

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

WP(C).No. 5113 of 2015 (L)

PETITIONER(S):

**T.P. BASHEER, S/O.THACHARAKKAL KUNHIKOYA,
AGED 60 YEARS, KALLADI HOUSE, KOVOOR,
MEDICAL COLLEGE P.O, KOZHIKODE-673 008.**

**BY ADVS.SRI.NIRMAL. S.,
SMT.VEENA HARI.**

RESPONDENT(S):

**THE CORPORATION OF KOZHIKODE,
REP. BY ITS SECRETARY,CORPORATION OFFICE,
BEACH ROAD, KOZHIKODE-673 001.**

BY ADV. SRI.K.D.BABU, SC.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 20/08/015, THE COURT ON 09/11/2015 DELIVERED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 COPY OF THE RECEIPTS OF THE BUILDING TAX.
- EXT.P2 COPY OF THE LICENSE FEE RECEIPT OF THE PETITIONER
DATED 02/05/2011.
- EXT.P3 COPY OF THE PHOTOGRAPH OF THE PETITIONER'S ROOM
AS IT ORIGINALLY STOOD.
- EXT.P4 COPY OF THE PHOTOGRAPH OF THE PETITIONER'S ROOM
AFTER CONSTRUCTION OF THE COMPOUND WALL.
- EXT.P5 COPY OF THE JUDGMENT DATED 29/11/2000 WITH OUT ITS
CAUSE TITLE.
- EXT.P6 COPY OF THE REPRESENTATION DATED 12/12/2000.
- EXT.P7 SERIES: COPY OF THE PHOTOGRAPHS OF THE PRESENT POSITION OF
THE SHOP ROOM.
- EXT.P8 COPY OF THE REPRESENTATION DATED 30/09/2002.

RESPONDENT'S EXHIBITS:- NIL.

COMMISSIONER'S ANNEXURES:-

- ANNEXURE I ROUGH SKETCH (NOT DRAWN TO SCALE) SHOWING THE
LOCATION OF THE SHOP ROOM, THE BOUNDARY WALL,
THE MOFUSSIL BUS STAND AND OTHER RELEVANT ASPECTS.
- ANNEXURE II PHOTOGRAPH SHOWING THE VARIOUS RELEVANT ASPECTS
REPORTED HEREUNDER ARE ANNEXED TO THIS REPORT
(16 IN NUMBER).

//TRUE COPY//

P.S. TO JUDGE

rs.

A.V.RAMAKRISHNA PILLAI, J

WPC No.5113 of 2015

Dated this the 9th day of November, 2015

JUDGMENT

Aggrieved by the inaction on the part of the respondent in not providing an opening in the compound wall in front of the petitioner's shop room, the petitioner has come up before this Court.

2. The petitioner is the owner of a room bearing No.17/503-C at Mruthi Enterprises Shopping Complex near the Moffussil bus stand at Kozhikode. The petitioner is running a computer business by name "Cosmic IT Solutions". The petitioner was having direct road access and customers could enter directly to the shop rooms. Later, Corporation of Calicut constructed a compound wall for the bus stand in front of the room of the petitioner. The business of all these commercial establishments suffered due to the construction of the compound wall. More over, the wall was constructed with a drain flowing along the side of the compound wall. No sanitary work is

being carried out for the proper maintenance of the drains and the long stretch of compound wall did tempt the public for relief in the absence of toilet facilities within the bus stand. According to the petitioner, some of the owners of the establishments filed O.P.No.29800/2008 against the construction of compound wall. By the judgment dated 29.11.2000, the writ petition was disposed of with a direction to provide opening in the compound wall for the petitioners in that case. Based on the judgment, representations were made by these shop owners to the respondent. The petitioner had made several representations before the respondent Corporation and the respondent has not provided an opening in front of the petitioner's shop room till date. It is with this background the petitioner has come up before this Court.

