

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

WP(C).No. 13403 of 2015 (A)

PETITIONER:

**BIJI MOL S., AGED 24 YEARS,
D/O.RADHAMMA, NETHAJI NAGAR-30, KRISHNALAYAM,
PUTHENVILA VEEDU, PUNTHALAZHAM, KOLLAM DT,
PIN-691 508.**

BY ADV. SRI.SUNNY ZACHARIAH

RESPONDENT/DEFENDANTS:

- 1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
DEPARTMENT OF LOCAL SELF GOVERNMENT, SECRETARIAT,
THIRUVANANTHAPURAM-671 501.**
- 2. KOLLAM CORPORATION,
REPRESENTED BY ITS SECRETARY, CORPORATION OFFICE,
KOLLAM-691 501.**
- 3. LAILA, W/O.SURESH BABU,AGED 47 YEARS,
SIJO NIVAS, NETHAJI NAGAR,
PUNTHALAZHAM, KOLLAM DT, PIN-691 508.**

**R1 BY GOVERNMENT PLEADER SRI.SHYSON P. MANGUZHA
R2 BY SRI.M.K.CHANDRA MOHAN DAS,SC,KOLLAM MPT**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 08-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

sts

WP(C).No. 13403 of 2015 (A)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1	THE TRUE COPY OF THE CERTIFICATE ISSUED TO THE PETITIONER
EXT.P2	TRUE COPY OF THE STOP MEMO ISSUED BY THE 2ND RESPONDENT DATED 31.7.2015
EXT.P3	TRUE COPY OF OBJECTION
EXT.P4	COPY OF THE ORDER PASSED BY THE 2ND RESPONDENT DATED 6.1.2014
EXT.P5	TRUE COPY OF THE PETITION FILED BEFORE THE MAYOR DATED 27.01.2014
EXT.P5(A)	TRUE COPY OF THE EXTRACT OF PROCEEDING CALLING FOR URGENT REPORT
EXT.P6	TRUE COPY OF THE JUDGMENT IN WP(C).NO.7519/2014
EXT.P7	TRUE COPY OF ORDER IN APPEAL 944/2014
EXT.P8	TRUE COPY OF THE WRITTEN REQUEST.

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

/TRUE COPY/

P.A.TO JUDGE

sts

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 13403 of 2015

Dated this the 8th day of June, 2015

J U D G M E N T

Ext.P4 order, by which the petitioner was directed to demolish a latrine constructed by the petitioner in her property, is under challenge.

2. The petitioner alleges that her residence, which was purchased in 2012, is a very old one with only one latrine. As its pit got damaged in heavy rain, it was repaired and maintained by the petitioner. The 3rd respondent, who is her neighbour, complained to the 2nd respondent that it is a new construction and it is in proximity with her well and violates the distance prescribed under Rule 104(4) of the Kerala Municipality Rules. The petitioner was issued with Ext.P2 stop memo and thereafter, Ext.P4 order was issued to demolish the same stating that the petitioner has violated Rules 4, 25(1) and 104(4) of the Kerala Municipality Building Rules. The petitioner filed Ext.P5 petition against Ext.P4 order; and

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as per Ext.P6 order, it is bypassed and coercive steps were taken against the petitioner. Though the petitioner approached the Tribunal for Local Self Government Institutions, Thiruvananthapuram challenging Ext.P4, the same was dismissed as per Ext.P7 order.

3. The petitioner alleges that her property and the residential building situated therein originally was the family property of the 3rd respondent. After the partitioning of the property among themselves, the brother of the 3rd respondent sold his item to strangers, then consecutively to others, from whom the petitioner purchased it. The 3rd respondent, as per the partition deed, was allotted with the neighbouring property, wherein she constructed the residential building and well for her use in 2005 and settled therein; it is alleged. According to the petitioner, the old residential building of the petitioner covers almost the whole property and there is no space to construct a latrine without demolishing the existing residential building to bring the same within the ambit of R.104(4). The petitioner points out that R.104(4)

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does not envisage such situations. According to the petitioner, it is unreasonable to state that when a latrine, which was in use of the family, is damaged by rain, it cannot be reconstructed, but the owner should abandon the same and also have to apply and to wait for long days for obtaining the permission. The petitioner filed Ext.P8 requesting for site inspection, but, the 2nd respondent, in haste, passed Ext.P4 order; it is alleged. According to the petitioner, if Ext.P4 order is implemented, she would be constrained to abandon her residence.

4. Heard the learned counsel for the petitioner, the learned Standing Counsel for the respondent corporation and the learned Government Pleader.

5. The learned Standing Counsel for the respondent corporation, inviting my attention to Ext.P8, submitted that the same is pending consideration.

6. The learned counsel for the petitioner, per contra, inviting my attention to Ext.P5(a), would submit that though there was a minute dated 05.02.2014 recommending for calling for a report from the PWD,

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which was accepted by the higher authorities, the impugned order was passed without waiting for such a report.

7. In the light of the pendency of Ext.P8 and also on account of the fact that a report from the PWD has not been obtained, this Court is of the view that the impugned order shall not be allowed to stand.

Therefore, the writ petition is disposed of quashing Ext.P4 and directing the respondent to consider Ext.P8 after collecting the report from the PWD as per the minute [Ext.P5(a)] dated 05.02.2014. The entire exercise shall be completed within a period of two months from the date of receipt of a copy of this judgment.

Till the entire exercise is completed, the present state of affairs shall be allowed to continue.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-