

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.SOMARAJAN

WEDNESDAY, THE 19th DAY OF JULY 2023 / 28TH ASHADHA, 1945

OP(C) NO. 1373 OF 2023

(AGAINST THE ORDER DATED 24/06/2023 IN I.A.NO.1/2023 IN UNNUMBERED SUIT PASSED BY THE ADDITIONAL MUNSIFF COURT - I, THIRUVANANTHAPURAM)

PETITIONER/PETITIONER/PLAINTIFF:

ST. PIUS X CHURCH, KUMARAPURAM,
REPRESENTED BY THE PASTOR OF THE PARISH,
REV. FR. JOSE FRANKLIN.B., AGED 50 YEARS,
S/o BERCUMANCE, RESIDING AT ST. PIUS X CHURCH,
KUMARAPURAM, C/o ARCHBISHOP'S HOUSE, VELLAYAMBALAM,
THIRUVANANTHAPURAM, PIN - 695010

BY ADV RAJESH P.NAIR

RESPONDENTS/RESPONDENTS/DEFENDANTS:

- 1 STATE OF KERALA,
REPRESENTED BY CHIEF ENGINEER,
PWD (BUILDINGS DIVISION), PUBLIC OFFICE,
OPPOSITE MUSEUM, THIRUVANANTHAPURAM, PIN - 695033
- 2 THE EXECUTIVE ENGINEER, PWD (BUILDINGS DIVISION),
VIKAS BHAVAN.P.O., THIRUVANANTHAPURAM, PIN - 695033
- 3 THE ASSISTANT EXECUTIVE ENGINEER,
PWD (BUILDINGS DIVISION), VIKAS BHAVAN.P.O.,
THIRUVANANTHAPURAM, PIN - 695033
- 4 THE ASSISTANT ENGINEER, PWD (BUILDINGS DIVISION),
VIKAS BHAVAN.P.O., THIRUVANANTHAPURAM, PIN - 695033
- 5 THE PRINCIPAL, THE GOVERNMENT MEDICAL COLLEGE HIGHER
SECONDARY SCHOOL, MEDICAL COLLEGE (P.O.),
THIRUVANANTHAPURAM, PIN - 695011

BY GOVERNMENT PLEADER SRI S. UNNIKRISHNAN

THIS OP (CIVIL) HAVING COME UP FOR HEARING ON 19.07.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

CR

JUDGMENT

It is pertaining to rejection of leave under Section 80(2) C.P.C. by the trial court finding that there is no necessity for any urgent relief in the suit matter. The order passed by the trial court appears to be untenable. There is failure on the part of the trial court to understand the real spirit under Section 80 C.P.C. and the sub-section thereto, viz., sub-section(2). The requirement to be complied with under Section 80(1) C.P.C. to bring up a suit against the Government or any public officer in respect of any act to be done in his official capacity by issuing two months notice in writing is basically a precautionary measure, subject to the application of sub-section (2), by which an exemption was carved out so as to bring up a suit when it is necessary to obtain an "urgent and immediate relief" and a suit can be brought up without serving two months notice as required by sub-section(1),

but with leave of court. The proviso to sub-section (2) says that the court, if it is satisfied after hearing the parties that no urgent and immediate relief need be granted can return the plaint for presentation in compliance with the requirement under sub-section (1) by giving two months notice before the institution of the suit. The whole scheme of Section 80 C.P.C. would show that sub-section (2) is inserted so as to protect the interest of the plaintiff from being defeated by any emergent danger or invasion on any valuable right. Necessarily, the court should give more importance to the existence of necessity or need of any urgent or immediate relief to protect the interest of the plaintiff and for that purpose, at the initial stage, the need or the requirement for any urgent or immediate relief should be assessed based on subjective satisfaction and probability of irreparable injury. In other words, the court must give due consideration regarding the existence of any urgent or immediate relief rather than sticking on the requirement under sub-section (1) of Section 80 C.P.C. for compliance of two months prior notice in writing. Necessarily, there cannot be any objective satisfaction at

the initial stage so as to reject leave under Section 80(2) C.P.C. to institute the suit without the compliance of requirement of two months prior notice in writing. The section shall not be read as an absolute mandate regarding the requirement of two months prior notice in writing, but should always be read as a precautionary measure for the benefit of the Government or the public servant as well as the plaintiff, the aggrieved person, so as to afford an opportunity to address the grievance within the time of two months as specified in sub-section (1) without a litigation and hence, that provision shall not be interpreted as a condition precedent invariably in all cases. The real spirit of the provision is resting on the question of avoidance of a litigation as against the State Government or a public servant by providing them two months time to redress the grievance of the plaintiff and not to defeat any valuable right of the plaintiff, especially any urgent and immediate relief. The courts should always bear in mind the abovesaid cardinal principle while dealing with the grant of leave by virtue of sub-section(2) of Section 80 C.P.C.

The abovesaid cardinal principle has been overlooked by the trial court in the instant case. An interim injunction application for urgent remedy was filed along with the suit. But the suit was returned by the trial court without applying the principle behind that provision, hence liable to be set aside. I do so by restoring the suit to the file of the trial court, for which the parties shall appear before the trial court on 25/07/2023 and the trial court shall consider the grant of leave afresh on that day itself and shall pass necessary orders in that behalf.

The O.P.(C) will stand allowed accordingly.

The Registry is directed to forward a copy of this judgment to the trial court forthwith.

Sd/-

P . SOMARAJAN

JUDGE

APPENDIX OF OP(C) 1373/2023

PETITIONER'S EXHIBITS

Exhibit P1 TRUE COPY OF THE PLAINT DATED 24.06.2023 FILED BY THE PETITIONER/PLAINTIFF IN UNNUMBERED O.S. OF 2023 BEFORE THE ADDITIONAL MUNSIF COURT-I, THIRUVANANTHAPURAM

Exhibit P2 TRUE COPY OF THE I.A. NO.1/2023 IN UNNUMBERED O.S. OF 2023 DATED 24.6.2023 ON THE FILE OF ADDITIONAL MUNSIF COURT-I, THIRUVANANTHAPURAM

Exhibit P3 TRUE COPY OF THE I.A. NO.2 OF 2023 IN UNNUMBERED O.S. NO. OF 2023 DATED 24.6.2023 ON THE FILE OF ADDITIONAL MUNSIF COURT-I, THIRUVANANTHAPURAM

Exhibit P4 TRUE COPY OF THE ORDER DATED 24.06.2023 PASSED BY THE ADDITIONAL MUNSIF COURT-I, THIRUVANANTHAPURAM IN I.A. NO.1/2023 IN UNNUMBERED O.S. OF 2023

// TRUE COPY //

P.S. TO JUDGE