

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 28TH DAY OF OCTOBER 2015/6TH KARTHIKA, 1937

WP(C).No. 17053 of 2012 (F)

PETITIONER:

N.BALAKRISHNAN, AGED 66 YEARS,
S/O. NARAYANAN, SAI JYOTHIS, HOUSE NO. 29/429
JANATHA ROAD, VYTTILA, KOCHI-19,
ERNAKULAM DISTRICT.

BY ADVS.SRI.T.MADHU

SRI.B.J.ABJITH
SMT.SANDHYA RAMAN

RESPONDENTS:

1. THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
REVENUE DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001.
2. THE DISTRICT COLLECTOR,
ERNAKULAM, CIVIL STATION, KAKKANAD.P.O.
KOCHI-682030.
3. THE TAHSILDAR,
KANAYANNUR TALUK, KOCHI-682011.
4. THE VILLAGE OFFICER
PUNITHURA VILLAGE, VYTTILA.P.O., KOCHI-682019.
5. THE COCHIN CORPORATION
REPRESENTED BY ITS SECRETARY, OFFICE OF THE SECRETARY
COCHIN CORPORATION, KOCHI-682011.
6. THE ASSISTANT EXECUTIVE ENGINEER
CORPORATION OF COCHIN, EAST ZONAL OFFICE,
VYTTILA, VYTTILA.P.O., KOCHI-682019.
7. M/S. INSTITUTE OF MARINE ENGINEERS(INDIA)-
KOCHI BRANCH, 29/427, JANATHA ROAD
VYTTILA.P.O., KOCHI-682019.

R5-R6 BY ADV. SRI.MILLU DANDAPANI,SC,COCHIN CORPORATION
R7 BY ADV. SMT.S.SIMY
R1 TO R4 BY ADV. GOVERNMENT PLEADER,SRI. T. J. MICHAEL
BY SRI.P.K.SOYUZ,SC,COCHIN CORPORATION

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
28-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

-
- EXT.P1 THE COPY OF THE REPLY DATED 11-7-2012 ISSUED BY THE 4TH
RESPONDENT TO THE PETITIONER.
- EXT.P2 THE COPY OF THE APPLICATION DATED 29-6-2012 SUBMITTED BY
THE PETITIONER BEFORE THE PUBLIC INFORMATION OFFICER OF
THE 5TH RESPONDENT.
- EXT.P3 THE COPY OF THE REPLY DATED 7-7-2012 ISSUED BY THE
PUBLIC INFORMATION OFFICER OF THE 5TH RESPONDENT.
- EXT.P4 THE COPY OF THE ORDER DATED 26-12-2011 OF THE 6TH
RESPONDENT AND BEARING NO. KRP1-3418/2011.
- EXT.P5 THE COPY OF THE NOTICE DATED 20-3-2012 OF THE 6TH
RESPONDENT.

RESPONDENTS' EXHIBITS:

-
- EXT.R7 (A) COPY OF THE OCCUPANCY CERTIFICATE.
- EXT.R7 (B) COPY OF THE DOCUMENT BEARING NO. KPI,1-4391/2012
DATED 09.11.2012.
- EXT.R7 (C) COPY OF THE REGISTRATION CERTIFICATE ISSUED UNDER THE
SOCIETIES REGISTRATION ACT, 1960.
- EXT.R7 (D) COPY OF PAN CARD ISSUED BY THE DIRECTOR OF INCOME TAX
(SYSTEMS) .
- EXT.R7 (E) COPY OF APPROVAL CERTIFICATE ISSUED BY THE DIRECTOR
GENERAL OF SHIPPING, GOVERNMENT OF INDIA.
- EXT.R7 (F) COPY OF APPROVAL OF SHIFTING THE ORGANISATION TO ITS
PRESENT LOCATION DATED 13.05.2009.
- EXT.R7 (G) COPY OF SALE DEED BEARING NO. 1563/2008 DATED 15.05.2008.
- EXT.R7 (H) COPY OF JUDGMENT DATED 13.08.2008 IN W.P.C. 14325/2008.
- EXT.R7 (I) COPY OF KERALA GAZETTE NOTIFICATION DECLARING THE FAIR
VALUE OF PROPERTY LYING IN 1036/4 KANAYANNUR TALUK,
ERNAKULAM DISTRICT.
- EXT.R7 (J) COPY OF THE TAX RECEIPTS.
- EXT.R7 (K) COPY OF THE COMPLAINT DATED 14.05.2012.
- EXT.R7 (L) COPY OF COMPLAINT 27.12.2012.

