

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

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

**WEDNESDAY, THE 28TH DAY OF OCTOBER 2015/6TH KARTHIKA, 1937**

**WA.No. 2281 of 2015 ()**  
-----

**WP(C) 16084/2013 of THIS HON'BLE COURT**  
-----

**APPELLANT/5H RESPONDENT :**  
-----

**JERIN JACOB, S/O. A.P.JACOB,  
ANJILY HOUSE, EDAPPALLY. P.O. KOCHI-682024.  
(REPRESENTED BY POWER OF ATTORNEY HOLDER A.P.JACOB.**

**BY ADV. SRI.S.M.PREM**

**RESPONDENTS/PETITIONER & RESPONDENTS 1 TO 4 :**  
-----

- 1. RADHAKRISHNAN NAIR  
S/O.K.MADHAVAN NAIR, 'RENJINI'MAROTTICHUVADU  
EDAPPALLY.P.O, KOCHI-682024.**
- 2. THE DISTRICT MEDICAL OFFICER  
OFFICE OF THE DISTRICT MEDICAL OFFICE  
ERNAKULAM DISTRICT-682011.**
- 3. THE HEALTH INSPECTOR,  
PRIMARY HEALTH CENTRE, THRIKKAKARA MUNICIPALITY  
KOCHI-682021.**
- 4. THRIKKAKARA MUNICIPALITY,  
REPRESENTED BY ITS SECRETARY  
TRHRIKKAKARAM KOCHI-682021.**
- 5. THE SUB INSPECTOR OF POLICE,  
THRIKKAKARA POLICE STATION, THRIKKAKARA,  
ERNAKULAM - PIN-682021.**

**R2, R3 & R5 BY GOVERNMENT PLEADER SRI. P.I. DAVIS  
BY CRI.C.S.AJITH PRAKASH  
BY SRI.S.SHANAVAS KHAN**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION  
ON 28-10-2015 ALONG WITH WA 2282/2015, THE COURT  
ON THE SAME DAY DELIVERED THE FOLLOWING:**

**bp**

WA.No. 2281 of 2015 ()

APPENDIX

PETITIONER'S ANNEXURES :

ANNEXURE 1: COPY OF NOTICE NO. T.P. I/H1-7657/12 DT 9/10/2015 WITH  
ENGLISH TRANSLATION.

ANNEXURE 2: COPY OF ORDER DT 25/9/2013 IN WPC NO. 16084/2013.

RESPONDENT'S ANNEXURES : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

**ASHOK BHUSHAN, C.J. &  
A.M.SHAFFIQUE, J.**

-----  
**W.A.Nos.2281 and 2282 of 2015**  
-----

**Dated this the 28<sup>th</sup> day of October, 2015.**

**J U D G M E N T**

ASHOK BHUSHAN, C.J.

Heard the learned counsel for the appellant and the learned Senior Government Pleader in the matters.

2. These writ appeals have been filed against the common judgment dated 21.8.2015, by which judgment, the learned Single Judge has decided two writ petitions ; wherein, W.P.(C)No.16084/13 was filed by the 1<sup>st</sup> respondent in W.A.No.2281 of 2015 and W.P.(C) No.24442/13 was filed by the appellant. In the writ petitions filed by both the parties, the following reliefs have been sought for :

In W.P.(C)No.16084/13

"i. to issue a writ of mandamus or any other appropriate writ, direction or order directing the 2<sup>nd</sup> and 3<sup>rd</sup> respondents to dismantle the septic tank reconstructed and charged to the toilet pipes, forthwith as the same is an unlawful action on the

part of 5<sup>th</sup> respondent.

ii. to issue a writ of mandamus or any other appropriate writ or order directing the 3<sup>rd</sup> and 4<sup>th</sup> respondent to initiate prosecution steps and to invoke the penal provision under the Kerala Municipality Act, 1994 against the 5<sup>th</sup> respondent and his father who supervised the work of restoration of the septic tank.

iii. To issue an order for appropriate writ directing the 5<sup>th</sup> respondent not to construct any septic tank within the prohibited distance from the drinking water well of the petitioner till the matter is finally decided by the authorities concerned.

iv. to grant such other relief as this Hon'ble Court deem fit and proper in the circumstance of the case."

In W.P.(C)No.24442/13

"i) issue a writ of mandamus or such other writ, direction or order compelling the respondents 1 and 2 to take immediate action to close the "well" dug by the 3<sup>rd</sup> respondent in proximity to the building of the petitioner in violation of the set back rules prescribed under Chapter XVI of the Kerala Municipality Building Rules, 1999 ;

ii) issue a writ of mandamus or such other writ, direction or order compelling the respondents 1 and 2 to take effective action to remove the illegal construction made by the 3<sup>rd</sup> respondent abutting the petitioner's property and preventing fresh air, day light and ventilation to the petitioner's building ;

iii) issue such other writ, direction or order as is deemed just and necessary in the facts, features and circumstances of the case ;

iv) award compensatory costs and expenses to the petitioner to be paid by the 3<sup>rd</sup> respondent."

