

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

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

WP(C).No. 23096 of 2014 (J)

PETITIONER:

M/S DESAI HOMES

(A REGISTERED PARTNERSHIP FIRM) C40, 40/7669

'VASTRA MAHAL', KOCHI - 682 011

REPRESENTED BY ITS MANAGING PARTNER, MR.V.R.DESAI.

BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR

SRI.P.GOPINATH

SRI.P.BENNY THOMAS

SRI.K.JOHN MATHAI

SRI.JOSON MANAVALAN

SRI.KURRYAN THOMAS

RESPONDENTS:

1. THE SUB INSPECTOR OF POLICE

THRIKKAKARA POLICE STATION, THRIKKAKARA P.O.KAKKANAD
KOCHI - 682 021.

2. THE ASSISTANT COMMISSIONER OF POLICE

THRIKKAKARA RURAL, KAKKANAD
ERNAKULAMDISTRICT - 682 021.

3. THE THRIKKAKARA MUNICIPALITY

THRIKKAKARA MUNICIPAL OFFICE, THRIKKAKARA P.O.
KOCHI - 682 021 REPRESENTED BY ITS SECRETARY.

4. RAJAN S/O.NARAYANAN

KEERIKATIL HOUSE, EDACHIRA, THENGODE P.O.KOCHI 682 030.

5. SANTOSH

S/O.NARAYANAN, KEERIKATIL HOUSE, EDACHIRA
THENGODE P.O., KOCHI 682 030.

6. MOHANAN

PARAPEL, EDACHIRA, THENGODE P.O.
KOCHI 682 030.

7. CHERIYAN

VELLAMKUZHI, EDACHIRA, THENGODE P.O.KOCHI - 682 030.

Addl.8. A.V.KRISHNANKUTTY
S/O.VALLON, AGED 53 YEARS, AAKKIKUDIYIL HOUSE
THENGODE.P.O., PIN -682030.

Addl.9. A.V.KUNJAN
S/O.VALLON, AGED 48 YEARS, AAKKIKUDIYIL HOUSE
THENGODE.P.O., PIN -682030.

Addl.10. A.K.SOMAN
S/O.KRISHNAN, AGED 50, ANTHAPPILLIL HOUSE
THENGODE.P.O., PIN -682030.

Addl.11. M.K.VELAYUDHAN
S/O.KURUMBAN, AGED 55, MOOZHIKKATTUMoola HOUSE
THENGODE, PIN -682030.

Addl.12. M.K.KUMARAN
S/O.KURUMBAN AGED 50, MOOZHIKKATTUMoola HOUSE
THENGODE, PIN -682030.

Addl.13. V.T.SURENDRAN
AGED 50, S/O.THANKAPPAN, VALLIYATH HOUSE
THENGODE, PIN -682030.

Addl.14. A.P.PRAHAN
S/O.PAPPUNNI, AGED 49, ANTHAPPILLIL HOUSE
THENGODE, PIN -682030.

Addl.15. K.N.THANKAPPAN
S/O.NARAYANAN, AGED 52 YEARS, KEERIKATTIL HOUSE
THENGODE, PIN -682030.

Addl.16. P.K.BIJU
S/O.KUNJAPPAN, AGED 36, PALACHUVATTIL HOUSE
THENGODE, PIN -682030.

Addl.17. SUNI.O.A.
S/O.AYYAPPAN, AGED 42, OTTIKKALIL HOUSE
THENGODE, PIN -682030.

Addl.18. SURESH.T.K.
S/O.KUNJU, AGED 34, THARAMATTATHIOL HOUSE
THENGODE, PIN -682030.

Addl.19. MEENAKSHI
W/O.AYYAPPANKUTTY, AGED 65, MADASSERY HOUSE
THENGODE, PIN -682030.

Addl.20. OMANA
W/O.KRISHNAN, AGED 68, KEERIKKATTIL HOUSE
THENGODE, PIN -682030.

Addl.21. KUMARI
W/O.VASU, AGED 48, THARAATTATHIL HOUSE
THENGODE, PIN -682030.

Addl.22. SASHIKUMAR.P.T
S/O.THANKAPPAN, AGED 55 YEARS, PUTHINETHIL HOUSE
THENGODE, PIN -682030.

