

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI**

**MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937**

**WP(C).No. 9276 of 2015 (H)**  
-----

**PETITIONERS :**  
-----

1. JABEENA HAMID YAFI, AGED 42 YEARS,  
W/O. HAMID YAFI, FATHIMANIKETH,  
CIVIL STATION WARD, ALAPPUZHA-12.
2. HAMID YAFI,  
S/O.ABDUL KHADER YAFI, FATHIMA NIKETH,  
CIVIL STATION WARD, ALAPPUZHA-12

**BY ADVS.SRI.A.T.ANILKUMAR  
SMT.V.SHYLAJA**

**RESPONDENTS :**  
-----

1. ALAPPUZHA MUNICIPALITY  
REPRESENTED BY ITS SECRETARY,  
MUNICIPAL WARD, ALAPPUZHA - 688001
2. THE SECRETARY  
ALAPPUZHA MUNICIPALITY,  
MUNICIPAL WARD, ALAPPUZHA - 688001
3. THE MUNICIPAL ENGINEER,  
ALAPPUZHA MUNICIPALITY,  
MUNICIPAL WARD, ALAPPUZHA - 688001
4. THE BUILDING INSPECTOR  
ALAPPUZHA MUNICIPALITY,  
MUNICIPAL WARD, ALAPPUZHA - 688001
5. NIZAR, S/O.N.M. SHERIF,  
FORMAN COTTAGE, SACARIA BAZAR WARD  
ALAPPUZHA - 688001

**ADDL. R6 IMPEADED :**

6. THE CIRCLE INSPECTOR OF POLICE,  
SOUTH POLICE STATION, ALAPPUZHA

**ADDL. R6 IS IMPEADED AS PER ORDER DT 27.3.2015 IN IA 4679/2015.**

**R1 & 2 BY ADV. SRI.AZAD BABU, SC, ALAPPUZHA MUNICIPALITY  
R5 BY ADV. SRI.P.K.IBRAHIM  
R5 BY ADV. SMT.K.P.AMBIKA  
R5 BY ADV. SMT.A.A.SHIBI  
ADDL. R6 BY GOVERNMENT PLEADER SRI. SHYSON P. MANGUZHA**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 08-06-2015, THE COURT ON THE SAME DAY DELIVERED  
THE FOLLOWING:**

**APPENDIX**

**PETITIONER(S)' EXHIBITS**  
-----

- EXHIBIT-P1: TRUE COPY OF THE COMPLAINT SUBMITTED BY THE PETITIONER DATED 15/01/2015 WITH TRANSLATION.
- EXHIBIT-P2: TRUE COPY OF THE COMPLAINT BEFORE THE 2ND RESPONDENT DATED 07/02/2015 WITH TRANSLATION.
- EXHIBIT-P3: TRUE COPY OF THE PHOTOGRAPHS.
- EXHIBIT-P4: TRUE COPY OF THE STOP MEMO DATED 06/02/2015 WITH TRANSLATION.
- EXHIBIT-P5: TRUE COPY OF THE REQUEST TO THE POLICE TO IMPLEMENT EXHIBIT-P4 MEMO WITH ENGLISH TRANSLATION.

**RESPONDENT(S)' EXHIBITS :**  
-----

- EXT.R5(a): COPY OF THE BUILDING PERMIT ISSUED UNDER RULE 146(3) OF THE KERALA MUNICIPAL BUILDING RULES BY THE R1 DT 20/3/2015 VALID FOR PERIOD OF 3 YEARS.
- EXT.R5(b): COPY OF THE NOTICE SERVED BY THE SUB INSPECTOR OF POLICE, SOUTH POLICE STATION ON 31/3/2015 AT 8/30 PM. WITH TRUE ENGLISH TRANSLATION .
- EXT.R5(c): COPY OF THE REPRESENTATION DT 01/04/2015 WITHOUT ITS ENCLOSURE SUBMITTED BEFORE THE R6 WITH COPY TO THE SUB INSPECTOR OF POLICE AND MUNICIPAL ENGINEER.

//TRUE COPY//

P.A. TO JUDGE

bp

**A.V.RAMAKRISHNA PILLAI, J**

-----  
WPC No.9276 of 2015  
-----

Dated this the 8<sup>th</sup> day of June, 2015

**JUDGMENT**

Alleging that respondents 1 to 4 who are knowing that there are no valid permits subsisting are giving silent permission to the 5<sup>th</sup> respondent to continue with the construction of a two storeyed building in his property in spite of Ext.P4 stop memo, the petitioners have come up before this Court.

