

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 27TH DAY OF FEBRUARY 2015/8TH PHALGUNA, 1936

WP(C).No. 8268 of 2013 (G)

PETITIONERS:

1. N.V. SUDHA
W/O.SATHEESH CHAND, PARVATHY NILAYAM,
NANDHYATTUKUNNAM, PARAVOOR,
ERNAKULAM DISTRICT.
2. M.S.SATHEESH CHAND
PARVATHY NILAYAM, NANDHYATTUKUNNAM, PARAVOOR,
ERNAKULAM DISTRICT.

BY ADVS.SRI.LIJU. M.P
SRI.G.PADMARAJ

RESPONDENTS:

1. THE NORTH PARAVOOR MUNICIPALITY,
MUNICIPAL OFFICE, NORTH PARAVOOR-683 513
ERNAKULAM DISTRICT, REPRESENTED BY ITS SECRETARY.
2. THE VILLAGE OFFICER,
VILLAGE OFFICE, NORTH PARAVOOR, ERNAKULAM-683 513.
3. THE TAHSILDAR
TALUK OFFICE, NORTH PARAVUR, ERNAKULAM DISTRICT,
PIN 683 513.
4. THE ASSISTANT ENGINEER
LOCAL SELF GOVERNMENT DEPARTMENT (L.S.G.D.)
MUNICIPAL OFFICE, NORTH PARAVOOR,
ERNAKULAM DISTRICT - 683 513.
5. THE TALUK SURVEYOR
TALUK OFFICE, NORTH PARAVUR, ERNAKULAM - 683 513.

ADDL.R6. IMPEADED:

6. THE DISTRICT SURVEY SUPERINTENDENT,
OFFICE OF THE DISTRICT SURVEY SUPERINTENDENT,
ERNAKULAM.
(ADDL.R6 IMPEADED AS PER ORDER DATED 06.02.2015 IN IA 1603/15)
R1 BY ADV. SRI.C.S.AJITH PRAKASH
R BY GOVERNMENT PLEADER
R BY SRI.C.S.AJITH PRAKASH,SC,PARAVUR MUNICI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
27-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS :

EXHIBIT-P1: TRUE COPY OF THE BUILDING PERMIT ISSUED BY 4TH RESPONDENT DATED 27.5.2010.

EXHIBIT-P2: TRUE COPY OF THE APPROVED PLAN DATED 24.3.2010 ISSUED BY 4TH RESPONDENT.

EXHIBIT-P3: TRUE COPY OF THE BUILDING TAX RECEIPT DATED 8.2.2012.

EXHIBIT-P4: TRUE COPY OF THE RECEIPT DATED 22.2.2012 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT-P5: TRUE COPY OF THE LETTER DATED 14.3.2012 ISSUED TO THE 1ST RESPONDENT.

EXHIBIT-P6: TRUE COPY OF THE PETITION DATED 3.5.2012 SUBMITTED BY PETITIONER TO THE 1ST RESPONDENT.

EXHIBIT-P7: TRUE COPY OF THE RECEIPT DATED 8.5.2012 ISSUED BY 1ST RESPONDENT.

EXHIBIT-P8: TRUE COPY OF THE JUDGMENT DATED 13.7.12 PASSED IN W.P.(C) NO.15693/12.

EXHIBIT-P9: TRUE COPY OF THE REPORT DATED 22.9.2012 ISSUED BY THE 3RD RESPONDENT.

EXHIBIT-P10: TRUE COPY OF THE RECEIPT DATED 6.7.2012 SHOWING PAYMENT OF TRADE LICENCE FEE.

EXHIBIT-P11: TRUE COPY OF THE PETITION DATED 7.9.2012 SUBMITTED BY 1ST PETITIONER BEFORE THE 1ST RESPONDENT.

EXHIBIT-P12: TRUE COPY OF THE RECEIPT ISSUED BY 1ST RESPONDENT FOR EXHIBIT-P11 PETITION.

EXHIBIT-P13: TRUE COPY OF THE NOTICE DATED 13.7.2013 ISSUED BY 1ST RESPONDENT TO THE 1ST PETITIONER.

EXHIBIT-P14: TRUE COPY OF THE REPLY DATED 16.3.2013 SUBMITTED BY THE 1ST PETITIONER TO EXHIBIT-P13.

EXHIBIT-P15: TRUE COPY OF THE RECEIPT DATED 16.3.2012 ISSUED BY 1ST RESPONDENT.

EXHIBIT-P16: TRUE COPY OF THE PLAINT IN O.S. NO. 546/11 ON THE FILE OF THE MUNSIFF'S COURT, NORTH PARAVUR.

: 3 :

EXHIBIT-P17: TRUE COPY OF THE LETTER NO.BA/116/10 DATED 21.07.2014
ISSUED BY THE 1ST RESPONDENT TO THE 5TH RESPONDENT.

EXHIBIT-P18: TRUE COPY OF THE COMMUNICATION 11489/2012 DATED
04.08.2014 ISSUED BY THE 3RD RESPONDENT.

