

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 6TH DAY OF MARCH 2015/15TH PHALGUNA, 1936

WP(C).No. 6440 of 2014 (D)

PETITIONER(S) :

**KILLIAN ECO TOURISM (P) LTD.,
RIVER ROAD, FORT KOCHI, KOCHI-682 001.
REPRESENTED BY ITS MANAGING DIRECTOR,
JOSEPH KILLIAN, S/O.T.J. JOSEPH.**

**BY ADVS.SRI.P.B.KRISHNAN
SRI.N.AJITH
SRI.P.M.NEELAKANDAN
SRI.P.B.SUBRAMANYAN
SRI.SABU GEORGE**

RESPONDENT(S) :

- 1. CHIEF TOWN PLANNER & MEMBER SECRETARY,
ARTS AND HERITAGE COMMISSION,
OFFICE OF THE CHIEF TOWN PLANNER,
KOTTARATHIL BUILDINGS,
PALAYAM, THIRUVANANTHAPURAM-695 001.**
- 2. CORPORATION OF COCHIN,
CORPORATION OFFICE, ERNAKULAM, KOCHI-682 011,
REPRESENTED BY ITS SECRETARY.**
- 3. ASST. EXECUTIVE ENGINEER,
CORPORATION OF COCHIN (ZONAL OFFICE),
FORT KOCHI, KOCHI-682 001.**
- 4. KINGSDEN HOSPITALITY (P) LTD.,
MATTAMMAL HOUSE, TRIPUNITHURA,
EROOR POST, KOCHI-682 306,
REPRESENTED BY ITS MANAGING DIRECTOR M.J.THOMAS.**

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*** ADDITIONAL R5 IMPEADED**

**5. FORT COCHIN TOURISM & HERITAGE PRESERVATION COUNCIL,
CC 1/636, QUIRO STREET, FORT KOCHI- 682 001,
REP. BY ITS PRESIDENT K.P.SIMPSON.**

*** IS IMPEADED AS ADDITIONAL R5 AS PER ORDER DATED 15.07.2014 IN
I.A.NO.9146/14.**

**R1 BY GOVERNMENT PLEADER SRI.RINNY STEPHEN CHAMAPARAMBIL
R2 & R3 BY ADV. SRI.N.RAVINDREN ACHARY, S.C
R4 BY ADVS. SRI.PREMCHAND R.NAIR
SMT ANNA THOMAS
ADDL.R5 BY ADV. SRI.G.KRISHNAKUMAR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 06-03-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1: A TRUE COPY OF BUILDING PERMIT NO.FEPI-244/06(A)
DATED 27-04-2007.**

**EXHIBIT P2: A TRUE COPY OF THE COMMUNICATION NO.D2-6625/06
DATED 13-11-2006.**

**EXHIBIT P3: A TRUE COPY OF THE OCCUPANCY CERTIFICATE
DATED 30-01-2009.**

**EXHIBIT P4: A TRUE COPY OF THE BUILDING PERMIT NO.FEPI-314/12
DATED 15-06-2012.**

EXHIBIT P5: A TRUE COPY OF THE APPROVED PLAN.

**EXHIBIT P6: A TRUE COPY OF THE SALE DEED DATED 19-10-2012
REGISTERED AS DOC. NO. 4788 OF 2012.**

EXHIBIT P7: A TRUE COPY OF THE LETTER DATED 09-12-2013.

**EXHIBIT P8: A TRUE COPY OF THE ORDER NO. CP NO. 105(3) 2014 ISIC
DATED 20-02-2014.**

**EXHIBIT P9: A TRUE COPY OF THE NOTICE FCPI 1501/13 (PI0-34288/13)
DATED 20-02-2014.**

**EXHIBIT P10: A TRUE COPY OF THE APPLICATION FOR REVISED PERMIT/
REGULARISATION DATED NIL SUBMITTED BY
RESPONDENT NO.4.**

EXHIBIT P11: A TRUE COPY OF THE REVISED BUILDING PLAN.

EXHIBIT P12: A TRUE COPY OF THE COMPLAINT DATED 26-02-2014.

RESPONDENT(S)' EXHIBITS

EXHIBIT R2(A): A TRUE COPY OF THE INSPECTION REPORT DATED 30.07.2014.

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.M. Shaffique, J.

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W.P (C) No. 6440 of 2014

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Dated this, the 6th day of March, 2015.

J U D G M E N T

This writ petition has been filed seeking for a direction to respondents 1 to 3 to inspect the construction activities of the 4th respondent in Sy. No. 17 of Fort Kochi Village and to restrain the 4th respondent from effecting any construction without approval/sanction from the Arts and Heritage Commission and to demolish the unauthorized construction. The petitioner submits that he is conducting a hotel under the name and style "Killians Botique Hotel" in the heritage zone of Fort Kochi. 4th respondent is a neighbour who started construction after obtaining permission from the local authority. But, it is alleged that the construction was not in accordance with the approved permit and that the 4th respondent has constructed the structure in total violation of the Kerala Municipality Building Rules and contrary to the restrictions imposed by the Art and Heritage Commission.

2. A report has been filed by the Corporation of Cochin inter alia observing that there has been clear violation of the conditions of permit and they are ready and willing to take appropriate action in accordance with the procedure prescribed.

3. The 4th respondent has not filed any counter affidavit controverting the allegations. But, it is stated by the learned counsel that they have already filed an application for regularization before the Corporation, which is pending consideration. Counsel for the petitioner submits that though such an application for regularization has been filed, the petitioner had obtained copy of the same under the Right to Information Act and produced as Ext. P10, which evidences that the application is not even submitted properly. Many of the columns in the printed form have been left vacant.

4. Having regard to the fact that the local authority is of the opinion that there is substantial violation of the conditions of the permit, it is for the said authority to consider the same including the application for regularization, if any, in accordance with the procedure prescribed. Accordingly, the writ petition is disposed of as under:

The 2nd respondent shall consider the complaint raised by the petitioner regarding violation of permit along with the application for regularization within two months from the date of receipt of a copy of this judgment, after hearing all affected parties.

Thereafter, if it is found that violation, if any, cannot be regularized in accordance with law, appropriate direction shall be issued to demolish the unauthorized construction.

Sd/-

A.M. Shaffique, Judge.

Tds/