

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 4TH DAY OF FEBRUARY 2015/15TH MAGHA, 1936

WP(C).NO. 10573 OF 2014 (V)

PETITIONER:

**KAVU SOUTH RESIDENTS ASSOCIATION,
A SOCIETY REGISTERED UNDER THE SOCIETIES REGISTRATION ACT,
BEARING REGISTRATION NO. S. 606/2009,
HAVING OFFICE AT PADMARAGAM, VELUTHEDATHUPARAMBU,
POST CHEVAYUR, KOZHIKODE-673 017, REP. BY ITS SECRETARY
VASUDEVAN. K., AGED 56 YEARS, S/O.KRISHNAN NAIR.**

**BY ADVS.SRI.SHYAM PADMAN,
SRI.A.RANJITH NARAYANAN,
SRI.S.K. SAJU,
SMT.A.SIMI.**

RESPONDENTS:

- 1. IOB OFFICERS AND RETIRED OFFICERS,
HOUSING CO-OPERATIVE SOCIETY LTD. NO.D. 2893,
PERIKKANCHERY PRAMBA, NEAR KAVU BUS STOP,
CHEVAYUR POST, KOZHIKODE- 673 017,
REP. BY ITS SECRETARY P.CHANDRAN.**
- 2. KOZHIKODE CORPORATION,
REP. BY ITS SECRETARY, CORPORATION BUILDING,
BEACH ROAD, KOZHIKODE-673 032.**
- 3. THE SECRETARY,
KOZHIKODE CORPORATION, CORPORATION BUILDING,
BEACH ROAD, KOZHIKODE-673 032.**
- 4. THE EXECUTIVE ENGINEER,
KOZHIKODE CORPORATION, CORPORATION BUILDING,
BEACH ROAD, KOZHIKODE-673 032.**

**R1 BY SRI.K.RAMAKUMAR, SENIOR ADVOCATE.
ADVS. SRI.S.M.PRASANTH,
SRI.M.MANOJKUMAR (CHELAKKADAN),
SMT ASHA BABU,
SMT AMMU CHARLES.**

R2 TO R4 BY ADV. SRI.SRI.K.D.BABU, SC.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 04-02-2015, ALONG WITH WP(C).NO.32470 OF 2014, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:-

- P1:- TRUE COPY OF THE PLAINT IN OS NO. 566/2009 PENDING BEFORE THE MUNSIF COURT- IIA, KOZHIKODE.
- P2:- TRUE COPY OF THE REPORT AND PLAN OF THE ADVOCATE COMMISSIONER AND EXPERT IN OS NO. 566/2009.
- P3:- TRUE COPY OF THE MEMORANDUM OF APPEAL AND DOCUMENTS SUBMITTED THEREWITH IN APPEAL NO. 394/2013 BY THE 1ST RESPONDENT BEFORE THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS.
- P4:- TRUE COPY OF IA NO. 1258/2013 FILED BY THE PETITIONER IN APPEAL NO. 394/2013 ON THE FILE OF THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS.
- P5:- TRUE COPY OF THE WRITTEN STATEMENT DATED 31/07/2013 FILED BY THE PETITIONER IN APPEAL NO. 394/2013.
- P6:- TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE 2ND AND 3RD RESPONDENTS HEREIN APPEAL NO. 394/2013.
- P7:- TRUE COPY OF THE ORDER DATED 17/12/2013 IN RP NO. 994/2013.
- P8:- TRUE COPY OF IA NO.234/2014 DATED 31/01/2014 FILED BY THE PETITIONER IN APPEAL NO. 394/2013.
- P9:- TRUE COPY OF THE REPLY DATED 24/12/2012 GIVEN BY THE 2ND RESPONDENT UNDER RIGHT TO INFORMATION ACT.
- P10:- TRUE COPY OF THE REPLY DATED 01/07/2013 GIVEN BY THE STATE PUBLIC INFORMATION OFFICER, FIRE AND RESCUE SERVICE ENCLOSING COPY OF THE REPORT DATED 23/03/2012.
- P11:- TRUE COPY OF THE APPLICATION SEEKING INFORMATION DATED 26/12/2013 SUBMITTED BEFORE THE GENERAL COMMANDER, FIRE AND RESCUE SERVICES UNDER THE RIGHT TO INFORMATION ACT.
- P12:- TRUE COPY OF THE REPLY DATED 06/01/2014 GIVEN BY THE STATE PUBLIC INFORMATION OFFICER, FIRE AND RESCUE SERVICES.
- P13:- TRUE COPY OF THE REPLY DATED 28/01/2014 GIVEN BY THE STATE PUBLIC INFORMATION OFFICER, FIRE AND RESCUE SERVICES, KOZHIKODE.
- P14:- TRUE COPY OF THE REPLY DATED 22/01/2014 GIVEN BY THE STATE PUBLIC INFORMATION OFFICER, FIRE AND RESCUE SERVICES ENCLOSING COPY OF THE INSTRUCTIONS GIVEN TO THE SR. GOVERNMENT PLEADER.
- P15:- TRUE COPY OF THE ORDER DATED 11/03/2014 IN APPEAL NO.394/2013 BY LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM.

