

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 17TH DAY OF SEPTEMBER 2015/26TH BHADRA, 1937

WP(C).No. 24022 of 2007 (I)

PETITIONER(S):

- 1. K.I. THOMAS, KIZHAKKEVEEDU,
PANAVELI MADATHIYARA, VETTIKKAVALA,
KOTTARAKKARA.**
- 2. DR.IKE THOMAS, S/O.K.I. THOMAS,
KIZHAKKEVEEDU, PANAVELI MADATHIYARA,
VETTIKKAVALA, KOTTARAKKARA.**

**BY ADVS.SRI.GEORGE MECHERIL,
SRI.SERGI JOSEPH THOMAS,
SRI.S.AJAY KUMAR.**

RESPONDENT(S):

- 1. THE KERALA STATE HOUSING BOARD,
HOUSING BOARD COMPLEX,
THIRUVANANTHAPURAM, REP. BY ITS SECRETARY.**
- 2. THE EXECUTIVE ENGINEER,
KERALA STATE HOUSING BOARD,
KOLLAM DIVISION, KOLLAM.**

**BY ADVS. SRI.A.JAYASANKAR, SC,
SRI.GEORGE BOBAN, SC.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 17-09-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 COPY OF THE SALE DEED NO.1813 OF 2004 DATED 21/05/2004.
- EXT.P2 COPY OF THE SALE DEED NO.1073 OF 2005 DATED 28/03/2005.
- EXT.P2A COPY OF THE PROCEEDINGS OF THE SECRETARY, KOLLAM CORPORATION DATED 10/01/2007.
- EXT.P2B COPY OF THE PROCEEDINGS OF THE SECRETARY, KOLLAM CORPORATION DATED 10/01/2007.
- EXT.P2C COPY OF THE TAX RECEIPT DATED 20/08/2007 ISSUED BY KOLLAM CORPORATION.
- EXT.P2D COPY OF THE TAX RECEIPT DATED 15/01/2007 ISSUED BY KOLLAM CORPORATION.
- EXT.P2E COPY OF THE BASIC TAX RECEIPT DATED 05/10/2006 ISSUED BY KOLLAM VILLAGE.
- EXT.P3 COPY OF THE NOTICE DATED 26/07/2005 BY THE 2ND RESPONDENT.
- EXT.P4 COPY OF THE REPLY DATED 16/08/2005 SUBMITTED BY THE 1ST PETITIONER.
- EXT.P5 COPY OF THE NOTICE DATED 20/06/2006 IN RESPECT OF FLAT NO.EF 9/105.
- EXT.P6 COPY OF THE REPLY DATED 20/09/2006 FILED BY THE PETITIONER TO THE EXECUTIVE ENGINEER.
- EXT.P7 COPY OF THE NOTICE DATED 20/06/2007 ISSUED BY KERALA STATE HOUSING BOARD TO THE PETITIONERS.
- EXT.P8 COPY OF THE NOTICE DATED 20/06/2007 ISSUED BY KERALA STATE HOUSING BOARD TO THE PETITIONERS.
- EXT.P9 COPY OF THE REPLY FILED BY THE PETITIONERS DATED 04/07/2007.
- EXT.P10 COPY OF THE NOTICE DATED 12/07/2007 ISSUED BY KERALA STATE HOUSING BOARD TO THE 1ST PETITIONERS.

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- EXT.P11 COPY OF THE NOTICE DATED 12/07/2007 ISSUED BY KERALA STATE HOUSING BOARD TO THE 2ND PETITIONERS.**
- EXT.P12 COPY OF THE COMMUNICATION DATED 12/07/2007 ISSUED BY KERALA STATE HOUSING BOARD TO THE 2ND PETITIONER.**
- EXT.P13 COPY OF THE COMMUNICATION DATED 12/07/2007 ISSUED BY KERALA STATE HOUSING BOARD TO THE 1ST PETITIONER.**
- EXT.P14 COPY OF THE REPLY DATED 26/07/2007 FILED BY THE PETITIONERS TO THE EXECUTIVE ENGINEER K.S.H.B.**
- EXT.P15 COPY OF THE REPLY DATED 26/07/2007 FILED BY THE PETITIONERS TO THE EXECUTIVE ENGINEER K.S.H.B.**

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.MUHAMED MUSTAQUE, J.

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W.P.(C).No. 24022 of 2007

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Dated this the 17th day of September, 2015

J U D G M E N T

The petitioners approached this Court aggrieved by Exts.P10 to P13 .

2. Exts.P10 and P11 are the orders issued by the Kerala State Housing Board directing the petitioners to vacate the unauthorized occupancy for non residential purpose. Ext.P12 and P13 are orders threatening the petitioners to cancellation of the sale deed.

3. If the petitioners are using the house against the bylaw of allotment, the respondents are free to take action against the petitioners based on the negative covenant. However, the respondent cannot direct the petitioner to vacate the occupancy. It is also not possible for the respondents to cancel the sale deed, as the petitioners are the absolute owner of the flats. Therefore, with a liberty based on any negative covenant to work out in an appropriate manner, the impugned orders to that extent are set aside.

The writ petition is disposed of, as above.

sd/-

sab

A.MUHAMED MUSTAQUE, JUDGE

