

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 27TH DAY OF JANUARY 2015/7TH MAGHA, 1936

WP(C).No. 15502 of 2013 (K)

PETITIONER :

**S.BRAHMANAND,
S/O.SREEDHARA SHENOY,AGED 49 YEARS,
SARASWATHI ABHARANASALA,
MELE PALAYAM, KOZHIKODE-673 001.**

**BY ADVS.SRI.P.B.KRISHNAN
SMT.GEETHA P.MENON
SRI.N.AJITH
SRI.P.M.NEELAKANDAN
SRI.P.B.SUBRAMANYAN**

RESPONDENT(S):

- 1. THE KOZHIKODE CORPORATION,
REPRESENTED BY ITS SECRETARY,
CORPORATION BUILDING,KOZHIKODE-673 032.**
- 2. THE EXECUTIVE ENGINEER,
KOZHIKODE CORPORATION, CORPORTION BUILDING,
KOZHIKODE-673 032.**
- 3. PRAKASH JEWELLERY,
REPRESENTED BY ITS PROPRIETOR HEMALATHA P. SHENOY,
MELE PALAYAM, KOZHIKODE-673 001.**

**R1 & R2 BY SRI.K.D.BABU,SC,KOZHIKODE CORPORATION
R3 BY ADV. SRI.NIRMAL. S**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 27-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

sts

WP(C).No. 15502 of 2013 (K)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: TRUE COPY OF THE COMPLAINT MADE BY THE PETITIONER BEFORE
RESPONDENT NO.1, DATED 12.6.2012**
- EXHIBIT P2: TRUE COPY OF THE NOTICE NO.T.P.5/69658/69990/12 ISSUED BY
RESPONDENT NO.1 TO RESPONDENT NO.3., DATED 1.8.2012**
- EXHIBIT P3: TRUE COPY OF THE LETTER SENT BY THE PETITIONER,
DATED 22.9.2012**
- EXHIBIT P4: TRUE COPY OF THE APPLICATION MADE BY THE PETITIONER UNDER
THE RIGHT TO INFORMATION ACT, 2005, DATED 8.5.2013**
- EXHIBIT P5: TRUE COPY OF THE COMMUNICATION RECEIVED BY THE
PETITIONER, DATED 29.5.2013,**
- EXHIBIT P6: TRUE COPY OF THE NOTICE NO.TP.5/69658/12 ISSUED BY
RESPONDENT NO.1., DATED 8.6.2013.**

RESPONDENT(S)' EXHIBITS

- EXHIBIT R3(A): TRUE COPY OF THE PHOTOGRAPHS OF THE SHOP ROOMS.**
- EXHIBIT R3(B): TRUE COPY OF THE NOTICE DATED 30/10/2013**
- EXHIBIT R3(C): TRUE COPY OF THE COMPLAINT DATED 08/06/2012.**

/TRUE COPY/

P.S.TO.JUDGE

sts

A.V.RAMAKRISHNA PILLAI, J

WPC No.15502 of 2013

Dated this the 27th day of January, 2015

JUDGMENT

The petitioner, who is conducting a jewelery within the local limits of the respondent Corporation, has submitted a complaint before the respondent Corporation with regard to an objectionable structure put up by his neighbour, who is the 3rd respondent herein. The structure, namely, 'pathy', was protruding on the shop of the petitioner. The water, flowing through it, was causing nuisance to the petitioner and to all passersby on the road. The petitioner alleges that on the complaint preferred by the petitioner, a site inspection was conducted. It is also alleged that the 3rd respondent was heard in the matter and the respondent Corporation concluded that the complaint was justified. Ext.P2 notice was issued directing the 3rd respondent to remove the 'pathy' within seven days, failing which, legal steps would be taken to get the same removed. The petitioner alleges

that the 3rd respondent did not challenge Ext.P2 before any forum and did not comply with the direction. However, later, the petitioner came to know that the respondent Corporation is proposing to issue notice to the parties fixing a date for hearing. According to the petitioner, he is deeply aggrieved by the attempt of the Corporation to virtually re-open a concluded proceeding.

2. The 3rd respondent filed a counter affidavit denying the allegations in the writ petition. According to him, he had given a reply to Ext.P2. He also admits the site inspection conducted by the authorities. According to the 3rd respondent, though a detailed hearing was conducted, a very same notice as per Ext.P2 was again issued on 30.10.2013, which is produced as Ext.R3(b).

3. Arguments have been heard.

4. The learned counsel for the petitioner submitted that there is a protruding structure called 'pathy' which allows the rain water falling on the roof of the building of the third respondent to flow through it and to fall in front of the petitioner's shop room causing nuisance to him as

well as the persons who enter the shop of the petitioner.

5. The third respondent in the counter affidavit has admitted that the site was inspected by the authorised representative of the respondent Corporation. According to the learned counsel for the third respondent, in continuation of the aforesaid 'pathy' he has connected a PVC pipe to drain out the rain water to the drainage in front of the shops of the petitioner as well as the third respondent. However, according to the learned counsel for the petitioner, the said PVC pipe was placed on the wall of the shop of the petitioner. According to the learned counsel for the petitioner, third respondent has no right to do so.

6. In the light of the rival submissions, this Court is of the view that it is only just and proper to direct the Secretary of the respondent Corporation to inspect the site and to see whether the existing PVC pipe is on the wall of the shop room belonging to the petitioner.

Therefore, this writ petition is disposed of directing the respondent Corporation to make a local inspection

through any of its authorised representative to see whether the existing pipe installed to drain out water from the roof of the third respondent shop is on the wall of the building owned by the petitioner. The representative of the respondent Corporation after conducting the inspection shall ascertain the exact location of the pipe which is now installed and if it is found that it is on the wall of the building belonging to the petitioner, the third respondent shall be directed to shift the same towards the side of his shop so as to abate the nuisance caused to the petitioner. This exercise shall be completed within a period of one month from the date of receipt of a copy of this judgment.

sd/-A.V.RAMAKRISHNA PILLAI
JUDGE

css/

true copy

P.S.TO JUDGE