

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937

RSA.No. 1055 of 2009

(AGAINST THE JUDGMENT IN AS 30/2007 of SUB COURT,KOCHI-5
DATED 24-03-2009

OS 103/2006 of PRINCIPAL MUNSIFF COURT, KOCHI

APPELLANTS/RESPONDENTS/PLAINTIFFS:

1. S.SARASWATHY, W/O.K.MURUGHAN,
AGED 50 YEARS, SWASTHOM, RESIDING AT CC No.V/903
G.K.AVENUE ROAD, KOCHI-682 002.
2. K.MURUGHAN,S/O.KRISHNAN ACHARI,
RESIDING AT CC No.V/903, G.K.AVENUE ROAD
KOCHI-682 002.

BY ADV. SRI.K.V.SADANANDA PRABHU

RESPONDENTS/APPELLANTS 1 & 2 DEFENDANTS 1 TO 4:

1. K.J.FELIX, S/O.JACOB, AGED 58,
RESIDING AT CC No.X/1576, KATTIPARAMBIL HOUSE
OPP.CCEA HALL, KOCHI-682 001.
2. MRS.JANET FELIX, W/o.K.J.FELIX,
AGED 52 YEARS, RESIDING AT CC No.X/1576
KATTIPARAMBIL HOUSE, OPP.CCEA HALL, KOCHI-682 001.
3. CORPORATION OF COCHIN, BY ITS SECRETARY
OFFICE OF THE CORPORATION OF COCHIN, ERNAKULAM
KOCHI-682 011.
4. THE ASSISTANT EXECUTIVE ENGINEER,
CORPORATION OF COCHIN, ZONAL OFFICE, FORT COCHIN
KOCHI-682 001.

R1 & R2 BY ADV. SRI.B.KRISHNA MANI

R3 & R4 BY ADV. SRI.K.ANAND, SC, COCHIN CORPN.

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON
18-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.BHAVADASAN, J.

Regular Second Appeal No.1055 OF 2009

Dated this the 18th day of June, 2015.

J U D G M E N T

A matter which should have been agitated by the local authority has been dragged to this Court for unnecessary purpose and has been kept pending for the last nine years.

2. Shorn of unnecessary details, the complaint of the plaintiffs is that the defendants who own property on the eastern side of the property of the plaintiffs have carried out constructions in violation of the permit granted to them. On coming to know about the same, it is seen from the written statement filed by the Corporation authorities that they issued show cause notice and before they could take any action as per the statute, suit was filed and their hands were tied. Therefore the Corporation authorities did not move an inch thereafter. In the suit, the trial court found against the defendants 1 and 4 whereas in appeal by the defendants 1 and 4 they were

successful and the suit was dismissed. Whatever that may be, the Kerala Municipal Building Rules, 1999 provides remedies available in the case of unauthorised construction. It is for the Secretary and other statutory authorities to initially take action for such violations.

3. From the written statement filed in the suit, it is seen that the statutory authorities did initiate proceedings. It is for them to complete the proceedings in accordance with law. It should have been only appropriate to let the statutory authorities act in accordance with law before approaching the court.

Leaving open the liberty of defendants 2 and 3 to take such steps as are available to them under law, this appeal is disposed of directing that appropriate decision shall be taken by the Corporation after conducting an enquiry in the matter and if necessary after hearing both parties. Before the Corporation decides the proceedings, the parties will be allowed to file their respective statements and produce whatever evidence in support of their case. Corporation shall take a decision untrammelled by

any of the observations made either by the appellate court or by this Court.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

// True Copy //

P.A. to Judge.