3. In the statement filed by the respondent Corporation, it was contended as follows:

It is contended that the respondent had constructed a compound wall in Moffussil bus stand considering the

large public interest and security reasons. The said construction does not cause any kind of hindrance to the smooth passage of the petitioner to his shop. In compliance to the judgment in O.P.No.29800/2000, passage is allowed to the petitioners in O.P.No.29800/2000 through the said compound wall. In the said case, the petitioner herein was not a party. It is contended that the petitioner is having straight entrance with front access of approximately 20 metres from the main road. The shop rooms of the petitioners in O.P.No.29800/2000 is lying towards the back side of the petitioner's building. Since there is no direct entrance to the shop room owned by the petitioners in O.P.No.29800/2000, entrance is permitted to them through the compound wall as directed by this Court in O.P.No.29800/2000.

It is contended that the petitioner has filed this writ petition and has produced Ext.P8 representation stating as if he had submitted the same on 30.9.2002. The very fact that the petitioner had awaited for the last 13 years

for filing a writ petition after submitting Ext.P8 itself shows that the said representation has been created for the sake of filing this writ petition. No such representation is pending in the Corporation files; it is contended. It is to be noted that the petitioner was engaged in his trade activities from 2000 onwards without any sort of complaint in the said premises.

It is further contended that the construction of the compound wall does not cause any kind of loss to the business carried by neither the petitioner nor to his neighbours. No drainage problem is prevailing in the said premises. Vast toilet facilities are provided in the Moffussil bus stand. The contention of the petitioner that due to the construction of the said compound wall, light and air flow is blocked to the shop room is absolutely incorrect. It is contended that the bar is not functioning at present due to the prohibition of bar. Several buses are parked in the bus stand and there is free passage of people. Considering the public security, the respondent was constrained to construct the compound wall around

the bus stand.

It is further contended that the contention raised by the petitioner for providing free passage and entrance to his shop room through the compound wall which is constructed around the bus stand and in the property which is owned by the Corporation is absolutely against the public interest. It is contended that the petitioner is having direct entrance to his shop room from the main road with 20 metre front access.

4. Arguments have been heard.

5. Before the case came up for final hearing, this Court at the instance of the petitioner has deputed an Advocate Commissioner who has submitted a report along with the photographs which gives an over all picture of the petitioner's property as well as the surrounding locality. The learned Commissioner has reported that the visibility and access to the shop room belonging to the petitioner from the Mofussil Bus stand seems to be totally blocked and obstructed by a 2.10 m. high compound wall constructed on the eastern boundary of the Mofussil Bus

stand separating it from Maruthi Enterprises shopping complex. Even though the petitioner's shop room is facing the Moffussil bus stand on its immediate western side, it is hardly visible or accessible from the bus stand due to the existence of the said 2.1 m. high wall. The Commissioner further reported that as many as four openings having width of 3.5 m., 6.7 m., 1.6 m. and 2m. are provided for direct access to all shop rooms of the shopping complex by name Sharara Arcades from the Moffussil Bus stand. All shop rooms of a shopping complex by name Sharara Arcade situated on the immediate southern side of the Maruthi Enterprises shopping complex and on the south-eastern side of the Moffussil Bus stand are provided with access to the bus stand. The commissioner has also seen adequate opening provided for a tyre work shop by name Kotta Tyre Works and a restaurant by name Kalicut Hotel towards the middle portion of southern boundary of the Moffussil Bus stand, from where the bus stand premises extends further south. All the above shops are facing the Moffussil Bus

stand and are provided with direct access and clear visibility from the bus stand premises by making sufficient openings in the boundary wall. The Commissioner further reports that the petitioner's shop room bearing No.17/503C at Maruthi Enterprises Shopping complex is presently not in a condition conducive for conducting any profitable business activity due to lack of proper means of access and adequate visibility.

6. Though a detailed objection has been filed by the respondent, I see no reason to disbelieve what is stated in the commissioner's report. It was pointed out that the petitioner has been conducting the business from 1991 near the Moffussil bus stand and was having very good business until the construction of the compound wall.

As the construction of the high compound wall has obstructed the access of the public to the petitioner's shop room from the bus stand, the petitioner is seriously affected. Therefore, this Court is of the view that the petitioner is entitled to get the relief as prayed for.

In the result, this writ petition is allowed. The

respondent is directed to provide an opening in the compound wall of the Moffussil bus stand in front of the petitioner's shop room as provided to the occupiers of the shop room in the Sharara Arcade within a period of one month from today so that he can have access to the Moffussil Bus stand.

**sd/- A.V.RAMAKRISHNA PILLAI
JUDGE**

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P.S.TO JUDGE