

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

WP(C).No. 30445 of 2008 (Y)

PETITIONER(S) :

1. P.P.MUSTHAFFA, S/O.VEERAN,
PALAKKAPARAMBIL HOUSE, P.O.AMMINIKKADU, MALAPPURAM.
2. P.P.ABUBACKER,
S/O. VEERAN, P.O.PATHAKKARA,
PERINTHALAMANNA, MALAPPURAM.

BY ADVS.SRI.V.G.ARUN
SRI.T.R.HARIKUMAR

RESPONDENT(S) :

1. P.K.SIDDEEK,
S/O.ISMAILKUTTY, SALEENA,
MANZIL, VALIYANGADI, PERINTHALMANNA.
2. THE SECRETARY,
PERINTHALMANNA, MUNICIPALITY, PERINTHALAMANNA.
3. THE PERINTHALMANNA MUNICIPALITY,
PERINTHALMANNA, REPRESENTED BY ITS SECRETARY.
4. THE REVENUE DIVISIONAL OFFICER,
PERINTHALMANNA, MALAPPURAM DIST.
5. THE ASSISTANT EXECUTIVE ENGINEER,
N.H.SUB DIVISION, MANNARKKAD ROAD, PERINTHALMANNA.
6. THE OMBUDSMAN OF THE LOCAL SELF
GOVERNMENT INSTITUTIONS, TRIVANDRUM, REPRESENTED BY ITS SECRETARY.

R,R2,3 BY ADV. SRI.P.K.VIJAYAMOHANAN
R,R2,3 BY ADV. SRI.NISHIL.P.S.
R,R1 BY ADV. SRI.JOSEPH SEBASTIAN PURAYIDAM
R,R1 BY ADV. SMT.MABLE.C.KURIAN
R2 BY SRI.P.C.SASIDHARAN, SC, PERINTHALMANNA MUNICIPALITY
R BY SRI.P.K.VIJAYAMOHANAN SC, PERINTHALMANNA
R BY SRI.P.K.VIJAYAMOHANAN SC, PERINTHALMANNA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
15-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXT. P1: A TRUE COPY OF THE SALE DEED NO.657/93 DATED 13/02/1993.
- EXT. P2: A TRUE COPY OF THE RECEIPT DATED 14/02/1993.
- EXT. P3: A TRUE COPY OF THE MINUTES OF THE MEETING DATED 26/10/07.
- EXT. P4: A TRUE COPY OF THE NOTICE NO.E2-9561/07 DATED 26/10/2007
- EXT. P5: A TRUE COPY OF THE RECEIPT DATED 12/11/2007.
- EXT. P6: A TRUE COPY OF THE COMPLAINT FILED BY THE 1ST RESPONDENT DATED 15/12/2007.
- EXT. P7: A TRUE COPY OF THE COUNTER STATEMENT IN COMPLAINT NO.1144/2007 DATED 20/05/2008.
- EXT. P8: A TRUE COPY OF THE COUNTER STATEMENT FILED BY THE 2ND RESPONDENT DATED 22/04/2008.
- EXT. P9: A TRUE COPY OF THE ORDER IN COMPLAINT NO.1144/2007 DATED 04/08/2008.
- EXT. P10: A TRUE COPY OF THE DISCHARGE SUMMARY DATED 27/12/2007.

RESPONDENT(S) ' EXHIBITS :

- EXT. R1(A): A TRUE COPY OF THE REPRESENTATION DATED 13/11/2008 SUBMITTED BY THE 1ST RESPONDENT TO THE 2ND RESPONDENT.
- EXT. R1(B): A TRUE COPY OF THE RECEIPT DATED 14/11/2008 ISSUED BY THE 2ND RESPONDENT.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V.RAMAKRISHNA PILLAI, J

WPC No.30445 of 2008

Dated this the 15th day of October, 2015

JUDGMENT

The petitioners are the owners in possession of 0.70 Ares of land and a building situated in Sy.No.51/2 of Perinthalmanna Taluk.

