

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

THURSDAY, THE 10TH DAY OF DECEMBER 2015/19TH AGRAHAYANA, 1937

WP(C).No. 10797 of 2012 (Y)

PETITIONER(S):

**JOHNSON @ JOSEPH AGED 46 YEARS
S/O. LATE. JOSEPH, VELUTHEDATH VEEDU, 16/1132
PALLURUTHY, KOCHI.**

**BY ADVS.SRI.ANOOP JOSEPH
SRI.K.N.ROY**

RESPONDENT(S):

- 1. CORPORATION OF COCHIN
SOUTH REGIONAL OFFICE
REPRESENTED BY ASSISTANT ENGINEER, PALLURUTHY
COCHIN-16.**
 - 2. THE ASSISTANT ENGINEER
CORPORATION OF COCHIN, SOUTH REGIONAL OFFICE
PALLURUTHY, COCHIN-16.**
 - 3. THOMAS, AGED 61 YEARS
S/O. LATE JOSEPH, VELUTHEDATH VEEDU, PALLURUTHY
KOCHI - 16.**
 - 4. VINCENT, AGED 55 YEARS
S/O. LATE JOSEPH, VELUTHEDATH VEEDU, PALLURUTHY
KOCHI - 16.**
 - 5. STATE OF KERALA
REPRESENTED BY SECRETARY
DEPARTMENT OF LOCAL SELF GOVERNMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM- 695001**
- R1 AND 2 BY ADV. SRI.K.P.JUSTINE(KARIPAT)SC,COCHIN CORPN
R5 BY ADV. GOVERNMENT PLEADER K.K.SAIDALAVI
R BY SRI.P.K.SOYUZ,SC,COCHIN CORPORATION**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

avk

APPENDIX

PETITIONER'S EXHIBITS

- | | |
|----------|---|
| EXT.P1 : | TRUE COPY OF THE PHOTOGRAPH EVIDENCING THE ILLEGAL CONSTRUCTION BEING CARRIED OUT BY THE RESPONDENT NOS. 3 AND 4. |
| EXT.P2 : | TRUE COPY OF THE PHOTOGRAPH EVIDENCING THE ILLEGAL CONSTRUCTION BEING CARRIED OUT BY THE RESPONDENT NOS. 3 AND 4. |
| EXT.P3 | TRUE COPY OF THE PHOTOGRAPH EVIDENCING THE ILLEGAL CONSTRUCTION BEING CARRIED OUT BY THE RESPONDENT NOS. 3 AND 4. |
| EXT.P4 | TRUE COPY OF THE COMPLAINT DATED 17-4-2012 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT. |
| EXT.P5 | TRUE COPY OF THE PETITION DATED 28-4-2012 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT. |
| EXT.P6 | TRUE COPY OF THE NOTICE DATED 24-4-2012 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER. |

RESPONDENTS' EXHIBITS

NIL

//TRUE COPY//

PA TO JUDGE

avk

ANIL K.NARENDRA, J

W.P.(C.)No.10797 Of 2012

DATED THIS THE 10th DAY OF DECEMBER, 2015

JUDGMENT

The petitioner is stated to be the owner of a residential building bearing No.16/1132 at Palluruthy. He has filed this writ petition seeking a writ of certiorari to quash Ext.P6 intimation dated 24.4.2012 issued by the second respondent and seeking writ of mandamus commanding respondents 1 and 2 to dispose of Exhibits P4 and P5 representations in accordance with law.

2. Going by the averments in the writ petition, the grievance of the petitioner is that the third and the fourth respondents who are none other than his brothers are making certain constructions in their property in violation of the provisions under the Kerala Municipality Building Rules. In order to substantiate the aforesaid fact, the petitioner would rely on Exts.P1 to P3 photographs. The petitioner submitted Ext.P4 complaint before the second respondent, which was followed by Ext.P5 representation dated 28.4.2012. On receipt of Ext.P4, the second respondent has issued Ext.P6 notice dated 24.4.2012 stating that there is boundary dispute

between the petitioner and respondents 3 and 4 and hence violation, if any, can be found out only if properties are measured by the Taluk Surveyor and hence before proceeding further with the matter, the report from the Taluk Surveyor is required. It is aggrieved by Ext.P6 the petitioner has approached this Court in writ petition seeking various reliefs.

3. A counter affidavit has been filed on behalf of the first respondent in which it has been stated that the respondents 3 and 4 have already completed the construction of their residential building with the assistance of the B.S.U.P House Construction Scheme and the constructions made under the said scheme are granted exemption from building rules. The counter affidavit of the first respondent states further that there is some dispute with regard to the extend of the land owned by the petitioner and respondents 3 and 4, which can be ascertained only on the basis of a appropriate survey being conducted by the Taluk Surveyor. It was in the such circumstances, the second respondent has issued Ext.P6 notice to the petitioner.

4. The materials on record would show that there is some dispute regarding the extend of land owned by the petitioner and respondents 3 and 4, which can be ascertained

only on the basis of a survey being conducted by the Taluk Surveyor. It was in such circumstances, on receipt of Ext.P5 representation made by the petitioner, the second respondent by Ext.P6 informed the petitioner that further action in the matter can be taken only after obtaining a report from the Taluk Surveyor. The above stand taken by the second respondent in Ext.P6 is neither arbitrary nor illegal.

5. In the said circumstances, this writ petition is disposed of directing the second respondent to take further action based on Ext.P6 for conducting survey of the properties in question. Necessary steps in this regard shall be taken as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a certified copy of this judgment.

Sd/-
ANIL K.NARENDRA
JUDGE

//TRUE COPY//

PA TO JUDGE

avk