- P16:- TRUE COPY OF THE REPRESENTATION DATED 11/04/2014 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.
- P17:- TRUE COPY OF THE REPORT DATED 30/05/2009 FILED BY THE ADDITIONAL TAHSILDAR, KOZHIKODE TO THE REVENUE DIVISIONAL OFFICER, KOZHIKODE.
- P18:- TRUE COPY OF THE APPLICATION DATED 01/10/2010 SUBMITTED BY SRI.ANEESH, TO THE COMMANDANT GENERAL, FIRE AND RESCUE SERVICES, THIRUVANANTHAPURAM.
- P19:- TRUE COPY OF THE REPLY DATED 26/11/2010 TO THE EXT.P18 APPLICATION.
- P20:- TRUE COPY OF THE APPLICATION DATED 27/06/2013 SUBMITTED BY SRI.SUDHAKARAN. K., TO THE COMMANDANT GENERAL, FIRE AND RESCUE SERVICES, THIRUVANANTHAPURAM.
- P21:- TRUE COPY OF THE REPLY DATED 08/07/2013 TO EXT.P20 APPLICATION.

RESPONDENT'S EXHIBITS:-

- EXT.R1A COPY OF THE JUDGMENT DATED 10/11/2014 IN O.S. NO.566/2009 ON THE FILE OF THE ADDITIONAL MUNSIF COURT-II, KOZHIKODE.
- EXT.R1B COPY OF THE COMMUNICATION DATED 24/11/2014 ISSUED BY THE ASST. EXECUTIVE ENGINEER, P.W.D.
- EXT.R1C COPY OF THE AGREEMENT DATED 24/11/2014 ENTERED INTO BETWEEN THE 1ST RESPONDENT AND PWD.
- EXT.R1D COPY OF THE COMMUNICATION OF THE 1ST RESPONDENT ADDRESSED TO THE 2ND RESPONDENT.

//TRUE COPY//

P.A TO JUDGE

rs.

DAMA SESHADRI NAIDU, J.

= = = = =

W.P.(C) Nos.10573 & 32470 of 2014

= = = = =

Dated this the 4th day of February, 2015

JUDGMENT

W.P.(C).No.10573 of 2014

The petitioner, a residents' association filed the present writ petition laying challenge against Ext.P15, an order dated 11.03.2014 in Appeal No.394/2013 on the file of the Tribunal for Local Self Government Institutions, Thiruvananthapuram. The respondents, especially the 1st respondent, who in fact began constructing a multi storeyed residential building, entered appearance and contested the matter.

