

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 21ST DAY OF AUGUST 2015/30TH SRAVANA, 1937

WP(C).No. 24442 of 2013 (E)

PETITIONER:

JERIN JACOB
S/O.A.P.JACOB, ANJILY HOUSE, MAROTTICHUVADU
EDAPPALLY P.O.
KOCHI - 682 024 REPRESENTED BY POWER
OF ATTORNEY HOLDER A.P.JACOB

BY ADVS.SRI.S.M.PREM
SRI.P.RAMACHANDRAN (PALAKKAD)

RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY THE DIRECTOR OF URBAN AFFAIRS
PUBLIC OFFICE BUILDINGS, MUSEUM P.O.
THIRUVANANTHAPURAM - 695 033

2. THE SECRETARY
THRIKKAKARA MUNICIPALITY, THRIKKAKARA, KOCHI - 682 021

3. RADHAKRISHNAN NAIR
S/O.K.MADHAVAN NAIR, 'RENJINI'
MAROTTICHUVADU EDAPPALLY P.O., KOCHI - 682 024.

SRI.RAFEEL.V.K., GOVERNMENT PLEADER
R4 BY ADV. SRI.C.S.AJITH PRAKASH
R4 BY ADV. SRI.PAUL C THOMAS
R BY SRI.S.SHANAVAS KHAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
21-08-2015, ALONG WITH WPC NO.24442/2013, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

RKC

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APPENDIX

PETITIONER'S EXHIBITS

EXT.P-1: TRUE COPY OF THE APPROVED SITE PLAN AND BUILDING PERMIT NO.BA-372/09-10 WITH COMPLETION CERTIFICATE ISSUED BY THE MUNICIPAL ENGINEER, THRIKKAKARA MUNICIPALITY.

EXT.P-2: TRUE COPY OF THE OCCUPANCY CERTIFICATE DATED 28.10.2011

EXT.P-3: TRUE COPY OF ORDER DATED 17.7.2012 ISSUED BY THE THRIKKAKARA MUNICIPALITY.

EXT.P-4: TRUE COPY OF THE PETITIONER REPLY DATED 3.6.2013 SUBMITTED TO THE 2ND RESPONDENT.

EXT.P-5: TRUE COPY OF THE ORDER DATED 25.9.2013 PASSED BY THIS HONOURABLE COURT IN WPC NO.16084 OF 2013.

EXT.P-6: TRUE COPY OF THE SITE INSPECTION REPORT DATED 30.9.2013 PREPARED BY THE 2ND RESPONDENT

EXT.P-7: TRUE COPY OF THE PETITIONERS REPRESENTATION DATED 30.9.2013 MADE TO THE 2ND RESPONDENT

EXT.P-8: TRUE COPY OF THE COMPLAINT DATED 20.5.2013 MADE BY THE PETITIONER TO THE 2ND RESPONDENT AGAINST THE UNAUTHORISED "WELL" CONSTRUCTED BY THE 3RD RESPONDENT.

EXT.P-9: TRUE COPY OF THE COMPLAINT DATED 20.5.2013 MADE BY THE PETITIONER TO THE 2ND RESPONDENT AGAINST THE ILLEGAL CONSTRUCTIONS MADE BY THE 3RD RESPONDENT.

EXT.P-10: TRUE COPY OF THE NEWS ITEM THAT APPEARED IN THE MALAYALA MANORAMA DAILY DATED 17.6.2013

EXT.P-11: TRUE COPY OF THE NEWS ITEM THAT APPEARED IN THE MALAYALA MANORAMA DAILY DATED 24.6.2013

3RD RESPONDENT'S EXHIBITS

R3(A): COPY OF THE NOTICE DATED 3.5.2012 ISSUED BY THE HEALTH OFFICER OF THE PRIMARY HEALTH CENTRE.

R3(B): REPLY SUBMITTED BY THE PETITIONER DATED 5.5.12

RE(C): COPY OF THE NOTICE DATED 2.6.2013 ISSUED BY THE MUNICIPALITY.

RKC

TRUE COPY

PA TO JUDGE

P.V.ASHA, J.

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W.P.(C) No.24442 of 2013
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Dated this the 21st day of August, 2015

JUDGMENT

This writ petition is filed with the following reliefs:

i) *issue a writ of mandamus or such other writ, direction or order compelling the respondents 1 and 2 to take immediate action to close the "well" dug by the 3rd respondent in proximity to the building of the petitioner in violation of the set back rules prescribed under Chapter XVI of the Kerala Municipality Building Rules, 1999:*

ii) *issue a writ of mandamus or such other writ, direction or order compelling the respondents 1 and 2 to take effective action to remove the illegal constructions made by the 3rd respondent abutting the petitioner's property and preventing fresh air, day light and ventilation of the petitioner's building;*

iii) *issue such other writ, direction or order as is deemed just and necessary in the facts, features and circumstances of the case;*

iv) *award compensatory costs and expenses to the petitioner to be paid by the 3rd respondent.*

2. The petitioner wants to see that a well which was constructed in 2006 is filled up and saying that it is constructed in violation of the rules. The third respondent has filed a counter

W.P.(C) No.24442 of 2013

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affidavit pointing out that there is no violation of the rules as far as the construction of the well is concerned and the petitioner has filed this writ petition only to harass the third respondent in view of the pendency of W.P.(C) No.16084 of 2013 and in order to see that the order issued by the Municipality for shifting the septic tank is delayed. It is pointed out that the Building Rules were made applicable to the Municipality only in November 2006 and respondent had constructed the well.

The contention of the petitioner is that the well is constructed in violation of the Building Rules. As the Building Rules were made applicable only subsequent to the implementation of Building Rules, the contention raised and the reliefs sought were untenable and it is only an abuse of the process of the court, only to harass the third respondent. In the above circumstances, the petitioner is not entitled to any relief in this writ petition and the same is liable to be dismissed with costs.

**P.V.ASHA,
JUDGE.**

rkc