

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

SA.No. 557 of 2002

**228/1994 OF FIRST ADDL.DISTRICT COURT, TRIVANDRUM, DATED 13-11-2001
OS 2809/1992 OF PRINCIPAL MUNSIFF'S COURT, TRIVANDRUM DATED 26-05-1994**

APPELLANT(S)/APPELLANTS/PLAINTIFF:

- * 1. SREENIVASAN SON OF MUTHUSWAMY,
HINDU, T.C.37/1266-1, SREEDEVI COMMUNITY HALL,
FORT, THIRUVANANTHAPURAM. (DIED)
(LEGAL HEIRS IMPEADED AS ADDL.A3 TO A8)
2. SANKARA VADIVAMMAL, W/O.SREENIVASAN,
HINDU, AGED DO. DO.
- ADDL.A3 TO A8 IMPEADED
3. S.ANANDARAJAN, S/O.LATE M.SRINIVASAN,
AGED 45 YEARS, TC.38/1561, ESAKI AMMAN KOVIL STREET,
PAZHAVANGADI, THIRUVANANTHAPURAM.
4. S.MUTHULAKSHMI, D/O.LATE M.SRINIVASAN, AGED 42 YEARS,
TC.38/1561, ESAKI AMMAN KOVIL STREET,
PAZHAVANGADI, THIRUVANANTHAPURAM.
5. S.VENKATACHALAPATHY, S/O.LATE M.SRINIVASAN, AGED 40 YEARS,
TC.38/1561, ESAKI AMMAN KOVIL STREET,
PAZHAVANGADI, THIRUVANANTHAPURAM.
6. S.GANESH KUMAR, S/O.LATE M.SRINIVASAN, AGED 38 YEARS,
TC.38/1561, ESAKI AMMAN KOVIL STREET,
PAZHAVANGADI, THIRUVANANTHAPURAM.
7. S.BALAJI, S/O.LATE M.SRINIVASAN, AGED 35 YEARS,
TC.38/1561, ESAKI AMMAN KOVIL STREET,
PAZHAVANGADI, THIRUVANANTHAPURAM.

PJ

....2/-

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8. S.SREEDEVI, D/O.LATE M.SRINIVASAN, AGED 28 YEARS,
TC.38/1561, ESAKI AMMAN KOVIL STREET,
PAZHAVANGADI, THIRUVANANTHAPURAM.

ADDL.APPELLANTS 3 TO 8 ARE IMPEADED BEING THE LEGAL
REPRESENTATIVES OF DECEASED FIRST APPELLANT AND SECOND
APPELLANT IS ALSO RECORDED AS ONE OF THE LEGAL REPRESENTATIVE
OF DECEASED FIRST APPELLANT AS PER ORDER DATED 16/6/2011 IN
IA.NO.1330/2011.

A2 BY ADVS.SRI.RAMASWAMY PILLAI.M.
SRI.P.C.HARIDAS
ADDL.3 - 8 BY ADVS.SRI.M.RAMASWAMY PILLAI

RESPONDENT(S)/RESPONDENT/DEFENDANT:

THE CORPORATION OF TRIVANDRUM,
REPRESENTED BY ITS COMMISSIONER, CORPORATION OFFICE
TRIVANDRUM.

BY ADV. SRI.N.NANDAKUMARA MENON,SC

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 30-06-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

P.BHAVADASAN, J.

S.A. No. 557 of 2002

Dated this the 30th day of June, 2015

J U D G M E N T

Undaunted by the concurrent finding against him, the plaintiff has come up in appeal.

2. The suit was one for injunction against the Corporation of Thiruvananthapuram from demolishing a portion of the structure he has put up in his property. Both the courts below concurrently found that though the Corporation rejected sanction and permission, the plaintiff was able to get exemption from the Government as per order dated 07.12.1991 which is not seen produced in the case. The Corporation did not dispute that there was such an order. However, the three conditions were imposed in that order to enable the plaintiff to put up construction as per his request.

3. When the Corporation found that all the three conditions have been violated, they issued notice under the

relevant provisions to pull down the structure. That brought the plaintiff to the court.

4. On evaluation of materials before it, the trial court found that the corporation is justified in its stand that all the three conditions have been violated by the plaintiff in the suit. Accordingly, the suit was dismissed. The appeal met with the same fate.

5. Notice was issued on the following substantial questions of law:

“(i) Whether standing committee has got power to deal with this temporary venal pandal.

(ii) Whether the temporary Pandal can be treated as unauthorised construction.

(iii) Whether the court has considered the actual lie of the lane and Main Road.

(iv) Whether the Commissioner's report regarding Venal Pandal is vital evidence to decide that the extention is not a permanent construction.”

6. The learned counsel appearing for the appellants contended that it has almost been 25 years since the

construction has been put up and it will be improper to ask him to pull down as no inconvenience is caused to the public or to the neighbours. Stress is laid down to the fact that none of the neighbours have complained to the Corporation about the construction.

7. Sri. N. Nandakumara Menon, the learned senior counsel appearing for the Corporation on the other hand contended that it is irrelevant whether anybody has complained or not, but the question is whether the conditions have been complied with by the plaintiff. The construction was permitted on granting exemption in compliance of certain conditions; one of which is an agreement with the Corporation. None of the conditions had been complied with and therefore, plaintiff is not entitled to any relief.

8. After having heard the learned counsel on both sides and after having perused the records, this Court finds almost no grounds to interfere with the findings of the courts

below. Except for the first condition which the plaintiff says that there is no stipulation as to mode of consent should be obtained from the neighbours, even assuming it to be so, the other two conditions are violated. If that be so, the Corporation was justified in taking action against the plaintiff and the courts below were justified in refusing him to grant relief to the plaintiff.

This second appeal is dismissed confirming the judgments and decree of the courts below. However, reserving the liberty of the plaintiff to approach such authorities in accordance with law, if he is entitled to do so for appropriate reliefs from the appropriate authorities.

Sd/-
P.BHAVADASAN
JUDGE

ds

//True copy//

P.A. to Judge