Addl.23. C.K.THANKAPPAN
S/O.AYYAPPAN, AGED 57, CHATHANVELIL HOUSE
THENGODE, PIN -682030.

Addl.24. V.K.SASI
S/O.KRISHNAN, AGED 55, VALIYATH HOUSE
THENGODE, PIN -682030.

Addl.25. V.POULOSE
S/O.KURIAKOSE, AGED 53 YEARS, VELLAMKUZHI HOUSE
THENGODE, PIN -682030.

Addl.26. NARAYANAN.V.K.
S/O.KRISHNAN, AGED 74, VALIYATH HOUSE
THENGODE, PIN -682030.

Addl.27. ELDHO.V.C.
S/O.CHERIYAN, AGED 40, VELLAMKUZHI HOUSE
THENGODE, PIN -682030.

ADDL. R8 TO R27 ARE IMPEADED AS PER ORDER DATED 18/09/2014 IN
IA 12505/2014.

R4,R5,R6,R7, ADDL 8 -R27 BY ADV.
SRI.V.S.CHANDRASEKHARAN
R4,R5,R6,R7, ADDL R8-R27 BY ADV. SRI.M.V.DAS
R4,R5,R6,R7,R ADDL R8 -R 27 BY ADV. SMT.LEKSHMI
SWAMINATHAN
R4,R5,R6,R7 BY ADV. SMT.S.A.SWAPNA
R4,R5,R6,R7 BY ADV. SMT.MANJUSHA GOVIND
R3 BY ADV. SRI.S.SHANAVAS KHAN
BY ADV. SRI.T.C.SURESH MENON (ADVOCATE COMMISSIONER)
R1,R2 BY SR. GOVERNMENT PLEADER SRI.R.PADMARAJ

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

EXT.P-1: TRUE COPY OF THE BUILDING PERMIT BEARING
NO.630/2008 DATED 30.6.2008

EXT.P-2: TRUE COPY OF THE STUDY REPORT SUBMITTED BY
MR.ABHILASH JOY,M.TECH, M.I.C.I DATED 31.7.2014

EXT.P-3: TRUE COPY OF THE COMPLAINT DATED 28.7.2014
SUBMITTED BEFORE THE 1ST RESPONDENT

EXT.P-4: TRUE COPY OF THE LETTER DATED 18.7.2014 ADDRESSED
TO THE 2ND RESPONDENT BY THE SAFETY OFFICER IN CHARGE OF THE
PROJECT

FOURTH RESPONDENT'S EXHIBITS

EXT.R4(1) TRUE COPY OF THE MASS REPRESENTATION PREFERRED BY
THE RESPONDENTS 4 TO 27 BEFORE the MUNICIPAL CHAIRMAN,
THRIKKAKARA MUNICIPALITY

EXT.R4(2) TRUE COPY OF THE MASS REPRESENTATION PREFERRED BY
THE RESPONDENTS 4 TO 27 BEFORE THE SECRETARY, THRIKKAKARA
MUNICIPALITY

EXT.R4(3) TRUE COPY OF the MASS REPRESENTATION DATED 18.7.2014
PREFERRED BY US TO THE DISTRICT COLLECTOR, ERNAKULAM

EXT.R4(4) TRUE COPY OF THE ORDER DATED Q NO.3540/14 DATED
19.7.2014 FORWARDED TO THE TAHSILDAR KANAYANNOR TALUK BY THE
DISTRICT COLLECTOR, ERNAKULAM

EXT.R4(5) TRUE COPY OF THE REPORT DATED 2.8.2014 ISSUED BY THE
TAHASILDAR, KANAYANNOOR TALUK TO the DISTRICT COLLECTOR,
ERNAKULAM

EXT.R4(6) (a -f) SERIES OF PHOTOGRAPHS SHOWING SOME OF THE
HORIZONTAL AND VERTICAL DAMAGES AND RIFTS CAUSED TO THE
CONCRETE RESIDENTIAL BUILDINGS OF THE RESPONDENTS.

