

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 15TH DAY OF JANUARY 2015/25TH POUSHA, 1936

WP(C).No. 19321 of 2014 (M)

PETITIONER :

**THE VIMALAGIRI PUBLIC SCHOOL
KOTHAMANGALAM, REPRESENTED BY ITS MANAGER.**

BY ADV. SRI.P.P.JACOB

RESPONDENT(S) :

- 1. THE NELLIKKUZHI GRAMA PANCHAYATH
NELLIKKUZHI, KOTHAMANGALAM, ERNAKULAM, PIN-686 691
REPRESENTED BY ITS SECRETARY.**
- 2. THE VILLAGE OFFICER
ERAMALLOOR VILLAGE OFFICE, ERAMALLOOR,
KOTHAMANGALAM, ERNAKULAM, PIN-686 691.**
- 3. THE TAHSILDAR
TALUK OFFICE, KOTHAMANGALAM,
ERNAKULAM, PINB-686 691.**

***ADDL. R4 IMPEADED**

- * ADDL.4. K.S.SASIDHARAN NAIR
S/O. SIVARAMAN NAIR, AGED 57 YEARS
KUNNATHAMKUDI, ELAMBRA
NELLIKUZHI P.O., KOTHAMANGALAM
(PRESIDENT - ELAMBARA SOWHRIDA RESIDENTS' ASSOCIATION (ESRA)
NELLIKUZHI P.O., KOTHAMANGALAM).**

***ADDL.R4 IS IMPEADED AS PER ORDER DATED 19.09.2014. IN
I.A. NO. 11384/2014.**

**R1 BY ADV. SRI.P.M.HABEEB
R2 & R3 BY GOVT. PLEADER SRI. G. GOPAKUMAR
ADDL.R4 BY ADV. SRI.ALEXANDER JOSEPH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Mn

...2/-

WP(C).No. 19321 of 2014 (M)

APPENDIX

PETITIONERS' EXHIBITS :

- EXT. P1 :** COPY OF THE SALE DEED NO.6358/94 OF THE KOTHAMANGALAM SUB
REGISTRY DATED 27.10.1994.
- EXT. P1(a):** PHOTOCOPY OF THE SALE DEED NO.6359/94 OF THE
KOTHAMANGALAM SUB REGISTRY DATED 27.10.94.
- EXT. P1(b):** PHOTOCOPY OF THE SALE DEED NO.6360/94 OF THE
KOTHAMANGALAM SUB REGISTRY DATED 27.10.94.
- EXT. P2 :** PHOTOCOPY OF THE LAND TAX RECEIPT DATED 24.6.2014 ISSUED BY
ERAMALLOOR VILLAGE OFFICE.
- EXT. P3 :** PHOTOCOPY OF THE LETTER ISSUED BY PETITIONER TO THE 2ND
RESPONDENT DTD.25.6.2014.
- EXT. P4 :** PHOTOCOPY OF THE PLAN OF THE PROPERTY PREPARED BY
APPROVED SURVEYOR DATED NIL.
- EXT. P5 :** PHOTOCOPY OF THE LETTER ISSUED BY PETITIONER TO THE 1ST
RESPONDENT DTD.27.6.2014.
- EXT. P6 :** PHOTOCOPY OF THE LETTER ISSUED BY 1ST RESPONDENT TO THE
PETITIONER DTD.9.7.2014.

RESPONDENT(S)' EXHIBITS :

- EXT. R4(a)** COPY OF THE LETTER DATED 22.7.2014 OF THE RDO TO THE
1ST RESPONDENT.
- EXT. R4(b)SERIES** COPIES OF THE PHOTOGRAPHS OF THE ROAD, PLAY GROUND
ETC.

//TRUE COPY//

P.A. TO JUDGE

Mn

A.M.SHAFFIQUE, J

W.P.C.No.19321 of 2014

Dated this the 15th day of January 2015

J U D G M E N T

Petitioner has approached this Court seeking for consideration of his application for building permit and for a further direction to complete the proceedings relating to the measurement as revealed by Ext.P6.

2. During the pendency of this *writ petition*, there was a direction to the Taluk Surveyor to measure the property and he has submitted a report which reads as under:

“In the above W.P(C), the Hon'ble High Court, in interim order dated 20.10.2014, directed the Taluk Surveyor, Kothamangalam to inspect the site and complete the survey proceedings in the impugnant land. As per the order, we have inspected the site and conducted survey in the land comprised in Survey 374/6/11 and 374/6/4/18/22 of Eramalloor Village in Kothamangalam Taluk. The survey is conducted on the basis of the existing survey records and LA

sketch prepared in LA14/86. It is reported that the Vimalagiri Public School Management (Petitioner in the W.P(C) has not encroached Government land in the site."

3. According to the Learned counsel for the petitioner, since the petitioner do not intend to trespass into any puramboke land, there is no reason why the Panchayath should not consider their application for building permit. Their only intention is to construct a boundary wall enclosing the playground.

4. Learned counsel for the additional 5th respondent submits that on the northern side of the aforesaid property, there is a road having width of 22 meters. Road was so widened by surrendering certain portion of the property belonging to the persons on either side, but proper applications under the Kerala Land Relinquishment Act has not been submitted and therefore the property remains in the Thandaper number of the neighbouring land owners. According to the 5th respondent, under the guise of constructing compound wall, width of the road should not be

reduced.

5. Whether the petitioner should be granted a building permit in the present boundary line or encroaching into the road portion are all matters which are to be considered by the authority who is to consider the application for building permit. Therefore, the apprehension expressed by the additional 5th respondent is out of place. That apart, if a building permit is granted in violation of any statutory provision or the factual situation, it shall be open for the 4th respondent to challenge the same, in accordance with law. Under such circumstances, I am of the view that a direction can be issued to the 1st respondent to consider the application of the petitioner for building permit.

In the result, this *writ petition* is disposed of as under:

1st respondent shall consider Ext.P5 and pass appropriate orders within a period of one month from the date of receipt of a copy of this judgment.

(sd/-)

(A.M.SHAFIQUE, JUDGE)

jsr