//TRUE COPY//

P.A. TO JUDGE

K. HARILAL, J.

= = = = =

W.P. (C) No. 17053 of 2012

- - - - -

Dated this the 28th day of October, 2015

J U D G M E N T

The grievance of the petitioner is that the 7th respondent, who purchased the property in the year 2008, has converted the nature of occupancy, without getting permission from 5th and 6th respondents. Though, they have issued Exts.P4 and P5 stop memos on the complaint of the people in the locality, no action has been taken against the 7th respondent, in spite of the subsequent act in violation of the said stop memos. It is also contended that the property in occupation of the 7th respondent forms part of Government land, which was taken as excess land under Land Reforms Act, 1963 and respondents 1 and 2, who are liable to preserve the Government land under the Land Conservancy Act, 1957, have not taken any action against the illegal encroachment of the Government land by the 7th respondent.

2. The 7th respondent has filed a counter statement denying the allegations in the Writ Petition. To substantiate the contentions raised in the counter affidavit, the 7th respondent has produced Exts.R7(a) to R7(l). R7(a) is the occupancy certificate stating that the alteration and reconstruction of the building in his possession was executed in accordance with the permit. Exhibit R7(b) shows that the additional construction made in the building, which was originally constructed for special residential purpose, was duly regularised by the 5th respondent.

3. In the counter affidavit filed by 5th and 6th respondents, it is stated that the 7th respondent filed an application on 16.08.2010 along with the documents and a plan for granting permit for special residential purposes in respect of the additions to buildings Nos.29/427, 428 and 428A in survey Nos.1036/4, 1054/1 comprising of 7.8 cents of property in Division No.29 of Poonithura Village. On receipt of the petition, the 6th respondent inspected the site and found that additions are made to the building against

the directions of respondents 5 and 6 and hence, respondents 5 and 6 directed the building owner to explain about the unauthorised construction. On the explanation, both the petitioner and the 7th respondent were heard and respondent Nos.5 and 6 found that the building, which was permitted to be used for residential purpose, was being used unauthorizedly against the permit conditions and hence Exts.P4 and 5 notices were issued to stop the unauthorised use. Thus, 5th and 6th respondents had taken action against the 7th respondent for the unauthorised use of the building and the allegation that they have not taken any steps against the unauthorised construction made by the 7th respondent is incorrect.

4. The short point to be considered in this Writ Petition is, whether there is inaction on the part of 5th and 6th respondents against the unauthorised construction made by the 7th respondent. Going by the counter affidavit filed by respondents 5 and 6 and Exts.P4 and P5, it could be seen that on receipt of the complaint from the petitioner, 5th and

6th respondents have taken action against the 7th respondent, by issuing Exts.P4 and P5. The petitioner has no case that even after the receipt of Exts.P4 and P5, the 7th respondent is continuing his illegal and unauthorised activities in the building.

5. So also, with regard to the excess extent of 2.4 cents of Government property, the 5th respondent has addressed the Additional Tahasilar and no reply has been received from the Additional Tahasildar regarding the alleged excess land. In view of the averments in the counter affidavit and present stage of the action taken against the 7th respondent, I do not find any circumstance to issue a writ of mandamus in exercise of the Writ jurisdiction under Art.226 of the Constitution of India.

6. However, 5th and 6th respondents are directed to complete the proceedings in accordance with the Municipality Building Rules, 1999, if the 7th respondent had made any unauthorised construction or using the building in violation of the conditions in the permit, in the said building,

-: 5 :-

at the earliest, at any rate, within a period of four months from today.

This Writ Petition is disposed of accordingly.

Sd/-

**K. HARILAL,
JUDGE**

DST

//True copy//

P.A. To Judge