

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

WP(C).No. 5582 of 2015 (W)

PETITIONER(S) :

1. JAILY MATHEW,
ERAMBADATHIL HOUSE, KOOHATTUKULAM P.O.,
ERNAKULAM DISTRICT, PIN - 686 662
(NOW RESIDING AT XXVIII/1796, PANORAMA NAGAR,
AMALA BHAVAN ROAD, KADAVANTHRA, KOCHI - 682 020).
2. DR.DEEPTHI,
ERAMBADATHIL HOUSE, KOOHATTUKULAM P.O.,
ERNAKULAMDISTRICT, PIN - 686 662
(NOW RESIDING AT XXVIII/1796, PANORAMA NAGAR,
AMALA BHAVAN ROAD, KADAVANTHRA, KOCHI - 682 020).

BY DR.K.P.SATHEESAN (SENIOR ADVOCATE)
ADVS. SRI.M.R.JAYAPRASAD
SRI.P.MOHANDAS (ERNAKULAM)
SRI.ANOOP.V.NAIR
SRI.S.VIBHEESHANAN
SRI.N.MANU THAMPI

RESPONDENT(S) :

1. KOOHATTUKULAM GRAMA PANCHAYATH
REPRESENTED BY SECRETARY, KOOHATTUKULAM P.O.,
ERNAKULAM DISTRICT, PIN- 686 662.
2. THE SECRETARY, KOOHATTUKULAM GRAMA PANCHAYAT,
KOOHATTUKULAM P.O., ERNAKULAM DISTRICT, PIN - 686 662.
3. REGIMON P.ALEX,
PADIKKAPARAMBIL HOUSE, KOOHATTUKULAM P.O.,
ERNAKULAM DISTRICT, PIN - 686 662.
4. THE TALUK SURVEYOR, TALUK OFFICE,
MUVATTUPUZHA TALUK, ERNAKULAM DISTRICT, PIN - 686 661.

R1 & R2 BY ADV. SRI.K.M.JAMALUDHEEN
R3 BY ADV. SRI.P.C.HARIDAS
R4 BY GOVERNMENT PLEADER SMT.ANITHA RAVEENDRAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 09-07-2015, THE COURT ON 22-07-2015 DELIVERED THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXT.P1:** TRUE COPY OF THE RELEVANT PAGE OF THE COMMISSION REPORT IN I.A.NO.1416/2008 IN O.S.NO.50/2007 OF THE MUNSIFF'S COURT, MUVATTUPUZHA.
- EXT.P1(A):** ENGLISH TRANSLATION OF EXT.P1.
- EXT.P2:** TRUE COPY OF THE INTERIM ORDER DATED 06/05/2008 I.A.NO.5617/2008 IN W.P.(C).NO.13516/2008.
- EXT.P3:** TRUE COPY OF THE JUDGMENT DATED 08/07/2008 IN W.P.(C).NO.13516/2008.
- EXT.P4:** TRUE COPY OF THE BUILDING PERMIT GIVEN TO THE PETITIONERS BY THE FIRST RESPONDENT DATED 06/03/2008.
- EXT.P5:** TRUE COPY OF THE ORDER DATED 26/06/2009 IN CONT.CASE(C)NO.1329/2008.
- EXT.P6:** TRUE COPY OF THE ORDER DATED 24/09/2009 IN CONT.CASE(C)NO.1329/2008.
- EXT.P7:** TRUE COPY OF THE JUDGMENT DATED 29/10/2009 IN W.P.(C).NO.19301/2009 AND W.P.(C).NO.23384/2009.
- EXT.P8:** TRUE COPY OF THE PROVISIONAL ORDER NO.A1-5534/12 DATED 29/11/2012.
- EXT.P8(A):** ENGLISH TRANSLATION OF EXT.P8
- EXT.P9:** TRUE COPY OF THE REPRESENTATION FILED BY THE SECOND PETITIONER DATED 08/04/2014.

RESPONDENT(S)' EXHIBITS :

- EXT.R3(A):** TRUE COPY OF THE PROCEEDINGS OF THE ARBITRATOR.
- EXT.R3(B):** TRUE COPY OF THE APPLICATION FOR BUILDING PERMIT SUBMITTED BY THE 3RD RESPONDENT.
- EXT.R3(C):** TRUE COPY OF THE APPLICATION FOR BUILDING PERMIT SUBMITTED BY THE PETITIONERS.
- EXT.R3(D):** TRUE COPY OF THE BUILDING PERMIT ISSUED TO THE 3RD RESPONDENT.
- EXT.R3(E):** TRUE COPY OF THE ORDER DATED 10.03.2015 OF THE 1ST RESPONDENT.