2. According to the petitioners, the 5<sup>th</sup> respondent is the holder of the property on the western side of the property of the petitioners. He purchased the property in the year 2005 and he started construction of a two storeyed building in his property recently. The 5<sup>th</sup> respondent obtained permit from the first respondent for the construction of a two storeyed residential building in the year 2007 and the same was in 2010. The same is in violation of Rule 15A of the Kerala Municipality Building Rules, 1997. As the permit was not renewed after 2010,

the construction in pursuance of the same is illegal; it is alleged. The 5<sup>th</sup> respondent started construction of the residential building and continued the same without observing the Kerala Municipality Building Rules 1999. The sunshade of the first floor has been constructed over the western compound wall of the petitioners without leaving sufficient distance. The petitioners submitted Exts.P1 and P2 complaints before the second respondent. In pursuance of the petitioner's complaint, the 4<sup>th</sup> respondent issued Ext.P4 stop memo. But the 5<sup>th</sup> respondent continued the illegal construction disregarding Ext.P4 stop memo. Then the third respondent issued Ext.P5 request to the Circle Inspector of Police to give adequate police protection to implement Ext.P4. As per the request of the third respondent, the police officials came to the spot and blocked the illegal construction. However, after that, the fifth respondent influenced the respondents by some means known to him and again started construction with the silent permission and blessings of the respondents, in spite of the pendency of

Ext.P4 stop memo; it is alleged. It is with this background the petitioners have come up before this Court.

3. The 5<sup>th</sup> respondent filed a counter affidavit contending as follows:

The 5<sup>th</sup> respondent had obtained a building permit for construction of a residential building in 7 cents of land comprised in sy.No.523/38A-2 in Alappuzha West Village of the first respondent Municipality vide order dated 18.9.2007. The building permit was valid for a period of 3 years. The construction was undertaken by the 5<sup>th</sup> respondent in 2007, however, it could not be completed for want of sufficient funds. However, in connection with the marriage of his daughter, he raised some funds to complete the construction. Accordingly, the work was resumed without being aware of the fact that the permit for construction issued in 2007 had expired. While so, upon a complaint by the 2<sup>nd</sup> petitioner, the Municipal Engineer, Alappuzha, issued a memo directing him to stop all construction work since the construction is being found undertaken without renewing the building permit. It was

only after the receipt of stop memo he realised that the building permit issued to him had expired in 2010. Immediately, he stopped the work and approached the Municipality to regularise the construction and for permit to complete the building permit.

The first respondent regularised the construction by receiving the compounding fee and issued permit for completing the work under Rule 146(3) of the Municipalities Building Rules. A true copy of the building permit issued under Rule 146(3) of the Kerala Municipal Building Rules by the first respondent dated 20.3.2015 valid for a period of three years is produced and marked as Ext.R5(a). The construction was resumed accordingly.

It is submitted by the 5<sup>th</sup> respondent that the construction undertaken by the 5<sup>th</sup> respondent is with a valid building permit and the stop memo issued is no more in force. The Municipal Engineer has not made any request for police interference to stop construction under the permit now issued by the Municipality.

The petitioners who are aware of these facts

suppressed these facts and filed this writ petition on 23.3.2015 alleging that the construction undertaken by the 5<sup>th</sup> respondent is in violation of Ext.P4 stop memo dated 6.2.2015 and obtained an interim order directing the 6<sup>th</sup> respondent to take appropriate action to enforce Ext.P4. From the order, it is clear that this Court was made to believe from the pleadings that the construction work undertaken by the 5<sup>th</sup> respondent is without any permit and that despite a stop memo, for want of police assistance, the order could not be enforced. Had this Court was appraised of the true facts, this Court would not have passed such a direction in as much as Ext.P4 had lost all its relevance after the issue of Ext.R5(a); so contends the 5<sup>th</sup> respondent.

4. The petitioner has filed a reply affidavit.

5. I have heard the learned counsel for the petitioner, the learned standing counsel for the respondent Municipality and the learned counsel for the 5<sup>th</sup> respondent.

6. The learned counsel for the 5<sup>th</sup> respondent

submitted that pursuant to the direction of this Court, the Sub Inspector of Police, Alappuzha South Police Station issued a notice on 31.3.2015 directing the 5<sup>th</sup> respondent to stop all constructions until further orders and the work has to be stopped notwithstanding a valid permit for constructing the residential building. Ext.R5(b) is the said notice. However, later the 5<sup>th</sup> respondent was able to convince the C.I. of Police that the construction was under valid building permit and he later submitted Ext.R5(c) representation before the C.I. of Police who is the 6<sup>th</sup> respondent. The proposed construction is undertaken by the 5<sup>th</sup> respondent in 7 cents of land comprised in sy.No.523/38A-2 in Alappuzha West Village.

7. The learned counsel for the petitioners would strenuously argue that though the permit was with respect to a particular ward, the construction was undertaken in a different ward. However, according to the learned counsel for the petitioners, it was a mistake committed by the respondent Municipality and later the same has been corrected. A copy of the plan which shows

the name of the ward was also made available for my perusal.

8. On a specific query put by me during the course of the argument to the learned counsel for the respondent Municipality as to whether the petitioner has obtained the valid permit and plan for the construction, the learned counsel answered in the affirmative.

Therefore, this writ petition is disposed of permitting the 5<sup>th</sup> respondent to continue with the construction as per the permit and plan issued by the respondent Municipality. If the petitioner is constructing the building not in accordance with the permit and plan, it is open to the Municipality to proceed against the 5<sup>th</sup> respondent in accordance with law.

**sd/- A.V.RAMAKRISHNA PILLAI**  
**JUDGE**

css/

true copy

P.S.TO JUDGE