

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

WP(C).No. 30968 of 2014 (U)

PETITIONER:

SONIE JOSEPH P.,
AGED 53 YEARS, C/O. JOHNY P. MATHEW,
28/2772A, POYONIL, ELAMKULAM, KADAVANTHRA,
KOCHI-20.

BY ADV. SRI.R.SANJITH

RESPONDENTS:

1. CORPORATION OF KOCHI,
PARK AVENUE, ERNAKULAM.
REPRESENTED BY ITS SECRETARY -682011.
2. THE SECRETARY, CORPORATION OF KOCHI,
PARK AVENUE, ERNAKULAM-682011.
3. ASSISTANT EXECUTIVE ENGINEER,
EAST ZONAL OFFICE, CORPORATION OF KOCHI,
VYTTILA, ERNAKULAM - 682019.
4. RDS REALTIES LTD., SHIHAB THANGAL ROAD,
PANAMPILLY NAGAR, KOCHI - 682036
REPRESENTED BY M.D., BY ITS JOINT COL (RTD)
JOHN K MANAVALAN.
5. ABRAHAM GEORGE MAMPILLY,
ASSISTANT GENERAL MANAGER,
AGM MARKETING
HR AND ADMIN., RDS REALTIES LTD.,
SHIHAB THANGAL ROAD,
PANAMPILLY NAGAR, KOCHI - 682036

R1 BY ADV. SRI.PRAVEEN K. JOY
R4,R5 BY ADV. SRI.C.K.KARUNAKARAN
BY SRI.P.K.SOYUZ,SC,COCHIN CORPORATION

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
26-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF THE DEED BEARING NO.1222/I/2000 DATED 21/03/2000

EXT.P2 : COPY OF THE BUILDING PERMIT NO.COC-KRP-32/2012,KRP1-5/2012 DATED 18.12.2013

EXT.P3 : COPY OF THE PHOTOGRAPHS.

EXT.P4 : COPY OF THE COMPLAINT DATED 30/10/2014.

EXT.P5 : COPY OF THE ENGLISH TRANSLATION OF EXHIBIT R1(A)

EXT.P6 : COPY OF THE RIGHT TO INFORMATION APPLICATION PREFERRED BY THE PETITIONER DATED 06.12.2014.

EXT.P6 (A) : COPY OF THE ENGLISH TRANSLATION OF EXHIBIT.P6.

EXT.P7 : COPY OF THE REPLY DATED 22.12.2014.

EXT.P7 (A) : COPY OF THE ENGLISH TRANSLATION OF EXHIBIT.P7.

EXT.P8 : COPY OF THE REPORT DATED 11.11.2013.

EXT.P8 (A) : COPY OF THE ENGLISH TRANSLATION OF EXHIBIT.P8.

EXT.P9 : COPY OF THE BASIC TAX REGISTER.

EXT.P9 (A) : COPY OF THE ENGLISH TRANSLATION OF EXHIBIT.P9.

EXT.P10 : COPY OF THE APPROVED PLAN OBTAINED BY THE PETITIONER UNDER RIGHT TO INFORMATION ACT.

RESPONDENTS' EXHIBITS:

EXHIBIT R1 (A) : THE COPY OF THE ORDER DATED 31.12.14 OF THE RESPONDENT CORPORATION.

EXHIBIT R1 (B) : THE COPY OF THE NOTICE DATED 28.4.2015 ISSUED TO PETITIONER AND THE OTHER RESPONDENT.

EXHIBIT R1 (C) : THE COPY OF THE SITE INSPECTION REPORT DATED 7.5.2015.

EXHIBIT R1 (D) : THE COPY OF THE REPORT DATED 15.5.15 OF THE RESPONDENT.

EXHIBIT R5 (A) : COPY OF THE BUILDING PLAN (LOCATION PLAN)

EXHIBIT R5 (B) : PHOTOGRAPH OF THE VERTICAL WALL OF THE RAMP.

(P.T.O.)

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EXHIBIT R5 (C) : COPY OF LAND TRIBUNAL ORDER DATED 05.03.1970
IN O.A. NO. 152 OF 70.

EXHIBIT R5 (D) : COPY OF PROPERTY TAX RECEIPT NO. 147850 DATED
29.09.2011.

EXHIBIT R5 (E) : COPY OF PROPERTY TAX RECEIPT NO. 44950 DATED
05.03.2013.

EXHIBIT R5 (F) : COPY OF THE PROPERTY TAX RECEIPT NO. 7169
DATED 20.10.2011.

EXHIBIT R5 (G) : COPY OF SATELLITE PHOTOGRAPH OF THE LOCALITY.

EXHIBIT R5 (H) : TRUE EXTRACT OF NOTIFICATION NO. K-13430/08
DATED 14.12.2009.

EXHIBIT R5 (I) : COPY OF THE APPROVED BUILDING PLAN AT
SECTION "AA".

EXHIBIT R5 (J) : COPY OF FRONT ELEVATION AT SECTION"BB"
OF THE BUILDING.

EXHIBIT R5 (K) : COPY OF THE GROUND FLOOR PLAN OF THE BUILDING

EXHIBIT R5 (L) : PHOTOGRAPH SHOWING THE HEIGHT OF THE TOP
OF THE COMPOUND WALL FROM THE PETITIONER'S
COMPOUND.