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**EXT.R3(F): TRUE COPY OF THE INTERIM ORDER DATED 17.04.2015 IN
APPEAL NO.355/2015 OF THE LSGD TRIBUNAL.**

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.5582 of 2015

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Dated this the 22nd day of July, 2015

JUDGMENT

The petitioners have approached this Court for removal of certain structures said to have been made by the third respondent which, according to the petitioners, were constructed in violation of Ext.P7 judgment of this Court.

2. The petitioners are husband and wife. The first petitioner is the owner of 12.05 cents of land within the local limits of the first respondent panchayat. He constructed a three storeyed RCC building in the said property consisting of 14 shop rooms and a lane on the ground floor. Two rooms on the ground floor face M.C.Road on the west and the remaining rooms are behind the said rooms, that is on the eastern end. That is why a lane has been provided on the ground floor. The stair case leading to the upstairs is in one of the rooms on the eastern end. The third respondent, at present, is the owner of the rooms situated on the ground floor of the building. According to the petitioners, he does not have absolute right over the property where the ground floor is situated.

3. The petitioners allege that there was a parking area on the southern side and the passage on the southern side of the ground

floor belongs to the first petitioner. The petitioners further allege that and the third respondent has only a limited right of easement over the land. It was as per certain sale deeds executed in the years 1997 and 2006, that the third respondent has purchased the rooms on the ground floor.

4. The petitioners further allege that the rooms on the ground floor occupy only half of the property belonging to the first petitioner and the remaining part of the property having an extent of more than 6 cents is used as parking area and passage. On the eastern side of this property, there was a wetland having an extent of 4.57 cents which was purchased by the third respondent in the year 2006. The same was reclaimed by the third respondent which according to the petitioners was without any permission from any of the authorities. Thereafter the third respondent submitted a plan before the respondent panchayat for constructing a building stating that he is having 11.546 cents, though he had right over only 4.570 cents of land and other amenities permitted by the petitioners for using the rooms on the ground floor.

5. The petitioners further allege that as the third respondent is having right over only the rooms under the ground floor, he cannot make any further constructions in the property of the

petitioners. The petitioners further allege that without ascertaining the actual position, the respondent panchayat issued building permit to the third respondent, in November, 2006. In total violation of the Rules, the third respondent constructed a four storeyed building in his property. These buildings were independent and separated by a compound wall; it is alleged.

6. The petitioners further allege that while the third respondent was constructing the building, there was an attempt on his part to connect his building with the petitioners' building to make it appear that it is a single structure. It was objected to by the petitioners. As the attempt continued, the petitioners filed O.S No.50 of 2007 before the Munsiff's Court, Muvattupuzha seeking injunction. A Commissioner was deputed who filed a report. Ext.P1 is the copy of the relevant pages of the report. The petitioners further allege that the third respondent continued his illegal attempt to connect two buildings.

7. As the trial court was closed during mid-summer vacation, the petitioners approached this Court with W.P(C) No.13516 of 2008 wherein interim order dated 6.5.2008 was passed restraining the third respondent from carrying out any construction joining the two buildings. Ext.P2 is the copy of the interim order. Subsequently, this

order was extended until further orders. Finally, the writ petition was disposed of on 8.7.2008 recording the undertaking of the third respondent and his wife that the two buildings would not be joined without obtaining permission from the panchayat. This Court directed the panchayat that decision regarding permission to join the buildings should be taken only after hearing the objections of the petitioners also. Ext.P3 is the copy of the judgment.

8. In the meanwhile, the petitioners applied for building permit to construct the second floor of the existing building. It was granted by the respondent panchayat as evident from Ext.P4 dated 6.3.2008. The third respondent challenged Ext.P4 before the Tribunal for Local Self Government Institutions in Appeal No.382 of 2009. His contention was that as he is occupying the ground floor of the building his consent ought to have been obtained before granting the permit. The petitioners point out that in all the documents executed in favour of the third respondent and others, their right to make further constructions were reserved. However, the Tribunal set aside Ext.P4 permit. This was challenged by the petitioners before this Court in W.P(C) No.19301 of 2009 wherein the operation of the order of the Tribunal was stayed. In the meanwhile, the third respondent submitted a representation before

the panchayat on 23.8.2008 stating that he is going to join the two buildings, viz., the building belonging to the petitioners and the new constructed building by the third respondent. The petitioners further allege that this was against the direction given by this Court in Ext.P3 judgment. They would further allege that on 24.8.2008, the third respondent joined the two buildings without obtaining any permission from the respondent panchayat nor any consent from the petitioners.

9. The petitioners further allege as there was violation of the directions in Ext.P3 judgment, they filed Cont. Case (C) No.1329 of 2008 which was disposed of by Ext.P5 finding that the third respondent has violated Ext.P3 judgment and directed to initiated proceedings against the third respondent. When the contempt case was listed before the Division Bench, the petitioners and the third respondent were directed to go for mediation. However, it did not succeed. Thereupon the Division Bench considered the contempt case and directed the third respondent to remove the petitioners' structure as per Ext.P6 order. There was a further direction to file compliance report on 29.9.2009. On that date, the learned counsel for the third respondent submitted that they are prepared for a settlement and sought time for settling the issue. The time was

granted. Subsequently, a compromise was filed and the writ petition was disposed of by Ext.P7 judgment recording the compromise.

