

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

FRIDAY, THE 20TH DAY OF NOVEMBER 2015/29TH KARTHIKA, 1937

WA.No. 205 of 2010

AGAINST THE JUDGMENT DATED 04-01-2010 IN WP(C) 31677/2009.
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APPELLANT(S)/PETITIONERS:

- 1. SMT.SHERLY WILSON, W/O.SRI.WILSON P.I.,
PARAKKAL, NJARELY HOUSE, KAROOR P.O.,
THRISSUR.**
- 2. WILSON P.I., S/O.ITTOOP, PARAKKAL,
NJARELY HOUSE, KAROOR P.O., THRISSUR.**

**BY ADVS.SRI.S.SREEKUMAR
SRI.P.MARTIN JOSE
SRI.M.A.MOHAMMED SIRAJ
SRI.P.PRIJITH**

RESPONDENT(S)/RESPONDENTS:

- 1. THE CHALAKKUDY MUNICIPALITY,
REPRESENTED BY ITS SECRETARY.**
- 2. THE KERALA STATE HOUSING BOARD,
TRIVANDRUM, REPRESENTED BY ITS SECRETARY.**
- 3. PRADEEPKUMAR, AGED 46, S/O.SAHADDEVAN,
VENNARATHIL HOUSE, HOUSING COLONY,
CHALAKKUDY.**
- 4. BABU JOSEPH, AGED 50, S/O.JOSEPH,
PUTHANANGADY HOUSE, NEAR LIONS HOUSE,
CHALAKKUDY.**

**R2 BY ADV. SRI.GEORGE BOBAN, SC
R2 BY ADV. SRI.A.JAYASANKAR, SC
R3 & R4 BY ADV. SRI.SREEPRAKASH K.NAIR
BY SRI.M.PASHOKKUMAR**

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 20-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

mbr/

APPENDIX

PETITIONERS' ANNEXURES:

ANNEXURE I : TRUE COPY OF DECISION DATED 22.12.2009 UNDER THE
RIGHT TO INFORMTION ACT.

ANNEXURE II : TRUE COPY OF APPLICATION UNDER THE RIGHT TO
INFORMATION ACT.

ANNEXURE II(A): TRUE COPY OF REPLY DATED 7.1.2011 ISSUED BY THE
1ST RESPONDENT.

ANNEXURE III : TRUE COPY OF APPLICATION UNDER THE RIGHT TO
INFORMATION ACT.

ANNEXURE III(A): TRUE COPY OF REPLY DATED 4.1.2011.

RESPONDENTS' ANNEXURES: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

ASHOK BHUSHAN, CJ

&

A.M.SHAFFIQUE, J.

*** * * * ***

W.ANo.205 of 2010

Dated this the 20th day of November 2015

J U D G M E N T

Shaffique, J

This writ appeal is filed by the writ petitioners challenging the judgment dated 04/01/2010 in W.P.C.No.31677 of 2009, by which the learned Single Judge dismissed the writ petition.

2. The writ petitioners claim to be running a medical shop in the name and style, M/s.New Supriya Medicals, in a plot allotted by the 2nd respondent, Kerala State Housing Board (hereinafter referred to as 'the Board') which was transferred to another person. The 2nd petitioner purchased a residential building in an adjacent plot allotted by the Board and they submitted an application to the Municipality to shift another medical shop which was run by the 1st petitioner to the new premises purchased by the 2nd petitioner. The Municipality did not consider the application and accordingly the petitioners approached this Court by filing W.P.C.No.22873/2009. By Ext.P6 judgment, this Court directed the Municipality to consider the licence application and pass

appropriate orders. By Ext.P7, the Municipality called upon the petitioners to produce No Objection Certificate from the Board. Petitioners again challenged Ext.P7 by filing W.P.C.No.25996/2009, which was disposed of holding that the issue, whether the petitioners should be allowed to accommodate their medical store in a residential premises by change of user, is a matter for the 2nd respondent to decide. Hence direction was issued to the Board to consider whether the petitioners should be permitted to open a medical store in the said premises. The Board passed Ext.P9 order declining to issue NOC which was challenged in the writ petition.

3. The Board filed a counter affidavit inter alia stating that, as per the allotment of plots, buildings etc., the scheme itself provide for usage of the plot or building for residential purpose alone which cannot be utilised for commercial purpose.

4. The additional respondents, who had been impleaded in the case, filed a counter affidavit stating that they filed a suit as O.S.No.275/09 before the Munsiff Court, Chalakkudy seeking for an injunction to restrain the petitioners from shifting the medical shop to the new premises. It is now submitted by the

learned counsel appearing for the additional respondents that the suit had been decreed restraining the petitioners from shifting the medical shop to the building in the Board complex or from converting the same into a commercial building. Petitioners have preferred an appeal before the Subordinate Judges Court as A.S.No.14/2011, which is still pending consideration.

5. The learned Single Judge, after considering the respective contentions of the parties, formed an opinion that when the allotment letter by itself would indicate that the building shall be used for residential purpose only, it is not open for the petitioners to seek for change of occupancy, unless it is allowed by the Board. In so far as the Board has transferred the land to various allottees based on a scheme, there was justification on the part of the Board to have refused to grant permission to convert a residential building into a commercial building. On that basis, the writ petition has been dismissed.

6. Having gone through the findings of the learned Single Judge, having perused the records and having heard the learned counsel for the parties, we are of the view that the learned Single Judge has not committed any error in arriving at the aforesaid

conclusion. That apart, the petitioners were restrained by a permanent prohibitory injunction for converting the residential building into a commercial building by way of a decree passed by the Civil Court, which is pending in appeal.

7. Under such circumstances, we do not think that we will be justified in interfering with the judgment of the learned Single Judge as no materials have been brought out to come to a different finding.

Accordingly, this writ appeal is dismissed.

(sd/-)
(ASHOK BHUSHAN, CHIEF JUSTICE)
(sd/-)
(A.M.SHAFFIQUE, JUDGE)

True Copy

PA to Judge

jsr/23/10/2015