

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

WP(C). No.19798 of 2013 (Y)

PETITIONER(S):

**SHABNA, D/O.MOIDEENKUTTY HAJI,
KUNDIL HOUSE, KAVATHIKULAM, KOTTAKKAL,
MALAPPURAM DISTRICT.**

BY ADV. SRI.BABU S. NAIR

RESPONDENT(S):

- 1. THE KOTTAKKAL MUNICIPALITY,
REPRESENTED BY ITS SECRETARY, KOTTAKKAL,
MALAPPURAM DISTRICT, PIN - 676 503.**
- 2. THE SECRETARY TO THE GOVERNMENT,
DEPARTMENT OF LOCAL SELF GOVERNMENT,
GOVERNMENT SECRETARIAT, TRIVANDRUM, PIN - 695 001.**
- 3. THUMBATH BEERAN HAJI,
S/O.MUHAMMED HAJI, THUMBATH HOUSE, KLARI,
KOTTAKKAL, MALAPPURAM DISTRICT, PIN - 676 501.**

R3 BY ADV. SRI.K.RAMACHANDRAN

SMT.M.C.BINDUMOL

R1 BY ADV. SRI.ESM.KABEER

R2 BY GOVERNMENT PLEADER SMT. SUNITHA VINOD

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS:

- P1: TRUE COPY OF THE BUILDING PERMIT ISSUED BY THE FIRST RESPONDENT DATED 30/4/2011.
- P2: TRUE COPY OF THE CONSENT LETTER GIVEN BY THE 3RD RESPONDENT TO THE FIRST RESPONDENT DATED NIL.
- P3: TRUE COPY OF THE ORDER ISSUED TO THE PETITIONER BY THE 1ST RESPONDENT DATED, 27/12/2012 AS NO.PW1-3669/11.
- P4: TRUE COPY OF THE REPLY SUBMITTED BY THE PETITIONER TO EXHIBIT P3 NOTICE DATED 6/1/2013.
- P5: TRUE COPY OF THE NOTICE ISSUED TO THE PETITIONER TO THE FIRST RESPONDENT DATED 28/2/2013.
- P6: TRUE COPY OF THE ORDER PASSED BY THE SUB COURT, TIRUR IN I.A NO.3184/2012 IN O.S NO.399/2012 DT. 9/11/2012.
- P7: TRUE COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT TO THE FIRST RESPONDENT DATED 7/5/2013 AS NO.16660/RB3/2013/LSGD.
- P8: TRUE COPY OF THE INTIMATION GIVEN TO THE PETITIONER BY THE 1ST RESPONDENT DT. 2/7/2013 AS NO.PW1/9622/12.

RESPONDENT(S)' EXHIBITS:-

- R3(A):- COPY OF THE COMPLAINT DATED 6.12.2012 SUBMITTED BY THE 3RD RESPONDENT BEFORE THE 1ST RESPONDENT.
- R3(B): COPY OF THE COMPLAINT DATED 16.1.2013 SUBMITTED BY THE 3RD RESPONDENT BEFORE THE 1ST RESPONDENT.
- R3(C):- COPY OF THE COMMISSIONER'S REPORT DATED 15.11.2012 IN O.S NO.399/12 BEFORE THE SUB COURT, TIRUR (WITH THE SKETCH).

KRJ

/True Copy/

P.A to Judge

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.19798 of 2013

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Dated this the 9th day of February, 2015

JUDGMENT

Exts.P7 and P8 orders are under challenge.

2. After obtaining Ext.P1 building permit, the petitioner started to construct a residential building. Near the properties where construction was made, the third respondent is having properties which share a common boundary. The petitioner alleges that Ext.P2 consent was given by the third respondent for the said construction. The petitioner further alleges that the third respondent had approached the first respondent with a complaint against the construction and thereafter, Ext.P3 show cause notice in the style of an order was issued to her by the first respondent to which she submitted Ext.P4 detailed reply.

3. The petitioner further alleges that after the submission of Ext.P4, no further proceedings were pursued on the basis of Ext.P3.

However, the third respondent approached the first respondent complaining that the construction is trespassing upon his properties. Therefore, Ext.P5 notice was issued to the petitioner by the first respondent asking her to stop the construction until the Taluk Surveyor measures out the properties. On receipt of the same, the petitioner approached the first respondent and expressed his willingness to have the properties measured with the help of a Taluk Surveyor. However, in the meanwhile, the third respondent approached the Sub Court, Tirur with O.S No.399 of 2012 complaining that the construction was trespassing into his properties. Accordingly, Ext.P6 injunction order was passed by the Sub Court.

4. A Commissioner was appointed by the Sub Court who inspected the properties and measured the same. The petitioner alleges that in the measurement it was revealed that there was no trespass by the petitioner. On the other hand, it was revealed that one cent of property belonging to the petitioner has been encroached

upon by the third respondent. When the municipality suggested the measurement with the help of Taluk Surveyor, the petitioner informed the municipality that the matter is pending considering of the civil court. 5. The petitioner has completed the construction and had applied for getting the building permit. At this juncture, the third respondent approached the Government against granting of building number and issuance of occupancy certificate and. The petitioner alleges that the second respondent without any jurisdiction and without hearing the petitioner issued Ext.P7 order directing the first respondent not to take a final decision in the matter. In Ext.P7 it was directed that till a final decision is taken by the civil court in O.S No.399 of 2012, the building shall not be numbered. Therefore, the first respondent vide Ext.P8 intimated the petitioner that since the Government had directed not to take a final decision till the disposal of the suit the building cannot be numbered. It is with this background, the petitioner has approached this Court.

6. The third respondent has filed a counter affidavit wherein it was contended that the Sub Court has granted injunction from making further constructions trespassing upon the properties of the third respondent. Therefore, the third respondent justified the stand taken by the Government as well as the local authority in Exts.P7 and P8 orders.

7. Arguments have been heard.

8. It is true that a civil suit is pending consideration before a competent civil court with respect to the alleged encroachments. It is true that the civil suit is for restraining the petitioner herein from making constructions trespassing upon the property of the third respondent. The final outcome of the said suit is awaited.

9. The petitioner alleges that he has completed the construction in accordance with law. It has to be noted that it was on the basis of a valid permit that he has completed the construction. Therefore, unless the building is numbered and occupancy certificate is granted, the

petitioner will not be in a position to make use of the building. Therefore, the proper course open is to number the building and issue occupancy certificate subject to the final outcome of O.S No.399 of 2012 pending before the Sub Court, Tirur.

In the result, the writ petition is disposed of directing the first respondent to number the building and to issue occupancy certificate provisionally to the petitioner subject to the final outcome of O.S No.399 of 2012 now pending before the Sub Court, Tirur. Formal orders to this effect shall be issued within a period of one week from the date of receipt of a copy of this judgment.

To facilitate early action, it shall be open to the petitioner to produce a copy of this judgment as well as copy of the writ petition before the local authority concerned at the earliest.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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