

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

WP(C).No. 8189 of 2015 (W)

PETITIONER(S):

JIM JOSE, EDASSERY HOUSE, KANJOOR P.O.,
KALADY, ERNAKULAM DISTRICT, PIN - 683 575.

BY DR.K.P.SATHEESAN, SENIOR ADVOCATE.
ADVS. SRI.M.R.JAYAPRASAD,
SRI.P.MOHANDAS (ERNAKULAM),
SRI.ANOOP.V.NAIR,
SRI.S.VIBHEESHANAN,
SRI.N.MANU THAMPI.

RESPONDENT(S):

1. CORPORATION OF KOCHI,
REPRESENTED BY THE SECRETARY,
CORPORATION OFFICE, PARK AVENUE, KOCHI - 682 011.
2. THE SECRETARY, CORPORATION OF KOCHI,
CORPORATION OFFICE, PARK AVENUE, KOCHI - 682 011.
3. THE ASSISTANT EXECUTIVE ENGINEER,
CORPORATION OF KOCHI, EAST ZONAL OFFICE,
VYTTILA, KOCHI - 682 019.

* ADDL. R4 IMPEADED

4. COCHIN METRO BAR VIRUDHA SAMITHI,
CC.32/182B, LABOUR COLONY ROAD, THAMMANAM P.O.,
ERNAKULAM- 682 032, REP. BY ITS GENERAL CONVENOR
V.A. FRANCIS.

* ADDL R4 IMPEADED AS PER ORDER DATED 08.04.2015
IN I.A. NO.5115/2015.

R1 TO R3 BY ADVS. SRI.K.ANAND, SC.

SRI.P.K.SOYUZ, SC.

ADDL. R4 BY ADVS. SRI.ASHIK K.MOHAMMED ALI,
SMT.SAJNA T.UMMER,
SMT.V.RAIMA RAMESH.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 29/07/2015, THE COURT ON 05/08/2015 DELIVERED THE
FOLLOWING:

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P-1: TRUE COPY OF THE SALE DEED EXECUTED IN FAVOUR OF THE PETITIONER DATED 07.09.2011.
- EXT.P-2: TRUE COPY OF THE BUILDING PERMIT NO.KRP2 375/11 DATED 11.10.2011 ISSUED BY THE 3RD RESPONDENT.
- EXT.P-2(A): ENGLISH TRANSLATION OF THE RELEVANT PORTION OF EXT.P2.
- EXT.P-3: TRUE COPY OF THE APPLICATION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 12.09.2014.
- EXT.P-4: TRUE COPY OF THE JUDGEMENT DATED 26.09.2014 IN WP(C).NO.24748/2014.
- EXT.P-5: TRUE COPY OF THE LETTER GIVEN TO THE PETITIONER BY THE 3RD RESPONDENT DATED 19.11.2014.
- EXT.P-5(A): ENGLISH TRANSLATION OF EXT.P5.
- EXT.P-6: TRUE COPY OF THE LETTER ALONG WITH THE APPLICATION FOR REGULARIZATION FILED BY THE PETITIONER DATED 25.02.2015.
- EXT.P-6(A): ENGLISH TRANSLATION OF EXT.P6.
- EXT.P-7: TRUE COPY OF THE LETTER GIVEN TO THE PETITIONER BY THE 3RD RESPONDENT DATED 06.03.2015.
- EXT.P-7(A): ENGLISH TRANSLATION OF EXT.P7.
- EXT.P-8: TRUE COPY OF THE STOP MEMO NO.KRP2. 2928/14 DATED 12.03.2015 ISSUED BY THE 3RD RESPONDENT.
- EXT.P-8(A): ENGLISH TRANSLATION OF EXT.P8.
- EXT.P-9: TRUE COPY OF THE INTIMATION GIVEN BY THE PETITIONER TO THE 2ND RESPONDENT THROUGH THE ASSISTANT EXECUTIVE ENGINEER OF THE 3RD RESPONDENT DATED 21.02.2015.
- EXT.P-9(A): ENGLISH TRANSLATION OF EXT.P9.
- EXT.P-10: TRUE COPY OF THE RECEIPT ISSUED FROM THE OFFICE OF THE 3RD RESPONDENT DATED 21.02.2015.
- EXT.P-10(A): ENGLISH TRANSLATION OF EXT.P10.

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**EXT.P11 COPY OF THE NOTICE NO.KRP 2/2928/14 DATED 23/06/2015
ISSUED BY THE 3RD RESPONDENT.**

RESPONDENT'S EXHIBITS:-

**EXT.R4A COPY OF THE LETTER ISSUED TO THE 2ND RESPONDENT
WITHOUT ITS ANNEXURES ALONG WITH THE ENGLISH
TRANSLATION.**

EXT.R4B COPY OF THE POSTAL ACKNOWLEDGMENT CARD.

