
(2021) 05 KL CK 0158

In the High Court Of Kerala

Case No : Writ Petition (C) No. 19385 Of 2015

O.S. Biju And Ors

APPELLANT

Vs

Thrippunithura Municipality And Ors

RESPONDENT

Date of Decision : 17-05-2021

Acts Referred:

Kerala Municipality Act, 1994 — Section 411, 447, 509(1)

Citation : (2021) 05 KL CK 0158

Hon'ble Judges : Murali Purushothaman, J

Bench : Single Bench

Advocate : S. Sreekumar, Martin Jose, Prijith P, Thomas P. Kuruvila, V.M. Kurian, C.V. Manuvilasa

Final Decision : Disposed Of

Judgement

1. Since these writ petitions involve common issues, they were heard together and are being disposed of by this common judgment.

2. The petitioners are tenants in a building owned by St.Francis Xavier Church, the third respondent. The first petitioner is conducting a C-Class

stationery shop in the shop room bearing No.25/389 in the aforesaid building. He has been issued with D & O licence by the first respondent

Thrippunithura Municipality. The second petitioner is conducting a shop dealing with mobile phone accessories in the shop room bearing No.25/392

and has also been issued with D & O licence by the Municipality. The third petitioner is running a hotel in the said building with door No.25/388. His

father was originally running the said hotel. He has produced the copy of the D & O licence issued by the Municipality in the name of his father for

running the hotel.

3. While so, the third respondent-church, through its Vicar, issued Ext.P10 notice

dated 18.01.2015 to the petitioners and another stating that the Municipality has issued a notice dated 7.10.2014 to the church informing that the building owned by the church and occupied by the petitioners is not structurally safe and that the church has to reinforce the building and therefore, the petitioners have to give vacant possession of the building by 26.01.2015 for the reinforcement works.

4. The Municipality in the meantime issued Exts.P11, P12 and P13 notices dated 21.5.2015 to the petitioners under sections 411 and 447 of the Kerala

Municipality Act, 1994 (for short, 'the Act') stating that the Health Inspector, vide report dated 18.5.2015 reported that the shop rooms occupied by the petitioners are in dangerous condition due to its age and there is chance that the customers and the occupants would be caught in accident and

therefore, to avoid any untoward incidents, their licences are cancelled and they were directed to stop their business in the shops within two days from the date of receipt of the notice.

5. The petitioners submitted Exts.P14 to P16 representations before the Secretary of the Municipality and later, preferred Exts. P17 to P19 statutory appeals dated 28.5.2015 before the Municipal Council against Exts.P11 to P13.

6. The Church in the meantime issued Ext. P21 composite notice to the petitioners stating that they have received the copy of the notice dated

21.5.2015 (Exts.P11, P12 and P13) issued by the Municipality to the petitioners cancelling their licences and requiring vacant possession of the shop

rooms to demolish the building for the safety of public and each of the petitioners.

7. While so, the Secretary of the Municipality issued Exts.P20, 22 and P23 notices to the petitioners stating that they have not acted in terms of the

notice issued under sections 411 and 447 of the Act dated 21.5.2015 (Exts.P11, P12 and P13) and their petitions dated 28.05.2015 (Exts. P17 to P19)

cannot be entertained as they are conducting business in a building which is in a dangerous condition posing threat to the occupants and the public. It

was also stated that further proceedings pursuant to the notice dated 21.5.2015 will be initiated without further notice. It is challenging Exts.P11, P12,

P13 and Exts.P20, P22,P23 notices that the petitioners have approached this Court.

8. According to the petitioners, there is no structural instability for the building

and the notices under sections 411 and 447 are issued at the behest of the church as a rouse to evict the petitioners who are the tenants without following the due process of law. Therefore, the petitioners have prayed for quashing Exts.P11, P12, P13 and P20, P22, P23 notices and for direction to the Municipal Council to dispose of Exts.P17 to P19 appeals within a time frame.

9. At the time of admission of the writ petition, this Court had ordered status quo as on the date, which was later extended until further orders.

10. A counter affidavit is filed by the third respondent church stating that the building is more than 80 years old and is in a dilapidated condition and it poses danger to the occupants and the passers by. The Assistant Engineer of the Municipality had inspected the premises and issued notice dated

7.10.2014 to the church to take steps to provide structural stability to the building. They denied the contention that notices under sections 411 and 447 are issued at their behest to evict the petitioners from the building.

11. Respondents 1 and 2 have filed a counter affidavit stating that the building is very old and the Assistant Engineer who conducted inspection of the

building on 7.10.2014 has reported that the building is in a dilapidated condition and it is not structurally safe. Though the church submitted application

dated 18.1.2015 seeking permission to strengthen the building by providing columns, the same was not granted by the Municipality due to the old age

of the building. According to the Municipality, Exts.P11, P12 and P13 notices as well as Exts.P20, 22 and 23 notices were issued invoking the powers under sections 411 and 447 of the Act.

