

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 31ST DAY OF MARCH 2015/10TH CHAITHRA, 1937

WP(C). No.8433 of 2013 (D)

PETITIONER(S):

**DELPHINE DIZOOZA, AGED 41 YEARS,
B5 OMEGA CALYX, THRIKKAKARA.P.O., VAZHAKKALA VILLAGE,
KANAYANNUR TALUK, ERNAKULAM DISTRICT.**

**BY ADVS.SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN
SRI.V.S.SHIRAZ BAVA
SRI.JOSEPH KURIAN VALLAMATTAM**

RESPONDENT(S):

- 1. THRIKKAKARA MUNICIPALITY, REP. BY ITS SECRETARY-682030.**
- 2. JOSEMON,
S/O. THOMAS, PAZHAMPILLIL HOUSE, MARADU.P.O.,
MARADU DESOM, KANAYANNUR TALUK, ERNAKULAM DISTRICT-682304.**
- 3. XAVIER JOLLY,
S/O. AUGUSTINE, NELKUNNASSERY HOUSE, PALARIVATTOM.P.O.,
POONITHURA VILLAGE, KANAYANNUR TALUK,
ERNAKULAM DISTRICT-682025.**
- 4. RAPHEL.M.T.,
S/O. THOMAS, B1 OMEGA CALYX, THRIKKAKARA.P.O.,
VAZHAKKALA VILLAGE, KANAYANNUR TALUK,
ERNAKULAM DISTRICT-682021.**

BY SRI.S.SHANAVAS KHAN, SC

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WP(C).No. 8433 of 2013 (D)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT.P1 TRUE COPY OF THE SALE DEED NO. 2596/2012 OF SRO ,
 THRIKKAKARA DATED 23-8-12.**
EXHIBIT.P2 TRUE COPY OF THE BUILDING PLAN.
**EXHIBIT.P3 TRUE COPY OF THE COMPLAINT SUBMITTED BY THE
 PETITIONER BEFORE THE MUNICIPALITY DATED 26-11-12**
**EXHIBIT.P4 TRUE COPY OF DETAILED COMPLAINT TO THE 1ST RESPONDENT
 DT. 18-2-13.**

RESPONDENT(S)' EXHIBITS:- NIL

KRJ

/True Copy/

P.A to Judge

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.8433 of 2013

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Dated this the 31st day of March, 2015

JUDGMENT

This writ petition is filed for a direction to the respondent municipality to consider Exts.P3 and P4 and direct the fourth respondent to remove the alleged construction, at the earliest.

2. The petitioner is a resident of an apartment by name 'Omega Calyx' within the local limits of the first respondent municipality. The petitioner alleges that she has acquired 18.02 % undivided share in the total area of the property with an apartment on the second floor and car parking in the ground floor. According to her, the buildings were constructed on the basis of Ext.P2 building plan.

3. The petitioner further alleges that as per the sale deed in his favour and similar sale deeds in favour of all occupants, none of the occupants of the apartment have any absolute right over the common areas which can be used by all occupants. However, the fourth

respondent has closed the common area with grills and gate on the south east corner of the building and thereby restricting the entry to that area.

4. The petitioner points out that the above construction is contrary to the provisions of the Kerala Building Rules and sanctioned building plans. The building rules necessitated free passage on the four sides of the building. However, by the construction made by the fourth respondent that has been violated and the passage has been closed down. Therefore, the petitioner submitted Exts.P3 and P4 complaints to the first respondent. However, no action has been taken by the first respondent.

Considering the nature of the relief sought for in this writ petition, the writ petition is disposed of directing the respondent municipality to consider Exts.P3 and P4 complaints submitted by the petitioner in the light of the judgment in O.S No.75 of 2013 on the files of the IInd Additional Munsiff's Court, Ernakulam, after

affording the petitioner and affected parties an opportunity of being heard, within a period of two months from the date of production of a copy of this judgment.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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