

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 12TH DAY OF FEBRUARY 2015/23RD MAGHA, 1936

WP(C).No. 30121 of 2013 (M)

PETITIONER(S):

K.V. SUGHA,
W/O.MOHANDAS, AGED 60 YEARS,
MOHANAN, P.J.ANTONY ROAD
PALARIVATTOM, KOCHI - 682024.

BY ADV. SRI.C.P.RAVIKUMAR

RESPONDENT(S):

1. CORPORATION OF KOCHI,
REPRESENTED BY ITS SECRETARY,
CORPORATION OFFICE KOCHI - 682011

2. SMT.K.N.KANKAM, AGED 84 YEARS,
W/O.LATE PURUSHOTHAMAN, KANJIRAPARAMBIL HOUSE
P.J.ANTONY ROAD, KOCHI - 24.

3. K.V.SUJEEVAN, AGED 45 YEARS,
S/O.LATE PURUSHOTHAMAN
RESIDING AT KANJIRAPARAMBILHOUSE, P.J.ANTONY ROAD
KOCHI - 24.

R1 BY ADV. SRI.RAJESH S.SUBRAHMANIAN, SC, COCHIN CO
R3 BY ADV. SRI.K.R.VINOD
R BY SRI.P.K.SOYUZ, SC, COCHIN CORPORATION

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
12-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 30121 of 2013 (M)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P-1: TRUE COPY OF THE PLAN APPROVED BY THE 1ST RESPONDENT
EXT.P-2: TRUE COPY OF THE PERMIT GRANTED TO RESPONDENTS 2 & 3
EXT.P-3: TRUE COPY OF THE COMPLAINT DATED 10.6.2013 SUBMITTED
BEFORE THE ASSISTANT EXECUTIVE ENGINEER OF THE 1ST RESPONDENT
EXT.P-4: TRUE COPY OF THE COMPLAINT/REPRESENTATION SUBMITTED TO THE
1ST RESPONDENT DATED 24.10.2013
EXT.P-4(A): TRUE COPY OF THE RECEIPT ACKNOWLEDGING RECEIPT OF EXT.P4
BY THE 1ST RESPONDENT
EXT.P-5: TRUE COPY OF THE COMPLAINT/REPRESENTATION BEFORE THE TOWN
PLANNING OFFICER OF THE 1ST RESPONDENT DATED 26.11.2013
EXT.P-6: TRUE COPY OF THE COMPLAINT/REPRESENTATION DATED
13.11.2013 BEFORE THE ASSISTANT EXECUTIVE ENGINEER OF THE 1ST
RESPONDENT.

RESPONDENT(S) ' EXHIBITS

-----: NIL

/TRUE COPY/ PS TO JUDGE.

DAMA SESHADRI NAIDU, J.

W.P.(C).No. 30121 OF 2013

Dated this the 12th day of February, 2015

JUDGMENT

Heard the learned counsel for the petitioner, the learned Standing Counsel for the first respondent and the learned counsel for the second and third respondents, apart from perusing the records. Since the issue lies in a narrow compass, this Court proposes to dispose of the writ petition at the admission stage itself.

2. Briefly stated, the petitioner seems to have had certain protracted civil litigation with the 3rd respondent, her brother, apart from the 2nd respondent, the mother. The civil dispute culminated in RSA No.570/2013 before this Court, which dismissed the said Second Appeal filed by the petitioner, based on the concurrent findings of the trial court and the First Appellate Court.

3. The contention of the petitioner is that the 3rd respondent has constructed a building in violation of the sanctioned building plan. Despite numerous representations,

so far the first respondent Corporation has not initiated any action. Aggrieved thereby the petitioner has filed the present writ petition.

4. The learned counsel for the second and third respondents, having brought to the notice of this Court the civil disputes between the petitioner on one hand and the second and third respondents on the other, has further submitted that, in fact, on an earlier occasion, the 3rd respondent constructed an iron staircase which slightly projected beyond the area prescribed in the sanctioned plan. At any rate, subsequent to the directions of the first respondent Corporation, the 3rd respondent, in compliance thereof, dismantled the said staircase and built another one within the permissible limit. According to him, presently the building stands strictly in compliance with the building regulations of the respondent Corporation, more particularly in accordance with the sanctioned plan.

5. The first respondent Corporation has in fact filed its counter affidavit, sworn to by one of its officials, to the effect that

the respondent Corporation having found the open iron staircase built earlier by the 3rd respondent unauthorised, issued a notice. Lending support to the submissions of the learned counsel for the 3rd respondent, the learned Standing Counsel has further submitted that in compliance with the notice issued by the Corporation, the 3rd respondent has rectified the defects.

6. In the light of the above submission, it is instructed to refer to paragraph No.4 of the counter affidavit filed by the first respondent Corporation, as it reads thus:

"4. It is further submitted that the 2nd and 3rd respondents had illegally constructed and "Open Iron Stair" on the Northern side of their property. Thereafter this respondent had issued notice dated : 16/12/2013 to demolish the said unauthorized construction. The 2nd and 3rd respondents had complied with the said notice and the Open Iron Stair so constructed has been removed. "

7. In the facts and circumstances, especially going by the counter affidavit filed by the first respondent, I do not see any

further issue to be adjudicated upon in the present writ petition.

8. The learned counsel for the petitioner, however, contended that, notwithstanding the averments made by the first respondent Corporation in the counter affidavit, the violation still exists and the 3rd respondent has not rectified the defects.

9. Given the acrimony among the members of the family and given protracted civil litigation between the two sets of parties, it is hard to disbelieve the counter affidavit filed by the first respondent Corporation. Even in terms of Section 114 of the Evidence Act, there is statutory presumption rebuttable though, attached to the truth of the statement made by the official concerned. Nevertheless, it is made clear that if the petitioner is still of the opinion that there is no compliance by the 3rd respondent, as it is disputed question of fact which this court in a summary jurisdiction cannot go into, it is made clear that the petitioner is at liberty to approach the competent civil court and establish the factum of what is said to be still persisting violation on the part of the 3rd respondent. In such an event of the petitioner's establishing the factum, as has been contended

by her in the present writ petition, the petitioner is at liberty to prosecute not only the 3rd respondent but also the officials of the respondent Corporation.

With the above observations, the writ petition is disposed of. No order as to costs.

Sd/-

**DAMA SESHADRI NAIDU,
Judge.**

dpk

/true copy/ PS to Judge.

dpk