The learned Single Judge, after hearing the parties and after considering the pleadings in detail, has dismissed the writ petition filed by the appellant, whereas the writ petition filed by the 1<sup>st</sup> respondent has been allowed. The learned Single Judge, while allowing the writ petition, in paragraph 22 of the common judgment, the following directions were given :

"(i) the third respondent Municipality shall see that the 5<sup>th</sup> respondent shifts the septic tank in the property of 5<sup>th</sup> respondent as per suggestion No.2 of 3<sup>rd</sup> respondent in Ext.R3 (a) report ie. 5.4 meters towards the east of petitioner's well within a period of 1 month from the date of receipt of a copy of the judgment.

(ii) in case the 5<sup>th</sup> respondent does not shift the septic tank, as directed, implement its proceedings Exts.P13, P14 and P18, as finalised by Ext.R5(i) dated 23.9.2013 to demolish the septic tank without any further delay, if necessary with the help of police.

(iii) 4<sup>th</sup> respondent shall render necessary assistance to the 3<sup>rd</sup> respondent for implementing the same, on request from 3<sup>rd</sup> respondent.

(iv) the Municipality shall see that the entire proceedings are completed within a period of two months from the date of receipt of a copy of this judgment."

Whereas the writ petition filed by the appellant was dismissed with cost. The learned counsel for the appellant contended that the septic tank which has been now directed to be shifted was in accordance with the Rules and there was no violation of any statutory Rules and further the well which was constructed by the 1<sup>st</sup> respondent was also not in accordance with the Rules. He submits that no Rule relating to distance, has been violated by the writ petitioner. The learned counsel for the 1<sup>st</sup> respondent contended that the litigation was prolonged at the instance of the appellant who had adopted an adamant attitude and which fact was also found and recorded by the learned Single Judge. It is submitted that the septic tank of the appellant was in breach of the statutory prohibitions of distance as contained in Rule

104 of Sub rule (4) of Kerala Municipal Building Rules, 1999, which findings were also recorded by the learned Single Judge. It is submitted that there was enough space in the plots of the appellant to re-locate the septic tank, but it was only due to the adamant attitude of the appellant, that he did not accept the suggestions of anyone.

3. We have considered the submissions of the learned counsel on both sides and perused the records. The learned Single Judge, after considering all the evidence on record has recorded the categorical finding that, in the site of septic tank, there is violation by Rule 104 of Sub Rule 4 of Kerala Municipal Building Rules, where the prohibited distance is 7.5 mtrs. The submission of the learned counsel for the appellant that the appellant's septic tank is within a distance of 1.2 mtrs. from the plot boundaries and that it satisfies the rules, does not commend us. There is a purpose for providing the distance of 7.5 mtrs. from the existing well used for supplying water for human consumption or

domestic purpose. The learned counsel for the appellant contended that, the premises of the 1<sup>st</sup> respondent is a commercial premises, where shops are existing and water availed therein is not used for domestic purpose. This submission also does not commend us, since the Rule itself contemplates two circumstances, ie., water for human consumption or domestic purpose. Even if according to the appellant, there are commercial shops and establishments in the premises, it cannot be held that the water of the well cannot be used for human consumption. Thus the above submission has also no substance. The learned Single Judge has gone into and considered all aspects of the matter, and we do not find any error in the judgment, warranting interference of this Court in exercise of the appellate jurisdiction. The learned counsel for the appellant lastly contended that he should be given some time to re-locate the septic tank. The learned counsel for the 1<sup>st</sup> respondent has opposed the prayer and contended that the learned

Single Judge has already granted one month time while delivering the judgment on 21.8.2015 and more than two months have been lapsed, but, still no steps have been taken by the appellant. It is submitted that after the judgment, a notice was also issued for re-location and even thereafter no steps were taken by the appellant and the appeal was filed only on 19.10.2015. Considering all those facts and circumstances, we are of the view that, ends of justice will be served, in giving 15 days time from today to the appellant for shifting his septic tank as per the terms of the judgment passed on 21.8.2015. Accordingly, both the appeals are dismissed with the aforesaid observations.

Sd/-  
**ASHOK BHUSHAN,**  
**CHIEF JUSTICE.**

Sd/-  
**A.M.SHAFFIQUE,**  
**JUDGE.**

ami/

//True copy//

P.A. to Judge