkakara Municipality And Ors

RESPONDENT

Date of Decision : 11-01-2021

Acts Referred:

Kerala Municipality Act, 1994 — Section 406(1)

Citation : (2021) 01 KL CK 0287

Hon'ble Judges : S. Manikumar, CJ;Shaji P. Chaly, J

Bench : Division Bench

Advocate : P. Ramakrishnan, Preethi Ramakrishnan, T.C.Krishna, C. Anil Kumar, Pratap Abraham Varghese, Asha K. Shenoy, G.G. Manoj

Final Decision : Disposed Of

Judgement

S. Manikumar, CJ

1. Instant Public Interest Litigation is filed for a mandamus directing the respondents to take immediate steps to demolish the illegal construction made

below the water tank in Ward No. X of Thrikkakara Municipality.

2. Petitioner has sought for a further direction to the respondents to take action on Ext. P4 and P5 representations.

3. Short facts leading to the filing of writ petition are as hereunder:-

In ward No. X of the Thrikkakara Municipality, there is a public well situated in puramboke land. Adjacent to this well, there is a bore well and an

overhead water tank. The water from the well and the bore well used to be pumped and stored in the overhead tank and distributed in different areas

of Nedumkulangara, a place within the Municipal area, as and when required. According to the petitioner, the area below the water tank was

encroached by some local people and it was converted as a room. The road as well as the way to the water tank were also encroached. Petitioner

submitted an application under the Right to Information Act, 2005 seeking information as to whether any permission has been granted to anybody to

construct the building to which the Municipality vide Ext. P3 replied in the negative. Further, it was also stated that necessary action as per the Kerala

Municipality Act and Rules would be initiated. However, no action was initiated and in the circumstances, petitioner submitted Ext. P4 representation

and further Ext. P5 reminder. Petitioner has further submitted that no action has been taken so far.

4. On 18th December 2020, we directed notice to Mr. G. G. Manoj, learned Standing Counsel for the Municipality. We further directed Mr. V. Tek

Chand, learned Senior Government Pleader to get instructions, as to whether the construction is put up by the Groundwater Department or the Kerala

Water Authority.

5. On this day, when the matter came up for further hearing, on instructions, Mr. G. G. Manoj, learned Standing Counsel appearing for the

respondents submitted that resident association of Thrikkakara Municipality has put up a construction without permission and hence notice dated

04.01.2020 under Section 406 (1) of the Kerala Municipality Act, 1994 has been issued to those who have constructed the said building. He further

submitted that action has been taken for the alleged illegal constructions made below the water tank in ward No. X of Thrikkakara Municipality.

Section 406 (1) of the Kerala Municipality Act, 1994 reads thus:-

406. Demolition or alteration of building work unlawfully commenced, carried on or completed.- (1) Where the Secretary is satisfied-

(i) that the construction, reconstruction or alteration of any building or digging of any well-

(a) has been commenced without obtaining the permission of the Secretary or in contravention of the decision of the Council: or

(b) is being carried on, or has been completed otherwise than in accordance with the plans or specifications on which such permission or decision was

based; or

(c) is being carried on, or has been completed in breach of any of the provisions of this Act or any rule or bye-law or order made or issued thereunder

or any direction or requisition lawfully given or made under this Act, such rule, bye-law or order, or

(ii) that any alteration required by any notice issued under section 395 has not been duly made; or

(iii) that any alteration of or addition to any building or any other work made or done for any purpose in or upon any building has been commenced or

is being carried on or has been completed in contravention of the provisions of section 405, he may make a provisional order requiring the owner or the

person for whom the work is done to demolish the work done, or so much of it as, in the opinion of the Secretary, has been unlawfully executed or to

make such alterations as may, in the opinion of the Secretary, be necessary to bring the work in conformity with the provisions of this Act, bye-laws,

rules, direction, order or requisition as aforesaid, or with the plans and specifications on which such permission or decision was based and may also

direct that until the said order is complied with, the owner or such person shall refrain from proceeding with the work.

[Provided that the Secretary may, on realisation of a compounding fees as may be fixed by the Government, regularise any constructions,

reconstruction or alteration of any building or digging of any well, commenced, carried on or completed without getting a plan approved by the

Secretary or in deviation of the approved plan, if such construction, reconstruction or alteration of the building or digging of the well does not

contravene any of the provisions and specifications mentioned in this Act or the Building Rules made thereunder.]â??

6. Now that action has been taken under the abovesaid statutory provision, no mandamus is required to be issued. However, competent authority who

has initiated action, should act in accordance with law and notice dated 04.01.2020 issued under Section 406 (1) of the Kerala Municipality Act, 1994,

should come to a logical end. Action as ordered, has to be taken after considering the reply, in accordance with law, within three weeks from the date

of receipt of a copy of this judgment.

With the above directions, writ petition is disposed of.