

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

WEDNESDAY, THE 9TH DAY OF SEPTEMBER 2015/18TH BHADRA, 1937

WP(C).No. 16348 of 2010 (P)

PETITIONER:

VELLADATH KRISHNAN,S/O.AMBUTTY,
AGED 71 YEARS, ARTIST, THIRUMANA
MOONAM PEEDIKA, MANGATTIDAM AMSOM, KURUMBUKKAL DESOM
P.O.NIRMALAGIRI, THALASSERY TALUK.

BY ADVS.SRI.K.V.PAVITHRAN
SRI.JAYANANDAN MADAYI PUTHIYAVEETIL

RESPONDENTS:

1. SECRETARY, MANGATTIDAM GRAMA PANCHAYATH,
P.O.NIRMALAGIRI, THALASSERY TALUK, KANNUR DISTRICT.
2. VELLADATH RAGHAVAN,
S/O.AMBOOTTY, AGED 60 YEARS, PHOTOGRAPHER
MANGATTIDAM AMSOM, KURUMBUKKAL DESOM, P.O.NIRMALAGIRI
THALASSERY TALUK.
3. SECRETARY TO THE GOVERNMENT,
LOCAL SELF GOVERNMENT DEPARTMENT
THIRUVANANTHAPURAM.

R1 BY ADV. SRI.K.V.SOHAN
R2 BY ADV. SRI.V.V.ASOKAN
R2 BY ADV. SRI.R.JAIKRISHNA
R3 BY GOVERNMENT PLEADER SMT.LILLY K.T

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-09-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 16348 of 2010 (P)

APPENDIX

- EXT.P1: TRUE COPY OF THE INTERIM ORDER DT.12.1.09 IN WPC 36265/08
- EXT.P2: TRUE COPY OF THE JUDGMENT DATED 6.7.09 IN WPC 36264/08
- EXT.P3: TRUE COPY OF THE ORDER CIVIL COURT ISSUED BY 2ND
RESPONDENT.
- EXT.P4: TRUE COPY OF THE BUILDING PERMIT ISSUED BY THE PANCHAYATH.

TRUE COPY

P.A.TO JUDGE

ANU SIVARAMAN, J.

= = = = =

W.P.(C).No.16348 of 2010

= = = = =

Dated this the 9th day of September, 2015

JUDGMENT

This writ petition is filed with the following prayers:-

“(i) issue a writ of prohibition or such other writ or direction commanding the 1st respondent not to assign building number and/or occupancy certificate to the building constructed by the 2nd respondent before he constructs sufficiently strong retaining wall for the protection of the petitioner's property situating on the northern and southern side of the 2nd respondent's property.

(ii) issue a writ of mandamus directing the 1st respondent to enforce the 6th condition in Exhibit P4 building permit before assigning building number and completion certificate to the 2nd respondent.”

2. The case of the petitioner is that the petitioner is the owner in possession of properties adjacent to the properties of the 2nd respondent who has excavated the land to a depth of about 20 feet for construction of a residential building without providing proper lateral support to the properties of the petitioner and therefore his properties are in danger. The

construction of the building apparently is complete. The prayer raised by the petitioner at this stage is that no occupancy certificate should be issued to the 2nd respondent and the building should be numbered only if the conditions contained in Ext.P4 permit are complied with in full.

3. Heard learned counsel appearing for the petitioner and learned Government Pleader. It is submitted by the learned counsel appearing for the petitioner that the specific condition on which Ext.P4 permit issued was that retaining wall should be constructed for the protection of the land belonging to the petitioner. Though a compound wall was built the same has since collapsed and without construction of retaining wall for the protection of the petitioner's property, the 2nd respondent is not entitled to be issued occupancy certificate. It is clear that the construction of the retaining wall was a condition on which the building permit was issued to the 2nd respondent.

In the above circumstances, the writ petition is disposed of directing the 1st respondent to conduct an inspection in the

property of the 2nd respondent and to verify whether the condition No.6 contained in Ext.P4 has been complied with. Numbering the building and issuance of occupancy certificate shall be done only after the 1st respondent is satisfied that the conditions contained in Ext.P4 are complied with. Necessary action in this regard shall be taken within a period of one month from date of receipt of a copy of the judgment.

Anu Sivaraman, Judge

sj