10. The grievance of the petitioners is that though they were under the *bona fide* impression that the third respondent would honour the undertaking given by him before this Court on the basis of which the contempt case was dropped, to the petitioners' dismay, the third respondent closed the place meant for car parking with shutters and made it as a part of his textile showroom demolishing the boundary wall in between the properties. On account of this, there is no car parking area.

11. The petitioners point out that they are unable to file contempt case against the third respondent since more than one year elapsed after Ext.P7 judgment. Therefore, they filed complaint before the first respondent panchayat against the illegal conversion of the parking area. The first respondent passed provisional order directing removal of the unauthorised construction made by the third respondent enclosing the parking area as per Ext.P8. However, no further action was taken.

12. The second petitioner submitted Ext.P9 representation before the second respondent to take action against the third respondent. The petitioners allege that in spite of repeated

requests, respondents 1 and 2 are not taking any action against the third respondent. It is with this background, the petitioners have come up before this Court.

13. The respondents have filed a detailed counter affidavit controverting all the allegations in the writ petitioner and justifying their action. Along with the counter affidavit they have produced Exts.R3(a) to Ext.R3(f) in support of their contention. The definite stand taken by them is that there was no violation of Ext.P7 judgment. Therefore, he prayed for a dismissal of the writ petition.

14. I have heard the learned counsel for the petitioners, the learned standing counsel for the respondent panchayat and the learned counsel for the party respondent.

15. The gist of the allegation of the petitioner is that the undertaking given by the third respondent before this Court had resulted in Ext.P7 judgment. It was pointed out that the ground floor of the building should be kept as car parking area. Therefore, any conversion adjacent to or above would amount to violation of the undertaken by the third respondent; so submitted the learned Senior Counsel for the petitioners. In answer to the said argument, the learned counsel for the third respondent would submit that when the third respondent resumed constructions in terms of the

compromise, the petitioners were reluctant to co-operate with him. He would point out that the petitioners did not co-operate in submitting the application for building permit for the construction agreed to be carried out as per clauses (iv) and (v) of the compromise and at that juncture, he has approached the Arbitrator appointed as per the compromise, who is none other than the counsel for the petitioners in earlier proceedings.

16. The learned counsel for the third respondent invited my attention to Ext.R3(a) proceedings by which, both sides were permitted to submit application for permit for the respective portions of construction. Both sides were directed to give their signatures in the application to be submitted by the other side; so submitted the learned counsel for the respondent. Accordingly, the petitioners put their signatures on the application dated 17.12.2009 for building permit submitted by the third respondent. Ext.R3(b) is the copy of the said application and the application submitted by the petitioners were signed by the third respondent which is marked as Ext.R3(c). It was further argued that from Ext.R4(b) it is clear that the proposed construction is for a commercial space. It was pointed out that it was shown as commercial occupancy due to the objection of the respondent panchayat to permit the third respondent to use

the area as car parking space. This would indicate that the respondent panchayat was against the conversion of car parking space into a commercial area.

17. Though it was strenuously argued by the learned counsel for the respondent that the construction was in accordance with Ext.P7 judgment, this Court is not inclined to accept the same was the intention of this Court in Ext.P7 judgment was to keep the state of affairs on the ground floor as it existed on the date of Ext.P7. On the date of Ext.P7 judgment it was a car parking area. Therefore, neither the petitioner nor the third respondent has any right to go beyond Ext.P7. Respondents 1 and 2 are legally bound to see that Ext.P7 judgment is complied with by the third respondent in true letter and spirit.

18. It is evident from the counter affidavit filed by the third respondent itself that the second respondent was convinced that the car parking space shall not be converted into a commercial occupancy. It was the intention of this Court in Ext.P7 that car parking area has to be kept open so that it can be used only for car parking. By the subsequent act of the third respondent with the consent of the respondent panchayat, the same has been converted into a commercial area.

19. Though it was strenuously argued by the learned counsel for the third respondent that applications were submitted on the basis of the directions of the Arbitrator, this Court is of the definite view that the Arbitrator cannot have the right to upset the clear directions given in Ext.P7 judgment

20. As respondents 1 and 2 are duty bound to remove the unlawful constructions, this Court is of the view that the petitioners are entitled to the relief prayed for.

Therefore, the writ petition is disposed of directing respondents 1 and 2 to take proper action for removing the unlawful constructions made by the third respondent in violation of Ext.P7 judgment, within one month from the date of receipt of a copy of this judgment. If any structures constructed by the petitioners have been demolished, it shall be open to the them to approach a competent civil court to get it restored through a decree.

Sd/-
A.V.RAMAKRISHNA PILLAI
JUDGE

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