EXT.R4C COPY OF THE GO(MS) NO.160/2012/LSGD DATED 11/06/2012.

**EXT.R4D COPY OF THE PHOTOGRAPHS (4 NUMBERS) SHOWING THE
BUILDING OF THE WRIT PETITIONER.**

**EXT.R4E COPY OF THE STOP MEMO DATED 07/08/2014 ISSUED BY THE
3RD RESPONDENT ALONG WITH THE ENGLISH TRANSLATION.**

**EXT.R4F COPY OF THE D.O. NO.RT-25035/70/12-RS DATED 11/03/2013
ISSUED BY THE SECRETARY, MINISTRY OF ROAD TRANSPORT
AND HIGHWAYS.**

**EXT.R4G COPY OF THE LETTER DATED 24/03/2015 ISSUED BY THE
3RD RESPONDENT.**

**EXT.R4H COPY OF THE STOP MEMO DATED 23/06/2015 ISSUED BY THE
3RD RESPONDENT.**

//TRUE COPY//

P.S. TO JUDGE

rs.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 8189 of 2015

Dated this the 5th day of August, 2015.

JUDGMENT

Under challenge in this writ petition is Ext.P8 stop memo issued by the third respondent by which all constructions in the premises of the petitioner were ordered to be stopped.

2. The petitioner alleges that he purchased 10.48 Ares of property comprised in Sy.No.393 of Poonithura Village in Kanayannur Taluk, Ernakulam District as per Ext.P1 Sale Deed dated 7.9.2011. The petitioner points out that his predecessor-in-interest was given Ext.P2 permit for making an extension to the then existing building which is covered by Ext.P1 sale deed. The said permit was granted on 11.10.2011 and was valid upto 29.9.2014. The petitioner further alleges that the previous owner made an extension in the second floor of the building having an area of 105.43 M² as per Ext.P2 permit. The petitioner alleges that he started the construction of a lift near to the main entrance of the hotel which is small in

size and below the floor area ratio, under the bonafide belief that the construction of the same would be ratified by the respondent corporation, as there is no violation of the Building Rules. The petitioner is running a hotel having a three star classification and his endeavour is to make it as five star. It is with the same mind, he had decided to provide a lift at the entrance raising upto the roof where he would be able to provide a roof garden. He also purchased a property adjacent to the property covered by Ext.P1 where there existed buildings. While the construction of the lift room was going on, the third respondent issued a stop memo stating that the Building Inspector has reported that the petitioner is making an unauthorised construction. The petitioner rushed this Court and as directed by this Court, the petitioner submitted an application for regularisation. The petitioner was informed that the regularisation would be done only if the petitioner removes the temporary roofing made on the ground floor and demolishes the small building in the adjacent property, which

he had purchased subsequently. According to the petitioner, he is ready and willing to do so. While the petitioner was doing interior decoration so as to lift the standard of the hotel from three star to four star, the third respondent has now issued a stop memo restraining the petitioner from doing any work in the premises including interior decoration. This according to the petitioner, is in total violation of Rule 10 of the Kerala Municipality Building Rules and the same is illegal and unsustainable.

3. The third respondent has filed counter.

4. The fourth respondent who got themselves subsequently impleaded, filed an extensive counter affidavit contending that the construction is in violation of the building rules. The fourth respondent claims to be the General Convenor of the Cochin Metro Bar Virudha Samithi.

5. I have heard the learned senior counsel for the petitioner, the learned standing counsel for the respondent corporation and the learned counsel for the fourth respondent

in the matter.

6. The petitioner who intended to effect modifications to a building which he owned as per Ext.P1, preferred an application before the respondent corporation for a permit so as to effect modifications to the building. It is relevant to note that the previous owner of the property of Mr. Jacob N.A. has submitted an application on 16.6.2011 before the second respondent for making an extension to the existing building. As per the application, the proposed construction was to an extent of 105.43 M² on the second floor. The competent authority of the Corporation inspected the property as well as the existing building. There was no objection in respect of the existing building and the proposed construction was also in accordance with the Kerala Municipality Building Rules and accordingly building permit was given to the previous owner as evident from Ext.P2. It was thereafter, the ownership of the building was transferred to the petitioner as per Ext.P1. It is during the currency of the said building permit that the

petitioner sought to effect the modifications to the building. However, the respondent corporation had issued a stop memo raising objections to the modifications proposed by the petitioner. On receipt of the stop memo, the petitioner approached the respondent corporation by submitting an explanation. This was pending consideration before the respondent corporation. In the meanwhile, realising that the building permit standing in the name of the previous owner pertaining to the building in question, would expire by 29.9.2014, the petitioner preferred an application before the respondent corporation to extend the validity of the said permit. After submitting that application, the petitioner approached this Court with W.P.(C) No.24748 of 2014, which was disposed of by judgment dated 26.9.2011 (Ext.P4) directing the respondent corporation to pass final orders in the matter initiated by the stop memo after considering the objections preferred by the petitioner and affording him an opportunity of being heard. The respondent corporation was

also directed to consider the application for extension of validity so as not to render the whole exercise infructuous.

