

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

WEDNESDAY, THE 18TH DAY OF NOVEMBER 2015/27TH KARTHIKA, 1937

OP(C).No. 2461 of 2015 (O)

IA NO. 18744/2014 IN OS NO. 6092/2014 OF IST ADDL. MUNSIFF COURT, THRISSUR

PETITIONERS :

- 1. SATHIAN P.M., AGED 53 YEARS
S/O. MADHAVAN, POOTHERI HOUSE, PERUMBILLISERI
CHEVOOR VILLAGE, THRISSUR DISTRICT.**
- 2. BOBY, AGED 42 YEARS
W/O. SATHIAN M.P., POOTHERI HOUSE, PERUMBILLISERI
CHEVOOR VILLAGE, THRISSUR DISTRICT.**

**BY ADVS.SRI.M.S.MOHAMMED ANSARY
SRI.P.SAMSUDIN
SRI.K.C.ANTONY MATHEW
SRI.JITHIN LUKOSE**

RESPONDENTS :

- 1. THE SECRETARY
CHERPU GRAMA PANCHAYATH, CHERPU P.O.-680561
THRISSUR DISTRICT.**
- 2. CHERPU GRAMA PANCHAYATH
REPRESENTED BY ITS SECRETARY, CHERPU P.O.-680561
THRISSUR DISTRICT.**
- 3. JOSHI
S/O. ANTONY, CHELIPARAMBIL HOUSE, PERUMBILLISERI
CHEVOOR VILLAGE, CHERPU P.O.-680561
THRISSUR DISTRICT.**

**R1 & R2 BY ADVS. SRI.P.G.DEVADAS
SRI.R.SUDHISH
R3 BY ADVS. SRI. P.S.SUJETH
SMT.M.R.REENA**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 18-11-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

Mn

...2/-

APPENDIX

PETITIONERS' EXHIBITS :

- EXHIBIT P1- TRUE COPY OF THE NO OBJECTION CERTIFICATE DATED 23-03-2013 ISSUED BY PANCHAYATH.
- EXHIBIT P2- TRUE COPY OF THE SITE PLAN.
- EXHIBIT P3- TRUE COPY OF THE PERMIT DATE 07-02-2013 ISSUED BY THE COMPETENT AUTHORITY UNDER ARCHEOLOGICAL SITES AND REMAINS ACT 2010.
- EXHIBIT P4- TRUE COPY OF THE PLAINT IN OS 4136/2013 ON THE FILES OF MUNSIFF COURT, THRISSUR.
- EXHIBIT P5- TRUE COPY OF THE ORDER DATED 05-09-2013 IN IA 12291/2013 IN OS 4136/2013 ON THE FILES OF MUNSIFF COURT THRISSUR.
- EXHIBIT P6- TRUE COPY OF THE COUNTER IN IA 18744/2014 IN OS 4136/2013 ON THE FILES OF MUNSIFF COURT, THRISSUR.
- EXHIBIT P7- TRUE COPY OF THE ORDER DATED 14-03-2014 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P8- TRUE COPY OF THE INFORMATION OBTAINED BY THE PETITIONER UNDER THE RIGHT TO INFORMATION ACT.
- EXHIBIT P9- TRUE COPY OF THE NOTICE ISSUED BY THE COMPETENT AUTHORITY, ARCHEOLOGICAL DEPARTMENT DATED 24-02-2015.
- EXHIBIT P10- TRUE COPY OF THE REPLY LETTER SUBMITTED BY THE PETITIONER BEFORE THE COMPETENT AUTHORITY, ARCHEOLOGICAL DEPARTMENT DATED 10-07-2015.
- EXHIBIT P11- TRUE COPY OF THE REPLY DATED 19-03-2014, SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXHIBIT P12- TRUE COPY OF THE ORDER DATED 22-01-2015 IN IA NO. 18744/2014 IN OS 6092/2014 ON THE FILES OF MUNSIFF COURT, THRISSUR.
- EXHIBIT P13- TRUE COPY OF THE ORDER DATED 26-09-2014 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P13(a)- TRUE COPY OF THE REPLY DATED 21-10-2014 TO EXBT-P13 NOTICE SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXHIBIT P14- TRUE COPY OF THE BACK DOCUMENT NO. 2073/1975.

(Contd...)

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EXHIBIT P15- TRUE COPY OF THE NOTICE DATED 30-09-2014 ISSUED BY THE 1ST RESPONDENT TO THE 3RD RESPONDENT.

EXHIBIT P16- TRUE COPY OF THE PLAINT IN OS 6543/2014 ON THE FILES OF MUNSIFF COURT, THRISSUR.

EXHIBIT P17- TRUE COPY OF THE ORDER DATED 16-09-2015 IN CMA 16/2015 OF THE III ADDITIONAL DISTRICT COURT, THRISSUR.

EXHIBIT P18- PHOTOGRAPHS OF THE BUILDING AND SITE.

EXHIBIT P19- TRUE COPY OF THE CERTIFICATE ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P20- TRUE COPY OF THE REPRESENTATION DATED 16-02-2015, SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

RESPONDENT(S)' EXHIBITS :

EXHIBIT R1(a) COPY OF THE RESOLUTION NO.281 DATED 26.6.1996 OF CHERPU GRAMA PANCHAYATH.

EXHIBIT R1(b) COPY OF THE REPORT OF THE ASSISTANT ENGINEER LSGD DATED 25.9.2014.

EXHIBIT R3(a) ORIGINAL COLOUR PHOTOGRAPHS 4 IN NUMBERS.

//TRUE COPY//

P.A. TO JUDGE

Mn

K. ABRAHAM MATHEW, J.

O.P.(C)No. 2461 of 2015

Dated this the 18th day of July, 2015

J U D G M E N T

Petitioners are defendants 1 and 2 in OS.6092 of 2014 filed by the third respondent. Respondents 1 and 2 are co-defendants of the petitioners. The suit was filed on the allegation that the petitioners made illegal construction in their property and the building encroaches upon the property of the third respondent. By Ext.P12 order the learned Munsiff has restrained the first respondent-Panchayat from issuing completion certificate, occupancy certificate etc. This has been confirmed in CMA.16 of 2015. Its correctness is challenged.

2. Heard.

3. OS.4136 of 2013 filed by the third respondent for fixation of boundary and mandatory injunction is still pending. He has also filed OS.6543 of 2015 for injunction. The first respondent-Panchayat has found that there has been violation of the building rules on the part of the petitioners. The learned counsel for the petitioners submits

that Panchayat conducted the measurement without issuing notice to them.

4. It appears that unless the court fixes the boundary between the properties of the parties concerned, it is difficult to ascertain whether there has been encroachment into the property of the third respondent. In these circumstances, it is not proper to direct the first respondent-Panchayat to issue completion certificate and occupancy certificate before the boundary is fixed. The impugned order cannot be interfered with at this stage.

In the result, this OP is dismissed. The petitioners may take steps to expedite the disposal of the suit for fixation of boundary.

sd/-

K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge