

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 25TH DAY OF SEPTEMBER 2015/3RD ASWINA, 1937

WP(C).No. 19142 of 2015 (P)

PETITIONER(S):

**RENU VARGHESE, AGED 40 YEARS,
S/O.P.S.VARGHESE, MATTACKAL HOUSE, MOOLEPADOM ROAD,
KALAMASSERY, ERNAKULAM DISTRICT.**

**BY ADVS.SRI.NAGARAJ NARAYANAN
SRI.SAIJO HASSAN
SRI.PRATHAP PILLAI
SRI.R.S.SARAT
SRI.SEBIN THOMAS
SMT.J.KASTHURI
SRI.VISHNU BHUVANENDRAN**

RESPONDENT(S):

- 1. KALAMASSERY MUNICIPALITY,
REPRESENTED BY ITS SECRETARY, MUNICIPAL OFFICE,
KALAMASSERY-682 204.**
- 2. THE SECRETARY,
KALAMASSERY MUNICIPALITY, MUNICIPAL OFFICE,
KALAMASSERY-682 204.**
- 3. BABU,
THAIVELIKAKATH, NEAR I.T.I. QUARTERS,
KALAMASSERY-683 104.**
- 4. STATE OF KERALA,
REPRESENTED BY THE PRINCIPAL SECRETARY,
DEPARTMENT OF REVENUE, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.**
- 5. THE DISTRICT COLLECTOR,
COLLECTORATE, CIVIL STATION, KAKKAND, KCOHI-682 030.**

**R1 & 2 BY SRI.M.K.ABOOBACKER
R3 BY ADV. SRI.NAVEEN THOMAS
R4 & 5 BY GOVERNMENT PLEADER SMT.ANITHA RAVINDRAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17-08-2015
THE COURT ON 25-09-2015, DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1. TRUE COPY OF THE COMPLAINT DATED 30/4/2010 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT
- EXT.P2. TRUE COPY OF THE JUDGMENT DATED 17/6/10 IN WPC NO.18017/10 OF THIS HONOURABLE COURT.
- EXT.P3. TRUE COPY OF THE LETTER DATED 16/7/2010 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER
- EXT.P4. TRUE COPY OF THE INFORMATION GIVEN TO THE PETITIONER BY THE 1ST RESPONDENT VIDE NOTICE DATED 24/11/2010.
- EXT.P5. TRUE COPY OF THE RELEVANT PAGES OF APPLICATION DATED 2/9/2013 SUBMITTED BY THE 3RD RESPONDENT BEFORE THE 1ST RESPONDENT
- EXT.P6. TRUE COPY OF THE BUILDING PERMIT DATED 28/11/2014 ISSUED BY THE 2ND RESPONDENT BEFORE THE 3RD RESPONDENT
- EXT.P7. TRUE COPY OF THE PETITION SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 5/3/2015.
- EXT.P8. TRUE COPY OF THE JUDGMENT DATED 9/3/2015 IN WPC NO.7436/2015 OF THIS HONOURABLE COURT.
- EXT.P9. TRUE COPY OF THE LETTER DATED 24/3/2015 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER
- EXT.P10. TRUE COPY OF THE ORDER DATED 22/4/2015 ISSUED BY THE 2ND RESPONDENT
- EXT.P11. TRUE COPY OF THE PETITION DATED 24/4/2015 SUBMITTED BY THE PETITIONER BEFORE THE CI OF POLICE, KALAMASSERY POLICE STATION
- EXT.P12. TRUE COPY OF THE PETITION DATED 25/4/2015 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT
- EXT.P13. TRUE COPY OF THE PETITION DATED 30/5/2015 BRINING TO THE NOTICE OF THE 2ND RESPONDENT
- EXT.P14. TRUE COPY OF THE FRONT ELEVATION OF THE APPROVED BUILDING PLAN OF THE APARTMENT COMPLEX FOR THE 5TH FLOORS.
- EXT.P15. THE PHOTOGRAPHS SHOWING THE ADJOINING PUBLIC ROADS AND THE SIDE YARD OF THE APARTMENT COMPLEX OF THE 3RD RESPONDENT

WP(C).No. 19142 of 2015 (P)

- EXT.P16. THE PHOTOGRAPHS SHOWING THE ENCROACHMENT AND
 NARROWING THE PUBLIC DRAINAGE CANAL AT THE NORTHERN SIDE
 OF THE APARTMENT COMPLEX AND THE NORTHERN SIDE OPEN
 SPACE OF ACCOUNT 1.2 METRES**
- EXT.P17. THE PHOTOGRAPHS OF THE OUTWARD PROJECTIONS OF THE WALL
 ON THE NORTHERN SIDE OF THE APARTMENT COMPLEX FROM THE
 2ND FLOOR ONWARDS.**
- EXT.P18. THE PHOTOGRAPHS OF THE UNAUTHORIZED CONSTRUCTION OF
 THE 6TH FLOOR OF THE APARTMENT COMPLEX OF THE 3RD
 RESPONDENT WHICH IS PRESENTLY BEING UNDERTAKEN.**

RESPONDENT(S)' EXHIBITS

- EXT.R3(A): THE TRUE COPY OF THE NOTICE DATED 16/6/15 ISSUED BY THE R2**
- EXT.R3(B): THE TRUE COPY OF THE ORDER DATED 16/6/15 ISSUED BY THE R2**
- EXT.R3(C): THE TRUE COPY OF THE REPLY DATED 1/7/'15 GIBVEN BY R3**
- EXT.R3(D): THE TRUE COPY OF THE NOTICE DATED 2/7/15 COPY ISSUED BY R2.**

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.V.RAMAKRISHNA PILLAI, J

WPC No.19142 of 2015

Dated this the 25th day of September, 2015

JUDGMENT

The petitioner has approached this Court with this writ petition alleging that in spite of the direction by this Court to the Secretary of the respondent Municipality to consider the grievances of the petitioner, no action has been taken by the respondent Municipality to stop the third respondent from causing damage to the petitioner's property by making an illegal construction.

2. The petitioners allege that the third respondent illegally constructed a four storeyed apartment complex in 13 cents of land in Sy.No.450/11 of Thrikkakkara North Village, Kalamassery Municipality without necessary building permit, in 2010. Thereafter he constructed the 4th and 5th floors after illegally obtaining building permit without having the minimum open side yard required. Presently, the 6th floor is being constructed without

building permit. The petitioner is a resident of the neighbouring property.

3. According to the petitioner, the third respondent has encroached into the public drainage canal passing through the northern side by covering the canal without concrete slabs and using it as part of his property by placing flower pots on the concrete slabs laid over the canal.

4. According to the petitioner, the minimum mean set back to be maintained for the northern yard for the 4th, 5th and 6th floors of the apartment are 2, 2.5 and 3 metres respectively. Presently, there is hardly 1.2 metres mean open space on the northern side yard of the apartment complex, which would not even satisfy the minimum set back for the 3rd floor as per Rule 24(4) of KMBR; according to the petitioner. Hence, the construction from the third floor onwards is illegal; it is alleged.

5. According to the petitioner, the outward projections to an extent of 1 metre and more from the second floor onwards of the apartment complex, on its

northern side violate Rules 24(8) read with 24(1) and 24 (11) of the KMBR. The construction of the 6th floor now being undertaken without obtaining building permit is also illegal; it is alleged.

6. The petitioner points out that no action is being taken by the respondent Municipality to demolish the apparent unauthorised illegal construction. It is with this background the petitioner has come up before this Court.

7. In the counter affidavit filed by the third respondent, he has denied the allegations levelled against him. According to him, as the petitioner and his family members are misusing the drainage canal adjacent to the property of the third respondent by dumping waste, he had made complaints to the authorities. According to him, the canal passes through his property and slabs are laid by the first respondent Municipality over the canal. According to him, the constructions are made as per the permits issued by the respondent Municipality and the petitioner has never challenged the same before any forum. According to him, there was no violation of rules

and required set back has been provided as mandated by law as evident by Ext.P10. It is further contended that Exts.P9 and P10 show that the construction made till the 5th floor is legal and in conformity with the Building Rules. His definite case is that he is not constructing any sixth floor as alleged by the petitioner and he is only constructing a platform for overhead water tanks for fire fighting and domestic use, solar heater, lift room, engine room which cannot be included in calculating height from ground level as provided in Rule 32 of the Kerala Municipality Building Rules. Therefore, he prayed for a dismissal of the writ petition.

8. Arguments have been heard.

9. The case of the petitioner is that the construction of the floors from the third floor onwards of the apartment complex by the third respondent is without maintaining the minimum required set back open space from the northern, southern and western yards of the complex. According to the petitioner, the minimum mean set back to be maintained for the northern side yard is 1.5 metres

and the mean set back for the 4th, 5th and 6th floors would be 2, 2.5 and 3 metres respectively. According to the petitioner, presently, there is only 1.2 metres open space from the northern yard. It was pointed out that respondents 1 and 2 failed to see that the third respondent had illegally encroached into the public property by filling, covering and narrowing public drainage canal on its northern side and by illegally encroaching into the northern side of the apartment. The petitioner alleges that he had given notice to the respondents 1 and 2 that the public property has been illegally encroached by the third respondent. It is further pointed out that projections like cornice, roof and weather shade can project only up to 60 cms. as per the first proviso to Rule 24(11) of the Kerala Municipality Building Rules. The outward projections to an extent of 1 metre and more from the second floor onwards from the outward line of the ground and first floors on the northern side of the apartment complex being not cornice, roof or weather shade are in violation of Rules 24(8) read with Section 24(1) and 24(11)

of the KMBR; according to the petitioner.

10. The gist of the argument advanced by the learned counsel for the petitioner is that the construction activity carried out by the third respondent is without maintaining the minimum set back space at the rear end and it has resulted in the northern walls of the apartment complex projecting almost up to the southern boundary of the petitioner's residence.

11. The learned counsel for the third respondent as well as the learned counsel for the respondent Municipality would submit that the construction is perfectly in accordance with the approved plan and without violating any of the provisions of the Building Rules.

12. According to the third respondent, the apartment has minimum set back which is approved by Ext.P10. It is the definite case that the third respondent is not constructing any 6th floor as alleged. According to him, the measurements of the apartment as submitted by the petitioner are false and denied. It is the definite case that

the first respondent has inspected the property and issued Ext.P10 which makes it clear that there is no violation till the 5th floor and has required set back. According to the respondent, there is no sixth floor other than a platform for overhead water tanks for fire fighting and domestic use, solar heater, lift room, engine room which could not be included in calculating height from ground level as provided in Rule 32 of the KMBR.

13. The second respondent has issued a notice dated 16.6.2015 referring to the writ petition with an order dated 16.6.2015 alleging that the third respondent has made illegal construction of the 6th floor without permit. Exts.R3(a) and R3(b) are the copies of the notice and order. In response, the third respondent has given a reply (Ext.R3(c) wherein he has stated that there is no illegal construction and that the alleged 6th floor is only a platform as pointed out above. However, the second respondent has issued another notice on 2.7.2015 which is produced and marked as Ext.R3(d). As the third respondent has given reply to Exts.R3(a), R3(b) and R3(d),

it is for the first respondent Municipality to take a decision on the same.

Therefore, the writ petition is disposed of directing the first respondent Municipality to consider the reply given by the third respondent to Exts.R3(a), R3(b) and R3 (d) and to pass final orders within a period of one month from today after giving the petitioner and the third respondent an opportunity of being heard, if the same were not disposed of. If any orders on the same has been passed, it shall be open to the aggrieved party to challenge the same before the appropriate forum in accordance with law.

sd/- A.V.RAMAKRISHNA PILLAI
JUDGE

css/

true copy

P.S.TO JUDGE

A.V.RAMAKRISHNA PILLAI, J

WPC No.19142 of 2015

Dated this the 7th day of August, 2015

JUDGMENT

The petitioner has approached this Court alleging that the third respondent has illegally constructed a four storeyed apartment complex within the local limits of the respondent Municipality without obtaining the necessary

building permit.

2. When the matter came up for hearing there was no representation for the petitioner.

The learned standing counsel for the respondent Municipality would submit that the third respondent has been issued with a valid permit by the respondent Municipality and the construction was carried out in accordance with the permit and the rules. In the light of the above, the writ petition is dismissed.

sd/- A.V.RAMAKRISHNA PILLAI
JUDGE

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true copy

P.S.TO JUDGE