

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

W.A.No. 866 of 2012 () IN WP(C).33152/2011

AGAINST THE JUDGMENT IN W.P.(C) NO.33152/2011 of HIGH COURT OF KERALA DATED
17-04-2012

APPELLANTS/PETITIONERS:

1. AYISHA B.,
W/O MOIDEENKUTTY, PANDARATHIL HOUSE,
PUDIYANGADI,
KOZHIKODE.
2. A.K. MAJEED,
S/O MOIDEENKOYA MUDIRAYILPARAMBU,
PUTHIYANGADI, KOZHIKODE.

BY ADVS. SRI.K.MOHANAKANNAN
SMT.A.R.PRAVITHA

RESPONDENTS/RESPONDENTS:

1. KOZHIKODE CORPORATION REP. BY ITS SECRETARY
KOZHIKODE-673 001.
2. ZAKEER,
AYANAKKIL HOUSE, PUTHIYANGADI P.O.,
KOZHIKODE-673 021.
3. THE TOWN PLANNING OFFICER,
KOZHIKODE CORPORATION, KOZHIKODE-673 001.

R1 AND 3 BY SRI.P.V.SURENDRANATH, STANDING COUNSEL.
R2 BY ADVS. SMT.LATHA PRABHAKARAN
SRI.K.M.JAMALUDHEEN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 08-06-2015 ALONG WITH
W.A.NO.1656 OF 2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.T.O.

**ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.**

W.A.Nos.866 & 1656 of 2012

Dated this the 8th day of June, 2015

JUDGMENT

Antony Dominic, J.

These writ appeals are filed against the judgment of the learned Single Judge, dismissing W.P.(C) Nos.19144 of 2010 and 33152 of 2011, by a common judgment dated 17.04.2012.

2. By the judgment under appeal, taking the view that the temporary structure where the appellants are conducting a fast food shop is put up in violation of the provisions contained in the Kerala Municipality Building Rules, 1999, the learned Single Judge has declined to grant the prayers sought for. It is aggrieved by this judgment, these appeals are filed.

3. We heard the learned counsel for the appellants, the learned Standing Counsel appearing for the Corporation and also the learned counsel appearing for the party respondent.

4. Although various contentions were raised by the learned counsel for the appellants, he was unable to satisfy us that the finding of the learned Single Judge on the issue of violation of Kerala Municipality building Rules is erroneous for any reason. In our view also, this is a case where the construction is in violation of Rules 24 and 87 of the Rules. In such circumstances, the learned Single Judge could not have granted the reliefs sought for.

5. Irrespective of the above, fact remains that the appellants are conducting their business in the premises in question for the last several years and it will be too harsh to require them to immediately close down the establishment. Therefore, we find merit in the request of the learned counsel for the appellants for a reasonable time to remove the structure.

6. Therefore, while confirming the judgment under appeal, we allow the appellants three months time from today to remove the offending structure, which is mentioned in the judgment under appeal.

Subject to the above, the appeals will stand dismissed.

Sd/-

**ANTONY DOMINIC
JUDGE**

Sd/-

**SHAJI .P. CHALY
JUDGE**

//true copy//

P.S. to Judge

St/-