THIRD RESPONDENT'S EXHIBITS

EXT.R3(A) TRUE COPY OF THE REPORT DATED 29.9.2014 OF THE
SECRETARY, THRIKKAKARA MUNICIPALITY

ADVOCATE COMMISSIONER'S EXHIBITS

EXT.C1(A) TRUE COPY OF THE NOTICE DATED 21.10.2014

WP(C) .No. 23096 of 2014 (J)

EXT.C1(B) TRUE COPY OF THE FEW PHOTOGRAPHS OF THE CONSTRUCTION SITE AND THE HAMMER WEIGHT, THE BORE, AND THE SLUSH AND MUD MIXED WITH WATER FLOWING OUT OF THE BORE HOLE DATED NIL

EXT.C1(C) TRUE COPY OF THE FEW PHOTOGRAPHS which WOULD REVEAL THE DISTANCE FROM THE CONSTRUCTION SITE TO THE NEAREST RESIDENTIAL HOUSE AND THE VISIBLE CRACKS IN THE HOUSE DATED NIL

/TRUE COPY/

PA TO JUDGE

**T.R.RAMACHANDRAN NAIR &
P.V.ASHA, JJ.**

W.P.(C)No.23096 OF 2014

Dated this the 9th day of February, 2015

JUDGMENT

Ramachandran Nair, J.

This writ petition is filed by the petitioner seeking for issuance of a direction to respondents 1 and 2 to provide effective and adequate protection to the petitioner to enable it to carry on the construction activities in terms of Ext.P1 permit, without any hindrance at the hands of the respondents 4 to 7, or their supporters.

2. The learned counsel for the petitioner submits that already this Court has granted police protection as per order dated 11.11.2014 and the said order may be made absolute, while disposing of the writ petition.

3. We heard the learned counsel for the petitioner, the learned counsel for the respondents 4 to 27, the learned Government Pleader and the learned counsel for the Municipality.

4. It is seen from the various interim orders passed by this

Court that by order in I.A.No.13345/2014 dated 1.10.2014, this Court appointed Sri.T.C.Suresh Menon as the Advocate Commissioner to inspect the site and to report about the matters mentioned in the application and other matters for taking a decision. Thereafter this Court passed an interim order on 15.10.2014 directing the petitioner to stop all piling activities till the matter is finally decided after getting the expert opinion and the Commissioner's report in the matter. A modified order has been passed by this Court on 11.11.2014, paragraph 3 of which is reproduced below :

“3. As per the interim order dated 15.10.2014, we have passed an order of injunction restraining the writ petitioner from continuing with the piling operations until further orders. In the light of the report submitted by the Commissioner and the Experts, we vacate the order of injunction granted as per order dated 15.10.2014. In other words, the writ petitioner would be entitled to continue the piling operations. It is alleged that respondents 4 to 27 caused obstructions to the piling operations undertaken by the petitioner. The learned counsel

appearing for respondents 4 to 27 submitted that there would be no obstruction from the side of respondents 4 to 27 in the matter of piling activities. This submission is recorded. If any obstruction is caused by respondents 4 to 27 or any person on their behalf, respondents 1 and 2 (S.I. of Police, Thrikkakara Police Station and the Assistant Commissioner of Police, Thrikkakara Rural, Kakkanad) shall provide effective and adequate protection to the petitioner to enable them to carry on the construction activities in terms of Ext.P1 permit. Petitioner shall pay a sum of ₹10,000/- to the Advocate Commissioner as additional remuneration.”

5. In the light of the above, the learned counsel for the petitioner submitted that the piling operations are continuing and there is no obstruction as on today. We therefore make the said order absolute.

6. The learned counsel for the respondents 4 to 27 Sri.V.S.Chandrasekharan submits that due to the piling operation damage has occurred to the buildings situated nearby and owned by respondents 4 to 27, which is disputed by the learned counsel for the

petitioner. Even though the learned counsel for the respondents 4 to 27 wanted this Court to adjudicate the matter, since this is a writ petition filed by the petitioner seeking police protection alone, we will not be justified in going into such contention. We only make it clear that the disposal of the writ petition will not stand in the way of the right, if any, of the respondents 4 to 27 to approach the appropriate forum for claiming damages, if any.

The writ petition is accordingly disposed. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE

P.V.ASHA, JUDGE

SV.