

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&**

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA, 1937

WA .No.2104 of 2015 ()

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(AGAINST THE ORDER IN RP 629/2014 OF HIGH COURT OF KERALA DATED 13.2.2015 IN
W.P(C) NO.10880/2013 AND THE JUDGMENT IN WP(C) 10880/2013 OF THIS HON'BLE
COURT DATED 25.7.2014.)**

APPELLANT(S)/PETITIONER:

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G.BHAGAVATH SINGH,
"SAROJ GANGA", 46/1314-B, FIROZ GANDHI LANE,
JETTY ROAD, VADUTHALA P.O., KOCHI - 682 023.**

BY ADV. SRI.G.BHAGAVAT SINGH (PARTY IN PERSON)

RESPONDENT(S)/RESPONDENTS:

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- 1. MANOJ JOSEPH,
S/O.JOSEPH, NADUVILA MULLOTH HOUSE, KALOOR,
KOCHI - 682 017. NOW RESIDING AT NADUVILA MULLOTH HOUSE,
FIROZ GANDHI LANE, JETTY ROAD, VADUTHALA P.O.,
KOCHI - 682 023.**
 - 2. THE CORPORATION OF COCHIN,
REP. BY ITS SECRETARY, CORPORATION OFFICE,
KOCHI - 682 011.**
 - 3. THE SECRETARY,
CORPORATION OF COCHIN, CORPORATION OFFICE,
KOCHI - 682 011.**
 - 4. SRI. JAMES,
BUILDING INSPECTOR, OFFICE OF THE TOWN PLANNING,
CORPORATION OF COCHIN, KOCHI - 682 011.**
 - 5. SRI. SUDHEER,
ASSISTANT ENGINEER, OFFICE OF THE TOWN PLANNING,
CORPORATION OF COCHIN, KOCHI - 682 011.**

:2:

**6. THE SUB INSPECTOR OF POLICE,
TOWN NORTH POLICE STATION, ERNAKULAM NORTH P.O.,
KOCHI - 682 018.**

**7. THE CIRCLE INSPECOR OF POLICE,
TOWN NORTH POLICE CIRCLE, ERNAKULAM NORTH P.O.,
KOCHI - 682 016.**

**R6 & R7 BY SENIOR GOVERNMENT PLEADER SHRI C.R.SYAM KUMAR
R1 BY SRI.ASP.KURUP
R2 TO R5 BY SRI.V.E.ABDUL GAFOOR, SC, COCHIN CORPORATION**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 01-12-2015, ALONG
WITH WA. 840/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WA.No.2104 of 2015 ()

APPENDIX

APPELLANTS' ANNEXURES:-

ANNEX:1- COPY OF THE PROPERTY SCHEDULE IN SALE DEED NO.3193/2012 STANDS IN FAVOUR OF THE FIRST RESPONEENT.

ANNEX:1(A)- ENGLISH TRANSLATION OF ANNEXURE 1.

ANNEX:2- ROUGH SKETCH OF THE LANE SHOWING ENCROACHMENT.

RESPONDENTS' ANNEXURES:-NIL

KRJ

//TRUE COPY//

PA TO JUDGE

ASHOK BHUSHAN, C.J

&

A.M.SHAFFIQUE, J.

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W.A No.2104 of 2015

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Dated this the 1st day of December, 2015

JUDGMENT

Shaffique, J

This appeal has been filed by the petitioner in W.P(C) No.10880 of 2013 challenging the order in R.P No.629 of 2014 and the judgment of the learned single Judge.

2. The writ petition has been filed by the petitioner pointing out certain infirmities in the construction being effected by the first respondent, who is a neighbour of the petitioner. According to the petitioner, the building was not constructed in accordance with the building plan and that substantial encroachments to the neighbouring property has been made and a ramp has been constructed which again is in violation of the building rules as well as various other statutory provisions. During the pendency of the writ petition, the first respondent had approached the Tribunal for Local Self Government Institutions by filing appeal against the

action taken by the Corporation. The Tribunal by order dated 13.9.2013 permitted first respondent to prefer appeal before the council and further direction was issued to the Secretary to follow the guidelines/directions in paragraph (15) of its order and to complete the process within two months. Para (15) of the said order reads as under:

15. Hence the Secretary has to conduct an inspection of the building of the appellant either by himself or get an inspection done by an experienced officer subordinate to him, verify what are the unauthorised constructions effected therein, prepare a mahazar noting those constructions, the law violated by the construction etc and give a proper provisional order and show cause notice under Section 406(1) and (2) of the Kerala Municipality Act narrating the same. Whether the appellant submits a reply or not a hearing has to be conducted. If the Secretary is convinced by considering the statement of the appellant that there is unauthorised construction he shall issue a proper, legal, reasoned confirmation order under Section 406 (3) of the Kerala Municipality Act.

3. The learned single Judge, after taking note of the fact that the Corporation has already taken appropriate action in the matter which had been interfered by the Tribunal, taking note of paragraph (15) of the order passed by the Tribunal, directed the

Corporation to follow the directions in paragraph (15). Accordingly, the writ petition was disposed of directing the Corporation to implement the order of the Tribunal in terms of paragraph (15).

4. Thereafter, the petitioner preferred R.P No.629 of 2014 pointing out that no steps were taken by first respondent to file any appeal or revision before the competent authority in terms of the directions issued by the Tribunal and, therefore, direction was sought to implement Ext.P8 order. In the review petition, the learned single Judge directed the Corporation to implement Ext.P8 order without any further delay. Ext.P8 is the order passed by the Corporation on 10.5.2013 invoking Section 406(3) r/w. Sections 364 and 367 of the Kerala Municipalities Act, 1994 by which the first respondent was called upon to demolish the unauthorised construction.

5. The appellant, who appears before us as party in person, submits that the learned single Judge has failed to consider entire factual issues involved in the matter and the reliefs sought for has

not been granted to him.

6. Be that as it may, the learned single Judge already having directed the Corporation to implement Ext.P8, we do not think that, in this writ appeal, no further directions are required to be passed. If the appellant has a case that any further violations are still remaining to be attended, it shall always be open to the petitioner/appellant to bring to the notice of the Corporation regarding the said violation and the competent authority shall look into the matter and do the needful.

With the above observations, the writ appeal is dismissed.

Sd/-

**ASHOK BHUSHAN
CHIEF JUSTICE**

sd/-

**A.M.SHAFFIQUE
JUDGE**

krj

//true copy// P.A to Judge