EXHIBIT-P19: TRUE COPY OF THE ORDER DATED 27.09.2014 ISSUED BY THE
GOVERNMENT OF KERALA.

RESPONDENTS' EXHIBITS :

EXT.R1(a): TRUE COPY OF THE LETTER DATED 21.07.2014 ISSUED BY THE 1ST
RESPONDENT TO THE 3RD RESPONDENT.

EXT.R1(b): TRUE COPY OF THE REPLY DATED 04.08.2014 ISSUED FROM THE
OFFICE OF THE 3RD RESPONDENT TO THE 1ST RESPONDENT.

/True Copy/

P.A to Judge.

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 8268 of 2013 (G)

Dated this the 27th day of February, 2015.

JUDGMENT

The petitioners are wife and husband. The first petitioner, being the owner and possessor of certain extent of land in Survey Nos. 270/17A and 270/17A2 of Paravur Taluk, constructed a building, based on an approved plan in Ext.P2 and submitted a completion certificate through Ext.P4 on 22.02.2012. The said building is yet to be numbered.

2. The second petitioner, the husband of the first petitioner, who deals in cosmetics, was initially carrying on his business in some other building with necessary trade licence. Later, in view of the sale of the said building by its owner, the second petitioner was constrained to shift his business to the building owned and possessed by his wife, the first petitioner.

3. In response to the first petitioner's application for building permit, the first respondent Municipality issued

Ext.P13 proceedings that the petitioners cannot carry on any business in the building in question without assignment of building number and trade licence by the respondent Municipality. Aggrieved thereby, the petitioners have filed the present writ petition.

4. After entering appearance, the respondent Municipality has filed its counter affidavit, inter alia, contending that one Smt. T.A. Saraswathy, a neighbour of the petitioners, has complained that there is a civil dispute pending before the petitioners and her, and that the petitioners' request cannot be processed until the Civil Court disposes of the suit filed by her. The respondent Municipality has further contended that in the light of Ext.P8 judgment rendered by this Court and also based on the direction of the Regional Joint Director, Urban Affairs, the petitioners are required to have a survey conducted and submit a report to enable it to process the petitioners' application further for the purpose of granting occupancy certificate.

5. Under these circumstances, the learned counsel for the

petitioners has submitted that though the petitioners have approached the 5th respondent on many occasions, according to him, the said Taluk Surveyor has persistently refusing to accede to the request of the petitioners to have their property surveyed, citing the reason that there are civil proceedings pending. It can be seen from the record that even the respondent Municipality has intimated the 3rd respondent through Ext.R1(a) to measure the property with the assistance of the police and submit the report. It appears, the 3rd respondent, the Tahsildar, in response to Ext.R1(a) communication by the respondent Municipality, issued Ext.R1(b) reply to the effect that the survey would be undertaken, once this Court disposes of the present writ petition. The said authority has also incidentally referred to the pending civil suit between the petitioner and Smt. T.A. Saraswathy.

6. The learned Standing Counsel for the respondent Municipality has contended that obtaining an occupancy certificate is entirely different from obtaining a trade licence to

carry on the business in the building in question. According to him, presently the second petitioner does not have any valid trade licence to carry on his business in cosmetics in the building.

7. Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent Municipality, apart from perusing the record.

8. It is not in dispute that there is a civil dispute between the petitioners and one Smt. T.A. Saraswathy. To a specific query from this Court, the learned counsel for the petitioner has submitted that the said T.A. Saraswathy has filed a suit for perpetual injunction without involving any title dispute. At any rate, unless there is any judicial interdiction by the Civil Court or any other competent judicial forum, there can be no hindrance to the 5th respondent in discharging his statutory obligations and undertaking survey based on the representation of any property owner. It goes without saying that even in the absence of any litigation pending either before a Civil Court or before

any other forum at the time of undertaking the survey, it is requisite that the said surveyor shall put the neighbours, who are likely to be affected, on notice.

9. It is further not in dispute that the second petitioner was carrying on his business earlier in some other building under a valid trade licence, but for the change of building, under compelling circumstances, the second petitioner still has a valid trade licence.

10. In the facts and circumstances, having regard to the respective submissions of the learned counsel for the petitioner and the learned Standing Counsel for the respondent Municipality, this Court disposes of the writ petition with a direction to the 3rd and 5th respondents to undertake a survey in terms of Ext.R1(a) communication from the respondent Municipality, after putting the petitioner as well as other affected persons in the neighbourhood, who has any property contiguous with that of the petitioners, including Smt. T.A. Saraswathy, and submit the report to the respondent

Municipality, as expeditiously as possible, at any rate within one month from the date of receipt of a copy of this judgment.

It is made clear that the second petitioner can carry on his business until the respondent Municipality takes a final decision concerning the issuance of the occupancy certificate based on the survey report to be made available by respondents 3 and 5. No order as to costs.

sd/- DAMA SESHADRI NAIDU, JUDGE.

