

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 26TH DAY OF FEBRUARY 2015/7TH PHALGUNA, 1936

WP(C).No. 33687 of 2008 (I)

PETITIONER(S):

1. VIJAY M. SHAH, S/O. MUNICHAND SHAH,
FLAT NO.12 , J M.GARDENS, PALLIKAVU
TEMPLE ROAD, VADUTHALA, KOCHI.
2. JAYSREE S. PRABHU,W/O.SUNI KUMAR V.PRABHU,
FLAT NO.14 , J.M.GARDENS,
PALLIKAVU TEMPLE, ROAD, VADUTHALA,
KOCHI.
3. K.J. SEBASTIAN, S/O. K.R. JOSEPH,
FLAT NO. 35, J.M. GARDENS, PALLIKAVU TEMPLE ROAD,
VADUTHALA, KOCHI.
4. P.K. CHANDRASEKHARN, S/O. KRISHNA IYYER,
FLAT NO. 19, J.M. GARDENS, PALLIKAVU
TEMPLE ROAD, VADUTHALA, KOCHI.
5. K.K.GOPALAKRISHNAN NAIR, S/O.P.K.KRISHNAN UNNITHAN,
FLAT NO. 59, J.M. GARDENS, PALLIKAVU
TEMPLE ROAD, VADUTHALA, KOCHI.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENT(S):

1. THE SECRETARY, CORPORATION OF
COCHIN, ERNAKULAM.
2. THE CORPORATION OF KOCHI,
REPRESENTED BY THE SECRETARY.
3. THE SECRETARY, J.M.GARDENS APARTMENT
OWNERS ASSOCIATION, PALLIKAVU TEMPLE ROAD,
VADUTHALA, KOCHI.
4. THE PRESIDENT, J.M. GARDENS APARTMENT
OWNERS ASSOCIATION, PALLIKAVU TEMPLE ROAD,
VADUTHALA, KOCHI.

Msv/

5. THE HON'BLE TRIBUNAL FOR LOCAL SELF
GOVERNMENT INSTITUTIONS, OPPOSITE MEDICAL COLLEGE,
THIRUVANANTHAPURAM.

R1 & R2 BY ADV. SMT.M.K.PUSHPALATHA,SC,COCHIN CORPORATI
R3 & R4 BY ADVS. SRI.N.NEELAKANDHAN NAMBOODIRI
SRI.P.S.NARAYANA RAJA
R5 BY SENIOR GOVERNMENT PLEADER SRI.S.JAMAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
26-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

APPENDIX

PETITIONER(S)' EXHIBITS:

**EXT.P1: A TRUE COPY OF THE BUILDING PERMIT WITH A PLAN ATTACHED
DTD.6.12.2007.**

**EXT.P2: A TRUE COPY OF THE JUDGMENT IN APPEAL NO.579/07 DTD.22.1.2008 ON
THE FILE OF THE 5TH RESPONDENT.**

**EXT.P3: A TRUE COPY OF THE JUDGMENT RENDERED BY THIS HON'BLE COURT
DTD.4.3.2008 IN WP(C) NO.3561/2008.**

**EXT.P4: A TRUE COPY OF THE ORDER PASSED BY THE FIRST RESPONDENT
DTD.8.4.2008 RECEIVED BY THE PETITIONERS ON 15.4.2008.**

**EXT.P5: A TRUE COPY OF THE PETITIONERS BEFORE THE 5TH RESPONDENT AS
APPEAL NO.199/2008 DTD.28.4.2008.**

**EXT.P6: A TRUE COPY OF THE ORDER IN APPEAL NO.199/2008 DTD.31.7.2008 ON THE
FILE OF THE HON'BLE TRIBUNAL, THIRUVANANTHAPURAM.**

**EXT.P7: A TRUE COPY OF THE RECEIPT EVIDENCING THE RECEIPT OF THE SAID
APPLICATION DTD.22.6.2010.**

RESPONDENT(S)' EXHIBITS:

EXT.R4(a): TRUE PHOTOSTAT COPY OF APPROVED PLAN.

EXT.R4(b): TRUE PHOTOSTAT COPY OF MINUTES.

EXT.R4(c): TRUE PHOTOSTAT COPY OF MINUTES.

EXT.R4(d): TRUE PHOTOSTAT COPY OF THE WP(C) NO.3561/2008.

EXT.R4(e): TRUE PHOTOSTAT COPY OF THE JUDGMENT IN CMA.106 & 107 OF 2007.

EXT.R4(f): TRUE PHOTOSTAT COPY OF THE BYE-LAW.

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.M. Shaffique, J.

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W.P (C) No. 33687 of 2008

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Dated this, the 26th day of February, 2015.

J U D G M E N T

In this writ petition, the petitioners challenge Ext. P6 order dated 31.7.2008 passed by the Tribunal for Local Self Government. Appeal was filed by the petitioners inter alia contending that the local authority was not justified in granting building permit in favour of respondents 3 and 4, who are the President and Secretary of J.M. Gardens Apartment Owners Association. The main contention urged was that the petitioners being co-owners and without their permission, no building permit ought to have been granted.

2. The Tribunal, on a consideration of the entire factual matters involved in the issue, observed that the private respondents being co-owners of the building was entitled to apply for building permit and there is no illegality or impropriety on the part of the Corporation in granting building permit at the instance of the President and Secretary of the Apartment Owners Association

3. It is also pointed out by the learned counsel for respondents 3 and 4 that even before the writ petition is filed, the construction of the structure as per the building permit had been completed.

4. Counsel for the petitioners argues that building

permit was illegally issued as the owner or co-owners are not entitled for making such a construction.

5. It is essentially a dispute between co-owners, which cannot be adjudicated by this Court in a proceeding under Article 226 of the Constitution of India. As far as the legality of the Corporation in granting building permit has been considered by the Tribunal and has arrived at a decision, it cannot be termed as illegal. Under such circumstances, there is no reason for this Court to interfere with the order passed by the Tribunal under Ext. P6.

6. It is pointed out by the learned carousel for respondents 3 and 4 that in respect of very same issue, suits filed by the petitioners were partly decreed and appeals are also filed against the said suits.

7. Taking into consideration the fact that the petitioners have already taken up such issue before the civil court, it is also a reason for not interfering with the orders passed by the Tribunal.

Under such circumstances I do not think that this writ petition merits any consideration and accordingly, the same is dismissed.

Sd/-

A.M. Shaffique, Judge.

Tds/