EXHIBIT R5 (M) : PHOTOGRAPH SHOWING THE RAMP TO THE BASEMENT,
THE DRIVE WAY AROUND THE BUILDING.

EXHIBIT R5 (N) : PHOTOGRAPHS SHOWING THE PRESENT CONDITION
OF THE BUILDING.

EXHIBIT R5 (O) : PHOTOGRAPHS THAT WILL SHOW THAT THE SUBJECT
BUILDING IS COMING UP IN A FULL DEVELOPED
RESIDENTIAL AREA.

EXHIBIT R5 (P) : PHOTOGRAPHS THAT SHOW THE DRIVE WAY AROUND
THE BUILDING.

EXHIBIT R5 (Q) : PHOTOGRAPHS THAT SHOW THAT THE PETITIONER'S
LAND IS AT A HIGHER LEVEL TO THE NEIGHBOURING
LAND ON THE EASTERN SIDE.

//TRUE COPY//

P.A. TO JUDGE

DST

K. HARILAL, J.

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W.P. (C) No. 30968 of 2014

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Dated this the 26th day of October, 2015

J U D G M E N T

This petitioner has filed this Writ Petition seeking the following reliefs:

- i. To call for the records leading to the issuance of Exhibit P1 permit passed by the 1st respondent, examine its legality, propriety and quash the same by issuing a writ of Certiorari.*
- ii. To issue a Writ of Mandamus and direct the respondents 1 to 3 to take appropriate action on Exhibit P4 complaint preferred by the petitioner within a time framed by this Honourable court.*
- iii. To pass any other and such other orders as this Honourable court deem fit to pass in the nature and circumstances of the case.*
- iv. To award the cost of this proceedings.*

2. The petitioner is the owner in possession of 5 cents of property in Survey No. 712/1 of Elamkulam Village. Adjacent to the said property of the petitioner, 4th and 5th

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respondents are carrying out the construction of a residential flat. The grievance of the petitioner is that in the southern boundary of his property, the 4th respondent had built up a compound wall in pretext to encircle their property, but 10 feet concrete structure is filled up with soil to more than 8 feet height. The filling of soil to such a height will result in water logging in the property of the petitioner. During the rainy season, the rain water falling into the filled up portion of the property of the respondents 4 and 5 will flow to the petitioner's property causing severe damages. According to the petitioner, 4th and 5th respondents have made above constructions in violation of the Rules of KMBR and hence the Corporation is liable to interfere with the said illegal activities by issuing necessary Orders to stop the construction and to remove the unauthorised constructions made earlier. Despite the receipt of the complaint filed by the petitioner, the

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Corporation has not taken any steps to take action against 4th and 5th respondents. This is the grievance that caused this Writ Petition.

3. Respondents 4 and 5 have filed a counter statement denying the allegations of illegal constructions, made against them. According to them, they have completed construction of an apartment and now occupied the same, after getting necessary permission from the Corporation.

4. After the first hearing, this Court passed the order dated 09.04.2015, directing the Corporation to conduct an inspection of the property in dispute under due intimation/notices to the petitioner as well as the party respondents within two weeks and ascertain, whether the property of the 4th and 5th respondents has been raised while the construction of the building was carried out and whether the same would cause water retention in the property of the

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petitioner during the rainy season.

5. In compliance with the above direction, the Engineer of the Corporation conducted a site inspection in the presence of respondents 4 and 5. In the report filed by the Corporation, it is also stated that even though notice has been duly served to the petitioner, he was not present at the time of inspection and the copy of the notice issued to the parties is produced as Ext.R1(b). It is submitted that as per the site inspection report, there is no violation in the construction of the building from the permit issued by the Corporation. The 1st respondent has produced Ext. R1(d) report dated 15.05.2015, along with the counter affidavit. According to the Corporation, there is no merit in the Writ Petition filed by the petitioner.

6. According to the Kerala Municipalities Act, 1944, Ext.R1(d) Order passed by the Corporation is an appealable Order under Rule 160 of the Kerala Municipality Building

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Rules, 1999. Going by the pleadings of both parties in this Writ Petition, I find that the matter in dispute centres around disputed fact only. This Court cannot sit as a court of Appeal, but can review the manner in which a decision was made by the Authorities only. This Court cannot substitute its own decision, when a Statutory Appeal is specifically provided under the Act and Rules. The jurisdiction of the Appellate Authority is wide and ample so as to decide disputed facts from which the matter in issue arose on evidence.

7. I do not find any kind of *mala fides*, bias or arbitrariness to the extent of perversity so as to invoke jurisdiction and power under Art.226 of the Constitution of India. In the above context, the petitioner sought for a permission to file an Appeal against the impugned Order dated 15.05.2015, passed by the Corporation. Considering the pendency of the matter before this Court, it is for the

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Tribunal to take a lenient view in the matter of condonation of the delay in filing the Appeal. If an Appeal is filed within in one month from today, the Tribunal shall consider the Appeal and pass orders, after affording an opportunity of being heard to the petitioner and respondents 4 and 5, within a period of three months from the date of filing the Appeal.

The Writ Petition is disposed of accordingly.

Sd/-

**K. HARILAL,
JUDGE**

DST

//True copy//

P.A. To Judge