12. This writ petition is filed by the St.Francis Xavier Church represented by its Vicar and the two Kaikkarans of the church. According to the church,

pursuant to Ext.P1 complaint dated 12.8.2014 by one Sri.Sujith M.K addressed to the Secretary of the Municipality, the Assistant Engineer of the

Municipality inspected the building in question where the petitioners are conducting their respective business and reported that the building is not

structurally safe and steps have to be taken to reinforce it. Accordingly, Ext.P2 notice was issued by the Secretary of the Municipality to take steps to

reinforce the building pursuant to which the church made Ext.P3 application for strengthening the structural stability of the building which was not

considered by the Municipality. It is further stated that a retired Assistant

Engineer of the Local Self Government Department who was engaged by the church to assess the stability of the building inspected the same and gave the church a report stating that the building is structurally unsafe for use and is beyond the scope of reinforcement and the only option available is to demolish the same. Pursuant to the said report, the Parish Council resolved to demolish the building in public interest and requested the tenants of the building including respondents 2, 3 and 5 (the petitioners in W.P.(C) No.19385/2015) to vacate the building. According to the church, the building is more than 80 years old and is dilapidated and pose imminent danger to the inmates and passers by. The Municipality as well as the Kerala State Electricity Board and the police authorities whom the church has approached, are obliged to execute immediate evacuation of the tenants from the dilapidated building, and the writ petition is filed seeking such directions. The church and the other petitioners in this writ petition have also sought for a declaration that they will not in any way be responsible for any danger or damage that the building may cause in the event of any collapse.

13. Respondents 2, 3 and 5 (the petitioners in W.P.(C) No.19385/2015), the tenants, have filed a counter affidavit wherein they have stated that the building is not structurally unsafe and the attempt of the church is to evict them from the said building without going through due process of law and that the Municipality is acting hand in glove with the church to evict them.

14. Heard the learned counsel for the petitioners in both the writ petitions, Sri.C.V.Manuvilsan, the learned standing counsel for the Thripunithura Municipality and the learned Government Pleader.

15. It is seen from the order sheets that both the writ petitions were initially dismissed by this Court on 24.2.2016 on the premise that they became infructuous in view of the disposal of Exts.P17 to P19 statutory appeals allowing the same. Writ Appeals were preferred by the church against the common judgment in these two writ petitions as W.A Nos.1073/2016 and 1081/2016 and the Division Bench, after calling for the records and verifying the same, found that Exts.P17 to P19 statutory appeals are still pending consideration before the first respondent Municipality and set aside the judgment dated 24.2.2016 and restored the writ petitions to file. Accordingly, the writ petitions have come up for the consideration of this Court.

16. Sri. P. Prijith, the learned counsel for the tenants submitted that the building

is structurally safe and has survived many monsoons and had withstood the floods of 2018 and 2019 and the attempt of the church is to evict them in collusion with the Municipality without following the due process of law. On the other hand, the learned counsel for the church contented that the building is more than 86 years old and may collapse any time and is an imminent danger to the occupants and passers by.

17. The building is, admittedly, more than 80 years old. The Assistant Engineer had submitted a report before the Municipality on 7.10.2014 stating that the building is not structurally safe. When the writ petitions were heard on 31.3.2021, after more than six years from the date of the report, this Court passed an order directing the Secretary of the Municipality to cause an inspection of the building through the Assistant Engineer, LSGD, Thripunithura Municipality on or before 8.4.2021 and to submit a report regarding the present condition of the building after notice to the petitioners in both the writ petitions. Accordingly, the standing counsel for the Municipality has produced the report of the Assistant Executive Engineer, LSGD, Thripunithura Municipality wherein it is reported that the building is about 86 years old and the ceiling and roof of the rooms are in ruinous condition and cracks have developed in the walls of the building.

18. Section 411 of the Act deals with precautions to be taken by the Secretary of the Municipality in case of dangerous structures. It further deals with steps to be taken where immediate action is required and immediate evacuation is required. The section has been enacted to secure public safety. The Assistant Executive Engineer, in his report dated 08.04.2021, has reported that the building is about 86 years old and the ceiling and roof of the rooms are in ruinous condition and cracks have developed in the walls of the building. These writ petitions have been pending before this Court for more than 6 years and the statutory appeals against Exts.P11, P12 and P13 are also pending before the Municipal Council for such long time. Since the notice issued by the Secretary of the Municipality under section 411 and the proceedings of the Secretary cancelling the D & O licence are appealable under section 509 (1) of the Act and the petitioners in W.P. (C) No. 19385/2015 have preferred Exts.P17 to P19 statutory appeals against Exts.P11, P12 and P13 and the same are pending before the first respondent, this Court feels it appropriate to direct the Council of the first respondent

Municipality to dispose of Exts.P17 to P19 appeals as expeditiously as possible, at any rate, within two weeks from today. The first respondent

Municipality shall serve notice to the petitioners in both the writ petitions and shall hear them (either physically or through video conferencing) before a

decision is taken as above. The Council shall also take into account the report dated 8.4.2021 of the Assistant Executive Engineer of the Municipality.

Till the appeals are disposed of, the order of status quo passed by this Court in W.P. (C) No. 19385/2015 shall continue.

Writ petitions are disposed of.