

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

MONDAY, THE 6TH DAY OF APRIL 2015/16TH CHAITHRA, 1937

WP(C).No. 10123 of 2015 (M)

PETITIONER(S):

**SRI N.K.SHAJI, AGED 47 YEARS
S/O.KUNJAPPAN, NIRAPPEL HOUSE, KADAPPARA
MALAYATTOOR.**

**BY ADVS.SRI.S.SREEKUMAR (SR.)
SRI.P.MARTIN JOSE
SRI.P.PRIJITH
SRI.THOMAS P.KURUVILLA**

RESPONDENT(S):

- 1. THE STATE OF KERALA
REPRESENTED BY SECRETARY,
PUBLIC WORKS DEPARTMENT
SECRETARIAT, TRIVANDRUM, PIN 695 001.**
- 2. THE EXECUTIVE ENGINEER
PWD ROADS SUB DIVISION, ALUVA, PIN 683101.**
- 3. THE ASSISTANT EXECUTIVE ENGINEER,
PWD ROADS SUB DIVISION, ALUVA, PIN 683101.**

BY SENIOR GOVERNMENT PLEADER SRI.JOSEPH GEORGE

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 06-04-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1 TRUE COPY OF DOCUMENT NO 4420 OF 2005 DATED 05-12-2005 OF SREEMOOLANAGARAM S.R.O**
- EXHIBIT P2 TRUE COPY OF PATTA NO PF 275/94 DATED 29-11-1994**
- EXHIBIT P3 TRUE COPY OF MAHAZAR DATED 06-02-1994**
- EXHIBIT P4 TRUE COPY OF RECEIPT DATED 06-06-2013 ISSUED FROM OFFICE,MALAYATTOOR**
- EXHIBIT P5 TRUE COPY OF LOCATION SKETCH OF PROPERTY ISSUED BY THE VILLAGE OFFICER,MALAYATTOOR DATED 22-03-2006**
- EXHIBIT P6 TRUE COPY OF POSSESSION CERTIFICATE DATED 18-004-2008 ISSUED FROM VILLAGE OFFICE,MALAYATTOOR**
- EXHIBIT P7 TRUE COPY OF BUILDING PERMIT NO 3410/2010 DATED 22-06-2010**
- EXHIBIT P8 TRUE COPY OF TAX RECEIPT DATED 09-01-2013 ISSUED BY THE PANCHAYAT**
- EXHIBIT P9 TRUE COPY OF BUILDING TAX RECEIPT DATED 12-07-2013**
- EXHIBIT P10 TRUE COPY OF NOTICE DATED 30-11-2014 ISSUED BY THE 3RD RESPONDENT**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

P.R. RAMACHANDRA MENON, J.

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W.P.(C). No. 10123 of 2015

Dated this the 6th day of April, 2015

JUDGMENT

The petitioner has approached this Court with the following prayers:

“i. Call for the records leading to Ext.P10 and quash Ext.P10 notice dated 30-11-2014 by issue a writ of certiorari or other writ order or direction.

ii. Issue such other writ, order or direction as may be necessary in the interest of justice.”

2. Heard Sri. S. Sreekumar, the learned Senior Counsel for the petitioner and the learned Government Pleader for the respondents.

3. It is stated by the learned Senior counsel for the petitioner that, Ext.P10 dated 30.11.2014, though styled as a notice, is virtually an order by itself and that the petitioner is made to face serious adverse consequences for causing demolition of the building constructed by the petitioner, which was done on the basis of valid permit issued by the local authority. The learned counsel also submits that Ext.P10 is rather vague and the alleged encroachment is not specifically pointed out, but for mentioning “front portion of the building”.

4. The learned Government Pleader points out that the encroachment was established by measuring out the property with the help of a Taluk Surveyor and it was only thereafter, that Ext.P10 notice was issued, that too, on 30.11.2014.

5. The learned Senior counsel for the petitioner points out that Ext.P10, though issued on 30.11.2014, was served in the hotel of the petitioner on 24.3.2015.

6. This Court does not propose to conduct any probe with regard to the date of service. The grievance of the petitioner, if at all any, can be caused to be redressed by directing the 3rd respondent to treat Ext.P10 as a notice and not an order, with liberty of the petitioner to submit objections. If any objection is filed, with copies of relevant documents to sustain the version of the petitioner to the effect that there is no encroachment, within 'two weeks' from the date of receipt of a copy of this judgment, the same shall be considered and measurement of the property shall be caused to be effected by the 3rd respondent, with the assistance of the Revenue authorities at the cost of the petitioner, with proper notice to the petitioner and other

interested parties, if any. Based on the outcome of such measurement, further proceedings shall be pursued to cause demolition of the property, if at all any encroachment is there, and the proceedings shall be finalized within 'two months' from the date of receipt of a copy of this judgment.

The petitioner shall produce a copy of the judgment along with a copy of the writ petition before the concerned respondent for further steps. The writ petition is disposed of.

Sd/-
P.R. RAMACHANDRA MENON,
JUDGE.

kp/-