

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

WP(C).No. 17741 of 2010 (P)

PETITIONER

**KRISHNADAS,
S/O. RAMAN, AGED 38 YEARS,
PULIKKAL HOUSE, CHELAKKARA
THRISSUR DISTRICT.**

**BY ADVS.SRI.BINOY VASUDEVAN
SMT.P.G.BABITHA**

RESPONDENT(S):

- 1. CHELAKKARA GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY,
CHELAKKARA.P.O, THRISSUR DISTRICT.**
- 2. THE SECRETARY,
CHELAKKARA GRAMA PANCHAYATH.**
- 3. SAJI JOSEPH,
S/O. JOSEPH, MAALIYEKKAL HOUSE,
CHELAKKARA, THRISSUR DISTRICT.**
- 4. SHERLY,
W/O. SAJI JOSEPH, MAALIYEKKAL HOUSE,
CHELAKKARA, THRISSUR DISTRICT.**

**R1 & R2 BY ADVS. SRI.P.VIJAYA BHANU
SMT.M.M.DEEPA**

**R3 & 4 BY ADVS. SRI.G.SREEKUMAR (CHELUR)
SRI.K.RAVI (PARIYARATH)**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05-03-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

AMG

APPENDIX

PETITIONERS' EXHIBITS

- EXT- P1- TRUE COPY OF THE DOCUMENT No.907/97 OF SRO, CHELAKKARA.
- EXT- P2- TRUE COPY OF THE DOCUMENT No.2214/2006 OF THE OFFICE OF THE SUB REGISTRAR, CHELAKKARA.
- EXT- P3- TRUE COPY OF THE DOCUMENT No.792/1/2002 OF THE OFFICE OF THE SUB REGISTRAR, CHELAKKARA.
- EXT- P4- TRUE COPY OF THE DOCUMENT No.27/1/2002 OF THE OFFICE OF THE SUB REGISTRAR, CHELAKKARA.
- EXT- P5- TRUE COPY OF THE DOCUMENT No.2377/2000 OF THE OFFICE OF THE SUB REGISTRAR, CHELAKKARA.
- EXT- P6- TRUE COPY OF THE REPRESENTATION SUBMITTED BEFORE THE 2ND RESPONDENT DATED 27-03-2009.
- EXT- P6 (a)- TRUE COPY OF THE RECEIPT ISSUED BY THE 2ND RESPONDENT DATED 27-03-2009.
- EXT- P7- TRUE COPY OF THE REPRESENTATION SUBMITTED BEFORE THE 2ND RESPONDENT DATED 02-06-2009.
- EXT- P6 (a)- TRUE COPY OF THE RECEIPT ISSUED BY THE 2ND RESPONDENT DATED 02-06-2009.
- EXT- P8- TRUE COPY OF THE PETITION SUBMITTED BY THE PETITIONER BEFORE THE SENIOR HEALTH INSPECTOR OF THE HEALTH CENTRE DATED 14-09-2009.
- EXT- P9- TRUE COPY OF THE REPLY ISSUED BY THE SECRETARY OF THE PANCHAYAT DATED 24-11-2009.
- EXT- P10- TRUE COPY OF THE COMMUNICATION DATED 21-12-2009 ISSUED BY THE 2ND RESPONDENT.
- EXT- P11- TRUE COPY OF THE PLAINT IN OS No.72/2010 OF MUNSIFF COURT, WADAKKANCHERRY.
- EXT- P12- TRUE COPY OF THE ORDER DATED 20-02-2010 IN IA No.307/2010 IN OS No.04-05-2010
- EXT- P13- TRUE COPY OF THE COMPLAINT SUBMITTED BY THE PETITIONER DATED 04-05-2010.

- EXT- 13 (a)- TRUE COPY OF THE RECEIPT ISSUED BY THE 2ND RESPONDENT DATED 04-05-2010.
- EXT- P14- TRUE COPY OF THE REQUEST UNDER RIGHT TO INFORMATION ACT DATED 27-05-2010.
- EXT- 14 (a)- TRUE COPY OF THE RECEIPT ISSUED BY THE 2ND RESPONDENT DATED 04-05-2010.
- EXT- P15- TRUE COPY OF THE REPLY DATED 25-06-2010 ISSUED BY THE PANCHAYAT.
- EXT- P16- TRUE COPY OF THE CIRCULAR ISSUED BY THE LOCAL SELF GOVERNMENT DEPARTMENT BEARING No.45846/R.A1/08/LSGD DATED 31-07-2008.
- EXT- P17- TRUE COPY OF THE REPORT PREPARED BY THE MEMBERS OF THE COMMITTEE WHO VISITED THE SITE.

RESPONDENTS' EXHIBITS

- EXT- R1 (a)- TRUE COPY OF THE REPORT OF THE OVERSEER LSGD, CHELAKKARA GRAMA PANCHAYAT DATED 12-06-2009.
- EXT- R4 (a)- TRUE COPY OF THE SANCTIONED PLAN AND BUILDING PERMIT PROVIDED TO THE RESPONDENTS 3 & 4 DATED 03-10-2009.

True copy

P.A. To Judge

AMG

C.K. ABDUL REHIM, J.

W.P.(c) No. 17741 OF 2010-P

DATED THIS THE 5th DAY OF MARCH, 2015.

J U D G M E N T

Grievance of the petitioner is regarding construction attempted by respondents 3 & 4 in a property situated adjacent to the house building of the petitioner. It is evident that based on Ext.P6 complaint submitted by the petitioner the 2nd respondent had issued a stop memo on 21-04-2009, restraining the illegal construction carried on. It is revealed that respondents 3 & 4 had filed application for building permit and it was sanctioned on 03-10-2009. It is also evident that the petitioner had filed a civil suit against the 3rd respondent in which an interim injunction was issued by the Munsiff Cour, Vadakkancherry as per Ext.P12, on 20-02-2010 restraining the 3rd respondent from proceeding with any further construction activity without obtaining permit. Despite the fact that the building permit was obtained by the respondents 3 & 4 as early as on 03-10-2009 the petitioner has not chosen to challenge the said

permit in any appropriate proceedings. Even in this writ petition which is filed on 07-06-2010, the building permit was not produced and no specific challenge is raised alleging any illegality in granting the building permit. Of course, he had sought a relief by way of declaration to the effect that the building permit issued to respondents 3 & 4 is illegal and irregular. But such a relief cannot be granted by this court without producing a copy of the building permit and without raising any specific challenge in respect of any violation of the Building Rules. This is more so because the petitioner has got an effective statutory remedy of appeal against the grant of building permit.

2. Another complaint raised is with respect to the apprehended damage which will be caused to the building of the petitioner, because of the construction undertaken by respondents 3 & 4. It will be left open to the petitioner to seek appropriate relief in this regard in the civil suit pending or he will be at liberty to initiate appropriate action under common law if any damage is caused.

3. The petitioner had also raised an allegation of nuisance because of the functioning of the oven erected in the Bakery building owned by respondents 3 & 4. The complaint submitted in this regard before the 2nd respondent was considered and Ext.P10 reply was given. In Ext.P10 reply it is mentioned that an enquiry conducted had revealed that the alleged nuisance does not exist. If the petitioner is aggrieved in any manner by the findings contained in Ext.P10 it is left open to him to take appropriate steps to challenge the same before any appropriate forum.

4. Leaving open liberty of the petitioner to take appropriate steps as mentioned above, this writ petition is hereby dismissed.

Sd/-
C.K. ABDUL REHIM
JUDGE

AMG

True copy

P.A. to Judge