

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

**PRESENT:**

**THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN**

**FRIDAY, THE 17TH DAY OF JULY 2015/26TH ASHADHA, 1937**

**WP(C).No. 5365 of 2013 (U)**  
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**PETITIONER :**  
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**MOHAMMED A. MALIKA  
PRESIDENT, RAHMANIYYA MUSLIM JAMA ATH, AMBATTAKKUZHY  
SHIRIYA P.O., KASARAGOD DISTRICT.**

**BY SENIOR ADVOCATE SRI.GRASHIOUS KURIAKOSE  
BY ADVS.SRI.M.M.ANTO  
SRI.GEORGE MATHEWS  
SMT.CELINE JOSEPH  
SRI.P.BHARATHAN**

**RESPONDENT(S) :**  
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- 1. DISTRICT COLLECTOR  
KASARAGOD DISTRICT, KASARAGOD,  
PIN-671 121.**
- 2. THE SECRETARY  
MANGALAPADY GRAMA PANCHAYATH,  
MANGALAPADY, P.O. UPPALA  
KASARAGOD DISTRICT,  
PIN-671 322.**
- 3. T. SHANKARA NARAYANAN RAO  
S/O.RAMAKRISHNAN RAO, NEAR SHIRIYA RATION SHOP  
SHIRIYA VILLAGE, SHIRIYA P.O., KASARAGOD  
PIN-671 321.**

**R1 BY GOVT. PLEADER SRI. MANOJ P. KUNJACHAN  
R3 BY SENIOR ADVOCATE SRI.M.RAMESH CHANDER  
BY ADV. SRI.ANEESH JOSEPH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17-07-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**Mn**

**...2/-**

**APPENDIX**

**PETITIONERS' EXHIBITS :**  
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- |                   |                                                                                                        |
|-------------------|--------------------------------------------------------------------------------------------------------|
| EXT. P1-          | TRUE COPY OF THE REGISTRATION CERTIFICATE DATED 4.4.2007.                                              |
| EXT. P2-          | TRUE COPY OF THE PROPOSED BUILDING PLAN & SKETCH.                                                      |
| EXT. P3 (SERIES)- | TRUE COPIES OF THE PHOTOGRAPHS.                                                                        |
| EXT. P4-          | TRUE COPY OF THE COMPLAINT DATED 13.04.2010 SUBMITTED BY THE 3RD RESPONDENT BEFORE THE 1ST RESPONDENT. |
| EXT. P5-          | TRUE COPY OF THE RESOLUTION DATED 2.1.2010 ISSUED BY THE 2ND RESPONDENT.                               |
| EXT. P6-          | TRUE COPY OF THE ORDER DATED 4.7.2012 ISSUED BY THE 1ST RESPONDENT.                                    |

**RESPONDENTS' EXHIBITS :      NIL**  
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**//TRUE COPY//**

**P.S. TO JUDGE**

**Mn**

K. Vinod Chandran, J

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W.P.(C).No.5365 of 2013-U  
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Dated this the 17<sup>th</sup> day of July, 2015

**JUDGMENT**

The petitioner is aggrieved with the fact that the petitioner has been declined a No Objection Certificate [for brevity “NOC”] for constructing a prayer hall in Re-survey No.109/pt. in Shiriya village despite the Panchayat having requested the District Collector to grant a NOC.

2. The petitioner contends that the petitioner is not constructing a mosque and what is intended is only a prayer hall for 18 [eighteen] families and the same is constructed within the residential plot of the petitioner. The petitioner also contends that even going by Exhibit P6 order of the District Collector, the petitioner's residence is situated in a Muslim populated area and the only Hindu residing therein is the 3<sup>rd</sup> respondent. The learned counsel for the petitioner also points to Exhibit P4 objection filed by the 3<sup>rd</sup> respondent, wherein the objection raised is only on the apprehension that later there will be a burial ground constructed in the mosque and that would impair the source of drinking water to the 3<sup>rd</sup> respondent.

3. This Court cannot understand Exhibit P4 to be only an objection with respect to an apprehension of a burial ground being constructed in the property. Though the said apprehension was also raised in Exhibit P4, the 3<sup>rd</sup> respondent-objector specifically pointed out that the construction of the mosque would obstruct the communal harmony of the locality. The petitioner's contention that he is not constructing a mosque but only a prayer hall is belied by his own admission that he is constructing it for 18 families. Hence, what is intended is facilitation of a prayer space for the community members, which in effect is a mosque. The District Collector, on the request received from the Panchayat, considered the objections and passed a detailed order, at Exhibit P6. The District Collector had also obtained a report from the Superintendent of Police, Kasaragod and the Revenue Divisional Officer, Kasaragod.

4. The Superintendent of Police, Kasaragod reported that construction had already been started without prior permission of the authorities. The area was one in which 11 Muslim families were residing and one Hindu family, being that of the 3<sup>rd</sup> respondent-objector. It was specifically reported that the

construction of the mosque would lead to law and order problem in the area. The Superintendent of Police also specifically reported that two mosques are located nearby and there is no need for a new mosque.

5. The Revenue Divisional Officer reported that the residential house of the applicant, i.e., the petitioner herein, is at the eastern end of the land, while the said proposed prayer hall is in the south western end and adjacent to the house of the objector. It was reported that the activities in the proposed building would definitely affect the objector as well as his family. The RDO also reported that the work up to roof level was done without prior permission and that the residential house of the writ petitioner is just 50 meters from the proposed site.

6. The Superintendent of Police and the Revenue Divisional Officer did not recommend the NOC. Further, in Exhibit P6 an intelligence report forwarded to the Government was also referred to. The Government was also of the opinion that there is communal disharmony in the area and there are chances of communal problems erupting and directed the District administration to intervene in the matter.

7. Considering the fact that the construction was commenced and proceeded with prior to the NOC itself, the petitioner cannot claim any equity to complete the construction. Further, the objection cannot be said to be one confined to an apprehension about the site being converted as a burial ground in future. The Collector, who is in charge of the District administration, has been careful to get a report from the Superintendent of Police and the Revenue Divisional Officer. Both have recommended that NOC be not given; not merely on the grounds raised by the objector, but also on an over all assessment of the situation, which stood against such grant of NOC especially on the ground of apprehension of communal disharmony. This Court does not find any reason to interfere with Exhibit P6.

The writ petition would stand dismissed. No costs.

**Sd/-**

K.Vinod Chandran  
Judge.

vku/-

[ true copy ]