

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

**PRESENT:**

**THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM**

**WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936**

**WP(C).No. 15823 of 2010 (C)**  
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**PETITIONER(S) :**  
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**SURESH KUMAR, AGED 40 YEARS,  
S/O.KAILASANADHAN NAIR, RESIDING AT K.S.NIVAS,  
MULLACKAL, ALAPPUZHA, PIN-688 011.**

**BY ADVS.SMT.C.G.BINDU  
SMT.C.G.AJITHA**

**RESPONDENT(S) :**  
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- 1. R.JANARDHANAN PILLAI, AGED 68 YEARS,  
S/O.RAMAN PILLAI, OWNER OF J.P.TOWERS, ALAPPUZHA,  
RESIDING AT, "BHANUSHASU", MULLACKAL, ALAPPUZHA.**
- 2. T.SHANTHAKUMARI, W/O.R.JANARDHANAN PILLAI,  
RESIDING AT "BHANUSHASU", MULLACKAL, ALAPPUZHA.**
- 3. J.VINOD PILLAI, S/O.JANARDHANAN PILLAI,  
RESIDING AT "BHANUSHASU", MULLACKAL, ALAPPUZHA.**
- \* 4. J.PRAMOD PILLAI, S/O.JANARDHANAN PILLAI,  
RESIDING AT "BHANUSHASU", MULLACKAL, ALAPPUZHA (DELETED).**
- \* THE FOURTH RESPONDENT IS DELETED FROM THE PARTY ARRAY  
AS PER ORDER DATED 08.12.2014 IN I.A.NO.1153 OF 2012.**
- 5. ALAPPUZHA MUNICIPALITY,  
REPRESENTED BY ITS SECRETARY, ALAPPUZHA-1.**

**R1 BY ADVS. SRI.M.D.SASIKUMARAN  
SRI.K.S.HARIHARAPUTHRAN  
SRI.GEORGE MATHEW  
SRI.DIPU JAMES**

**R5 BY ADV. SRI.AZAD BABU, S.C**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 11-02-2015, THE COURT ON THE SAME DAY DELIVERED  
THE FOLLOWING:**

Msd.

**APPENDIX**

**PETITIONER(S)' EXHIBITS**  
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- EXT.P1: TRUE COPY OF THE LAND TAX RECEIPT.**
- EXT.P1(A): TRUE COPY OF THE LAND TAX RECEIPT.**
- EXT.P2: TRUE COPY OF THE SETTLEMENT REGISTER SHOWING THE SY.NO.813/5 AS PURAMBOKE.**
- EXT.P3: TRUE COPY OF THE NOTICE FOR ASSESSMENT OF PROPERTY TAX FOR THE BUILDING ISSUED BY 5TH RESPONDENT.**
- EXT.P4: TRUE COPY OF THE SALE DEED NO.920/2003.**
- EXT.P5: TRUE COPY OF THE CERTIFICATE DATED 14.03.2007 FROM VILLAGE OFFICER, MULLACKAL VILLAGE OFFICE.**
- EXT.P6: TRUE COPY OF THE CERTIFICATE DATED 02.01.2006 ISSUED BY TAHASILDAR, AMBALAPUZHA TALUK.**
- EXT.P7: TRUE COPY OF THE DEPOSITION OF THE VILLAGE OFFICER.**
- EXT.P8: TRUE COPY OF THE DEPOSITION OF TAHASILDHAR, AMBALAPUZHA TALUK.**
- EXT.P9: TRUE COPY OF THE BUILDING PERMIT ISSUED TO THE RESPONDENTS 1 TO 4 BY THE 5TH RESPONDENT.**
- EXT.P9(A): TRUE COPY OF THE OCCUPANCY CERTIFICATE DATED 13.01.2006.**
- EXT.P10: TRUE COPY OF THE STOP MEMO DATED 22.03.2006 ISSUED BY TAHASILDHAR OF AMBALAPUZHA TO THE 1ST RESPONDENT.**
- EXT.P11: TRUE COPY OF THE COMPLAINT DATED 05.03.2008 FILED BEFORE THE 5TH RESPONDENT.**
- EXT.P11(A): TRUE COPY OF THE ACKNOWLEDGEMENT BY THE 5TH RESPONDENT IN TOKEN OF RECEIPT OF EXT.P11.**
- EXT.P12: TRUE COPY OF THE COMPLAINT DATED 19.09.2008 FILED BEFORE THE 5TH RESPONDENT.**
- EXT.P13: TRUE COPY OF THE ACKNOWLEDGEMENT BY THE 5TH RESPONDENT IN TOKEN OF RECEIPT OF EXHIBIT-P12.**
- EXT.P14: TRUE COPY OF THE PLAN.**
- EXT.P14(A): TRUE COPY OF THE PLAN.**