2. Though at the outset I observe that the issue has a chequered history, having been subjected to multiple rounds of litigation before various fora, including Civil Courts, in the present instance, the issue confines itself with the issuance of Occupancy Certificate to the 1st respondent. Initially, it was rejected for want of NOC from the Pollution Control Board and also the Fire and Rescue Services. Aggrieved thereby, the 1st respondent filed Ext.P3 appeal before the Tribunal and invited Ext.P15 order.

3. The record reveals that the petitioner got itself impleaded in the appeal and contested it. It further emerges that, pending consideration of the appeal, the 1st respondent secured NOCs from the Fire and Rescue Services. NOC in turn is said to have been given based on a direction by this Court in Ext.P7 order in Review Petition No.994/13 in W.A.No.1498/2013. Since this Court proposes to put a quietus on this issue based on the arrangement agreed upon between both the learned counsel at the time of arguments, I do not propose to refer to all the previous litigation or the rival submissions in detail.

4. The singular contention on the part of the learned counsel for the petitioner is that, though Ext.P3(36), 'Inspection Report-Multistoreyed Residential (A-4) Building', issued by the Fire and Rescue Services reveals that there is passage around the building for heavy goods vehicles, in the light of the subsequent information provided by the department to the queries raised by the petitioner under the R.T.I, a doubt has been cast whether the authorities have actually physically inspected the property before arriving at the conclusion.

5. The learned Senior Counsel for the 1st respondent has drawn my attention to the findings of the Civil Court in Ext.R1(a), apart from the recommendation of the authorities of Fire and Rescue Services in Ext.P3(36) to contend that the issue stands concluded that there is a motorable passage and that it does not require any re-agitation.

6. The learned counsel for the petitioner, however, has submitted that concerning the findings of the Civil Court, Appeal No.181/2014 is filed and is pending on the file of District Court (Fast Track-IV), Kozhikode.

7. At any rate, the present writ petition does not affect the respective rights of the parties before any other Forum and they are at liberty to agitate the issue independent of any observations made herein.

8. On appreciation of rival submissions, in view of the fact that what is being constructed by the 1st respondent is a multi storeyed residential building involving the safety of residents therein, apart from the neighbours, this Court finds it desirable to direct the authorities of the Fire and Rescue Services to have physical verification of the building and to certify that there is a motorable passage around the building in terms of the Building

Regulations. If such certificate is made available on physical verification, as has been done earlier in Ext.P3(36), I do not see any reason why the 1st respondent should be restrained from proceeding with obtaining the necessary Occupancy Certificate from the 3rd respondent.

9. In the facts and circumstances, having regard to the respective submissions of the learned counsel for the petitioner and the learned Senior Counsel for the 1st respondent as well as the learned Standing Counsel appearing for the respondent Corporation, this Court disposes of the writ petition with a direction to the petitioner to make an appropriate application to the Fire and Rescue Services authorities to inspect the property of the 1st respondent for physical verification. Once an application is made, the Fire and Rescue Services authorities shall inspect the first respondent's residential complex and provide a certificate to the 2nd respondent, under a notice to the petitioner, testifying whether the width of the access road and the set backs left around the building are sufficient for motorable passage.

10. With the above observation, the writ petition is disposed of. In so far as issuance of Occupancy Certificate is concerned, it is needless to observe that the 3rd respondent shall comply with all

statutory formalities.

Given the apprehensions expressed by the Senior Counsel for the 1st respondent, it is made clear that the petitioner is expected to submit his application to the Fire and Rescue Services authorities within one week from the date of receipt of a copy of this judgment. Thereafter, the Fire and Rescue authorities may expedite the process and conclude the physical inspection of the residential building of the 1st respondent as expeditiously as possible.

WP(C) No.3250/2014

In so far as the proceedings in C.M.P.No.445 of 2012 on the file of the Enquiry Commissioner and Special Judge, Kozhikode, said to have been initiated at the behest of the petitioner concerned, they shall not be affected by any of the observations made herein above.

With the above observations, the writ petition stands disposed of.

DAMA SESHADRI NAIDU, JUDGE

sj