

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937

WP(C) .No. 6598 of 2015 (Y)

PETITIONER(S) :

K. MADHURAJ,
AGED 49 YEARS, S/O.K.P.ACHUTHAN PILLAI,
FLAT NO.ACP 428 (4TH FLOOR),
ATLAS CELESTIAL PARK, NAYATHODU P.O., ANGAMALY,
ERNAKULAM DISTRICT, PIN - 683 572.

BY ADVS.SRI.J.JULIAN XAVIER &
SRI.E.HARIDAS.

RESPONDENT(S) :

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1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
LOCAL SELF GOVERNMENTINSTITUTIONS, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
 2. ANGAMALY MUNICIPALITY,
REPRESENTED BY ITS SECRETARY,
ANGAMALY, ERNAKULAM-683 572.
 3. M/S.ATLAS GOLD TOWNSHIP (INDIA) PRIVATE LIMITED,
NEAR TO FEDERAL BANK, VAPPALASSERY P.O.,
PIN - 683 572, ANGAMALY, ERNAKULAM DISTRICT,
REPRESENTED BY ITS EXECUTIVE DIRECTOR.

*ADDL. R4 IS IMPEADED

R4. THE SECRETARY,
ATLAS CELESTIAL PARK OWNERS ASSOCIATION,
REG.NO. EKM/TC/70/2015,NAYATHODU P.O.,
ANGAMALY, PIN-683 572, NEDUMBASSERY.

(*ADDL. R4 IS IMPEADED AS PER ORDER DATED 09.04.2015 IN I.A.
NO.4383/2015)

Contd...

*ADDL. R5 TO R9 ARE IMPEADED

R5. ATLAS CRYSTAL PARK APARTMENT OWNERS ASSOCIATION
HAVING REG.NO. EKM/TC/885/2014,
REP. BY ITS SECRETARY, SAJITH J.M.,
S/O. M.T.YOHANNAN, AGED 37 YEARS, ACP-121,
ATLAS CELESTIAL PARK, NAYATHODU, ANGAMALY,
PIN-683 572.

R6. RAJEEV SANKAR NARAYANAN,
S/O. K.R.SANKARANARAYANAN, AGED 57 YEARS,
RESIDING AT ACP-318, ATLAS CELESTIAL PARK,
NAYATHODU, ANGAMALY, PIN-683 572.

R7. BABU VARGHESE,
S/O.K.T.VARKEY, AGED 56 YEARS,
RESIDING AT ACP-621, ATLAS CELESTIAL PARK,
NAYATHODU, ANGAMALY, PIN-683 572.

R8. VISWAMBARAN V.P.,
S/O.V.K.PURUSHOTHAMAN, AGED 63 YEARS,
RESIDING AT ACP-403, ATLAS CELESTIAL PARK,
NAYATHODU, ANGAMALY, PIN-683 572.

R9. SINOJ K. SHAJI,
S/O.N.A.SHAJI, AGED 36 YEARS,
RESIDING AT ACP-515, ATLAS CELESTIAL PARK,
NAYATHODU, ANGAMALY, PIN-683 572.

(*ADDL. R5 TO R9 ARE IMPEADED AS PER ORDER DATED 09.04.2015
IN I.A. NO.4905/2015)

R3 BY ADV. SRI.M.R.ANISON,
R3 BY ADV. SRI.ABHILASH BHASKAR,
R3 BY ADV. SRI.BINU JOHN,
R3 BY ADV. SMT.K.P.GEETHA MANI,
R3 BY ADV. SMT.P.A.RINUSA,
ADDL.4 BY ADV. SRI.P.DEEPAK,
R2 BY SRI.V.M.KURIAN, SC, ANGAMALY MUNICIPALITY,
(ADDL.R5-R9) BY ADV. SRI.A.J.VARGHESER
(ADDL.R5-R9) BY ADV. SRI.JOSE V.V. &
BY GOVERNMENT PLEADER SRI. G.GOPAKUMAR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 18-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXT.P-1: A TRUE COPY OF THE SALE DEED DATED 14.9.2012.
- EXT.P-2: A TRUE COPY OF THE PROPERTY TAX RECEIPT DATED 16.7.2014
ISSUED TO THE 2ND RESPONDENT.
- EXT.P-3: A TRUE COPY OF THE OCCUPANCY CERTIFICATE ISSUED BY THE
2ND RESPONDENT DATED 28.6.2012.
- EXT.P-4: A TRUE COPY OF THE REPRESENTATION DATED 16.12.2014
FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
- EXT.P-4 (A) : A TRUE COPY OF THE RECEIPT ISSUED BY THE 2ND
RESPONDENT.
- EXT.P-5: A TRUE COPY OF THE APPLICATION SUBMITTED BY THE
PETITIONER DATED 19.2.2015 BEFORE THE CHIEF INFORMATION
OFFICER OF THE 2ND RESPONDENT.
- EXT.P-5 (A) : RECEIPT ISSUED BY THE OFFICE OF THE 2ND RESPONDENT.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No.6598 of 2015

Dated this the 18th day of June, 2015.

JUDGMENT

The petitioner has approached this Court alleging inaction on the part of the second respondent in stopping illegal construction of an apartment near the residence of the petitioner.

2. The petitioner and his wife purchased an apartment ACP-428 having a super built-up area of 103.12 sq.mt. on the 4th floor in Atlas Celestial Park, Phase-I, as per Ext.P1 sale deed and is continuously remitting the tax to the 2nd respondent as evidenced by Ext.P2. The petitioner alleges that as per Ext.P3 occupancy certificate issued by the second respondent, the building is only a residential building. However, in violation of the occupancy certificate issued by the 2nd respondent, the 3rd respondent has used the ground floor of the apartment for starting a hotel and sold a portion of the ground floor for commercial purpose which is against the approved plan of

the apartment by name Altas Celestial Park, Phase-I. As per the approved plan, the entire ground floor has to be used for car parking. Apart from that the third respondent have constructed an auditorium on the terrace that too in violation of the building permit and also have permitted to install telecommunication tower on the top of the apartment which is in violation of Rule 130 of the Kerala Municipality Building Rules, 1999. Pointing out the illegalities, petitioner filed Ext.P4. Since there was no action on Ext.P4, the petitioner filed Ext.P5 remainder to which also there is no response of the 2nd respondent till this date; it is alleged.

3. When the matter came up for hearing, the learned counsel for the petitioner confined his argument to the limited prayer for a direction to the second respondent municipality to consider and pass appropriate orders on Exts.P4 and P5 within a time frame.

Therefore, the writ petition is disposed of directing the second respondent municipality to consider and pass

appropriate orders on Exts.P4 and P5, after affording the petitioner and the additional respondents 4 to 9, an opportunity of being heard. It is hereby made clear that this Court has not expressed anything on merits. The entire exercise shall be completed within a period of one month from the date of receipt of a copy of this judgment.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.