2. The petitioners are conducting a hotel by name 'Pournami' in the building situated in the above property. According to the petitioners, the second respondent Municipality took a decision to develop the housing colony road starting from the Moulana Hospital and leading up to the Government Hospital as the Ring Road by increasing its width. In order to develop the proposed ring road, the land holders and building owners on either side of the existing road was requested to surrender a portion of their land. The fourth respondent convened a meeting for this purpose in which the petitioners also participated and

volunteered to surrender a portion of their property. The surrender was on the basis of the specific understanding arrived at in the meeting that on such surrender being made the petitioners would be permitted to repair and retain the building leaving the minimum set back from the widened road. After surrendering the land, the existing building was repaired in accordance with the understanding arrived at in the meeting; it is alleged. According to the petitioners, on a petition filed by the first respondent, the sixth respondent passed an order holding that the construction is unauthorised and that regularisation sought for cannot be granted and further directed the Municipality to enforce the demolition notices within three months. It is with this background the petitioners have come up before this Court.

3. In the counter affidavit filed by the first respondent, it was contended that the petitioners have not surrendered their property having a width of

1.5 metres and 14 metres length for developing the road as claimed by them. It was further contended that the construction done by the petitioners is apparently impermissible as per the Building Rules and the relevant provisions of law applicable to the petitioners' case. The petitioners had constructed additional area in the then existing building illegally; it is alleged. Pointing out the illegality, the first respondent has submitted Ext.P6 complaint as the construction done by the petitioners was not in conformity with the Building Rules. Respondents 2 and 3 cannot regularise the construction. Therefore, they justified the impugned order passed by the 6th respondent.

4. Arguments have been heard.

5. The learned counsel for the petitioners would submit that the 6th respondent, the learned Ombudsman for Local Self Government Institutions have no power to enter into the findings as has been held in Ext.P9. Evidently, the impugned order was

passed by the 6th respondent relying on the report of the Regional Joint Director. According to the learned counsel for the petitioners, copy of the same was not furnished to the petitioners.

6. It is the definite case of the petitioners that they have voluntarily surrendered a portion of the land and having demolished part of their existing building to effectuate the surrender, has got the right to make necessary alterations or additions in the existing building. My attention was invited to Rule 70 of the Kerala Municipality Building Rules which confers such right on persons who voluntarily surrender their plots free of cost to make addition or alteration to the existing building. The 6th respondent has passed the impugned order without adverting to Rule 79 of the Municipality Building Rules. It was pointed out that the omission to make an application before the second respondent before carrying out the necessary work was not wilful, however, due to the fact that the second petitioner under whose

supervision the work was being carried out was hospitalised for a hip replacement surgery during the relevant period as could be seen from Ext.P10 which is the copy of the discharge summary of the second petitioner.

7. It is the definite case of the petitioners that immediately on receipt of Ext.P4 notice, relevant application with revised plan was submitted and the Building Inspector and Municipal Engineer had inspected the construction and had found that the same conforms to the Kerala Municipality Building Rules and recommended that the said construction could be regularised. Rule 79 of the Municipality Building Rules confers such power on the Municipality.

Therefore, this Court is of the definite view that the 6th respondent went wrong in finding that the construction could not be regularised by exercising the powers under Rule 100 of the Municipality Building Rules.

In view of the fact that the petitioners have voluntarily surrendered their plot free of cost, the relevant rule that is applicable is Rule 79 of the Municipality Building Rules and not 26 of the Municipality Building Rules.

In the result, Ext.P9 is quashed. Respondents 2 and 3 are directed to take a decision on the application and plan submitted by the petitioners and received under Ext.P5 and to pass formal orders regularising the construction within a period of one month from the date of receipt of a copy of this judgment.

**sd/- A.V.RAMAKRISHNA PILLAI
JUDGE**

CSS/

true copy

P.S.TO JUDGE