7. The learned senior counsel for the petitioner would submit that as directed in Ext.P4 judgment, the respondent corporation directed the petitioner to submit a revised plan for regularising the construction. Accordingly the petitioner submitted the revised plan for regularisation. The third respondent, who is the Assistant Executive Engineer of the respondent corporation, as per Ext.P5 notice informed the petitioner that on a detailed enquiry, it was revealed that one lift room and one machine room for operating the lift are constructed and also a temporary roof was being constructed by the petitioner which was unauthorised and therefore the revised plan should be submitted showing the above extensions also for considering the regularisations. It was also informed that that the regularisation of the additional constructions and the change of name would be done on submission of the revised application.

8. Thereafter, the petitioner submitted Ext.P6 application dated 25.2.2015 for regularisation. In reply to Ext.P6, the petitioner was informed that he should remove the temporary roof constructed on the existing building and a small building situated in the adjacent property which he has purchased subsequently. The petitioner is ready to remove the temporary shed as directed in Ext.P7. It is crucial to note that in the above said directions, no final orders were passed on the application for regularisation till date.

9. The learned senior counsel for the petitioner would submit that it was at the instance of the so-called Cochin Metro Bar Virudha Samithi of which the fourth respondent claims to be the convener that the corporation is not regularising the construction as requested by the petitioner.

10. On a specific query put by me to the learned counsel for the fourth respondent as to what is the legal status of the aforesaid 'Cochin Metro Bar Virudha Samithi', the learned counsel could not give any cogent answer. It is not

clear whether it is a registered society or a body corporate or a trust. The name of the hotel run by the petitioner is 'Cochin Metro Hotel Pvt.Ltd'. The very name adopted by the aforesaid Samithi would indicate that their sole aim is to obstruct the functioning of the petitioner hotel. In the counter affidavit, they have taken the contention that the intention of the petitioner is to conduct a bar hotel in the building mentioned in the writ petition. At present, the petitioner's hotel is having only a three star classification and it is submitted by the learned senior counsel for the petitioner that the intention of the petitioner is to have a five star classification for which the additional facilities are required. As per the policy of the Government, at present bar facilities are not extended to hotel having three star facilities. The running of a five star hotel with bar facilities is not a crime as the Government as per policy has approved such hotels.

11. The local authority, which is authorised under law, has to look into whether the building rules are violated or not

and the fourth respondent has no authority to interfere with the construction if it is otherwise in order. The petitioner is modifying the hotel as a business venture which cannot be prohibited merely for the reason that some local people do not like it.

12. The learned senior counsel for the petitioner would point out that the 4th respondent does not have any objections against the functioning of other bar hotels in the city.

13. One of the contentions of the local authority in their counter affidavit is that the original building permit was granted in the name of Sri.N.X. Jacob who is the predecessor in interest of the petitioner and the same has not been changed to the name of the petitioner. The second contention is that the petitioner has constructed a lift room in deviation of an approved plan. According to me, both these defects can be cured on an application submitted by the petitioner. Evidently and admittedly too the application dated 12.9.2014 which has been submitted seeking change of permit and for extending

the period of permit, were not considered owing to the above stated reasons. It is crucial to note that there was an early direction by this Court to consider the petitioner's applications. If the applications were not in order, the proper course open to the third respondent corporation was to inform the petitioner pointing out the defects and granting a time for curing the defects and if the petitioner is prepared to cure the defects, the respondent corporation could very well regularise the construction on proper terms. As it is absolutely within the competence of the respondent corporation as to whether the construction has to be regularised, they need not be carried away the obstructions caused by the so-called Cochin Metro Bar Virudha Samithi headed by the fourth respondent herein.

Therefore, the writ petition is disposed of directing the third respondent corporation to give a notice to the petitioner pointing out the defects to be cured by him for the regularisation of the constructions already made. On receipt of the said notice, the petitioner shall cure the defects and satisfy

the respondent corporation regarding the same within a period of two weeks thereafter. It shall be open to the petitioner to submit a proper application for change of permit to the petitioner's name. If the third respondent corporation finds that the application so submitted by the petitioner for regularisation and for change of name in the permit are in order, the application shall be allowed by the respondent corporation on such terms as they deem fit within a period of two weeks thereafter.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.