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**EXT.P14(B): TRUE COPY OF THE PLAN.**

**EXT.P15: TRUE COPY OF THE APPLICATION SUBMITTED BY  
THE PETITIONER ON 10.06.2011 UNDER THE RIGHT TO  
INFORMATION ACT BEFORE THE 5TH RESPONDENT.**

**EXT.P15(A): TRUE COPY OF THE INFORMATION DATED 29.07.2011 RECEIVE BY  
THE PETITIONER FROM THE 5TH RESPONDENT.**

**EXT.P15(B): TRUE COPY OF THE APPROVED PLAN RECEIVE BY  
THE PETITIONER ALONG WITH INFORMATION DATED 29.07.2011.**

**RESPONDENT(S)' EXHIBITS**  
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**NIL**

**//TRUE COPY//**

**P.A.TO JUDGE.**

Msd.

C.K.ABDUL REHIM, J.

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W.P.(C). No.15823 OF 2010

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Dated this the 11<sup>th</sup> day of February, 2015

JUDGMENT

This writ petition is filed seeking to quash Ext.P9 Building Permit as well as Ext.P9(a) Occupancy Certificate issued in favour of respondents 1 to 4, based on an allegation that the construction was made in violation of the Kerala Municipality Building Rules, 1999 and in a manner deviating from Ext.P14 approved Plan based on which the permit was granted.

2. It is noticed that Ext.P9 Permit was issued as early as in the year 2003 and Ext.P9(a) Occupancy Certificate was issued after completion of the construction, in the year 2006. Crux of the allegation seems to be that the respondents do not have absolute title over a portion of the land which was shown as parking area in the plan submitted. According to the petitioner the said area is actually Government land which was assigned under

'Kuthakapattom' Lease to the predecessors in interest of respondents 1 to 4, long back. The respondents 1 to 4 got assigned the land only to the extent of rights conferred under the 'Kuthakapattom' Lease. In support of such a contention the petitioner had placed reliance on Ext.P15 letter obtained under the Right to Information Act from the 5<sup>th</sup> respondent Municipality.

3. Learned counsel appearing for respondents 1 to 4 contended that the petitioner was occupying one of the rooms existed in an old building situated in the land in question, which was demolished after evicting him through a proceedings before the Rent Control Court, which went up to the hon'ble Supreme Court. It was after evicting the petitioner and demolishing the building, the new structure was constructed based on Ext.P9 Permit. According to respondents 1 to 4 the petitioner is now attempting to create trouble to the respondents with respect to the new building which was completed long back, in order to wreck vengeance against the eviction affected through the Rent Control Proceedings.

4. As pointed out in the foregoing paragraphs, the building permit was granted in the year 2003 and the building in question was completed construction in the year 2006. Therefore the challenge against Exts.P9 and P9(a) cannot be entertained at this point of time, especially when the petitioner had not resorted to any statutory remedy against the grant of building permit within the appropriate time. It is evident from Exts.P11 and P12 that, during the year 2008 the petitioner had submitted complaints before the Secretary of the 5<sup>th</sup> respondent Municipality, requesting to take action against respondents 1 to 4 under Rule 18 of the Kerala Municipality Building Rules 1999, on the allegation that the respondents have secured the permit and completed the construction by misrepresentation of facts. Interalia the petitioner sought direction for consideration of Exts.P11 and P12 by the 5<sup>th</sup> respondent Municipality. It is pertinent to note that, still thereafter, only in the year 2010 the writ petition was filed. However, question as to whether there was any misrepresentation with respect to

sanctioning of the building permit application or as to whether there was any irregularity or illegality with respect to the grant of the permit, because a part of the area earmarked for parking was only under the 'Kuthakapattom' Right, are matters which need to be considered by the 5<sup>th</sup> respondent Municipality. It is for the Municipality to decide whether any action under Rule 18 is warranted or not. It is not revealed as to whether Exts.P11 and P12 are pending consideration or not.

5. Under the above mentioned circumstances, this writ petition is disposed of by directing the 5<sup>th</sup> respondent Municipality to dispose of Exts.P11 and P12, if the same is still pending, after affording opportunity of personal hearing to the petitioner as well as respondents 1 to 4. A decision in this regard shall be taken at the earliest possible at any rate within a period of four months from the date of receipt of a copy of this judgment.

Sd/-

C.K.ABDUL REHIM, JUDGE