

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

WP(C).No. 32166 of 2014 (U)

PETITIONER:

DR. THOMAS PHILIP, AGED 63 YEARS
S/O.P PHILIP, R/A.10A, DOVER COURT APARTMENTS
SREEKANDATH ROAD, REVIPURAM, ERNAKULAM- 682016

BY ADVS.SRI.T.SETHUMADHAVAN (SR.)
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR
SMT.VANDANA MENON

RESPONDENTS:

1. THE CORPORATION OF COCHIN
REP BY ITS SECRETARY, PARK AVENUE ROAD, ERNAKULAM
COCHIN
 2. MATHER PROJECTS PRIVATE LIMITED, REP BY ITS CHIEF EXECUTIVE
OFFICER, KODIYAT CHAMBERS, RAJAJI ROAD, ERNAKULAM
COCHIN-35
- Addl.3. DR.FIROZ ABOOBACKER
11 A, DOVER COURT APARTMENTS, SREEKANDATH ROAD
RAVIPURAM, ERNAKULAM - 682 016.

ADDL.R3 IMPEADED AS PER ORDER DATED 09.12.2014 IN IA
16841/14.

BY GOVERNMENT PLEADER SRI.JUSTIN JACOB
R2 BY ADV. SRI.GEORGE ABRAHAM PACHAYIL
R2 BY ADV. SRI.AJEESH S.BRITE
R BY SRI.P.K.SOYUZ,SC,COCHIN CORPORATION

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
17-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

P1:-TRUE COPY OF THE REQUEST DTD 31/7/2012 MADE BEFORE THE 2ND RESPONDENT

P2:-TRUE COPY OF THE LETTER DTD 19/9/2012 ISSUED BY THE 2ND RESPONDENT TO THE DOVER COURT APARTMENT OWNERS ASSOCIATION

P3:-TRUE COPY OF LETTER SENT BY DOVER COURT APARTMENT OWNERS ASSOCIATION TO THE EXECUTIVE DIRECTORS OF MATHER & CO PVT LTD DTD 29/10/2012

P4:-TRUE COPY OF LETTER ISSUED BY MATHER & CO PVT LTD TO THE PRESIDENT DOVER COURT APARTMENT OWNERS ASSOCIATION DTD 8/11/2012

P5: TRUE COPY OF THE E MAIL LETTER ON BEHALF OF THE 2ND RESPONDENT 14/12/2012

P6:-TRUE COPY OF LETTER SENT BY 2ND RESPONDENT TO THE SECRETARY DOVER COURT OWNERS ASSOCIATION DTD 24/8/2013

P7:-TRUE COPY OF THE NOTICE DTD 13/5/2014 ISSUED BY THE 1ST RESPONDENT TO THE 2ND RESPONDENT

P8:-TRUE COPY OF THE LETTER DTD 27/5/2014 SENT BY 2ND RESPONDENT TO APARTMENT OWNERS ASSOCIATION

RESPONDENT'S EXHIBITS: NIL

TRUE COPY

PA TO JUDGE

Scl.

DAMA SESHADRI NAIDU, J.

W.P.(C) No. 32166 of 2014

Dated this the 17th day of March, 2015.

JUDGMENT

The petitioner is the owner of a residential flat on the 10th floor of "Dover Court Apartment".

2. He has a grievance that the second respondent builder raised illegal structures on the 11th floor, common area, thereby blocking all ventilation ducts.

3. The Dover Court Owners' Association, of which the petitioner is a member, submitted Ext.P1 representation to the second respondent, who in turn took up the issue with the first respondent Corporation. Eventually, after site inspection and hearing all the parties concerned, the first respondent Corporation issued Ext.P7 order directing the second respondent to raise and open the ducts immediately.

4. Complaining of non-compliance with Ext.P7 by the second respondent, the petitioner has filed the present writ petition.

5. In course of time, based on the representation made by the second respondent that it had already sold the property, and that it was the owner of tenements on the 11th floor level that illegally raised the structures, the petitioner brought the additional third respondent on record. According to the petitioner, despite his best efforts, subsequent to the direction of this Court, to serve notice on the third respondent, he could not succeed. Accordingly, in I.A.No.2930 of 2015, this Court declared service of notice on the third respondent.

6. In the above factual background, the learned counsel for the petitioner strenuously contended that the second respondent being the builder is solely responsible for the illegal structures that have come up on the 11th floor. The respondent Corporation has, in fact, issued Ext.P7 order only based on the representation made by the very second respondent builder. Now, without any justification, the second respondent has been trying, contends the learned counsel, to avoid the statutory obligation of ensuring that there are no illegal structures in a building constructed by it.

7. The learned counsel for the second respondent, in tune of the averments made in the counter affidavit, has submitted that it is another entity, a sister concern of the second respondent that constructed the residential apartment in question. He has further submitted that, initially, the construction was made strictly in accordance with the building permit, but later, once all the tenements were sold away, the third respondent, who became the owner of the property on the 11th floor, raised all these illegal structures. According to him, the second respondent has nothing to do with the structures that have come up illegally or otherwise, after the property was sold away by the second respondent.

8. According to the learned counsel, the Corporation could take action against the third respondent without making the second respondent liable for the illegal construction made by the third respondent.

9. The learned Standing Counsel for the respondent Corporation, on his part, has submitted that it is the second respondent which initially approached the Corporation and

brought to its notice the illegal structures made on the 11th floor. He has further submitted that the Corporation passed Ext.P7 order after physically inspecting the property and also after hearing all the parties concerned.

10. The learned Standing Counsel has drawn my attention to Ext.P6, which is said to be the undertaken by the second respondent on 24.8.2013 that it would open up the ventilation ducts on the 11th floor by removing illegal construction.

11. According to the learned counsel, it is the second respondent who has given the undertaking despite the fact that by then, it may have sold away the property. Accordingly, he has urged this Court to issue a suitable direction to the second respondent to abide by its own Ext.P6 undertaking.

12. Heard the learned counsel for the petitioner and the learned counsel for the second respondent, as well as the learned Standing Counsel for the first respondent Corporation, apart from perusing the records.

13. Indeed, the issue lies in narrow compass. In the

absence of the third respondent, against whom the notice is declared served, it can be said that no disputed questions of fact are involved in the present instance.

14. There is no denying the fact that there are illegal structures put up on the 11th floor of the building constructed by the second respondent or its so-called sister concern, as the case may be. Based on the representation made by flat owners association in Exts. P1 and P3, the very second respondent took up the issue with the respondent Corporation. In fact, the Corporation, after physically inspecting the property, has been satisfied that certain illegal structures were raised and accordingly issued Ext.P7 notice to the second respondent directing it to open up the ventilation ducts after removing the illegal structures.

15. The record further reveals that notwithstanding the second respondent's plea that the structures were put up subsequent to its selling away the property, it has gone on record in Ext.P6 undertaking given to the Association that it would ensure re-opening of ventilation ducts by removing the

unauthorised structures.

16. Indisputably, the respondent Corporation issued Ext.P7 by exercising its powers under Section 406(3) of the Kerala Municipality Act ('the Act' for brevity). Now the second respondent, for whatever reason, has been indulging in buck passing by showing an accusing finger towards the third respondent, the subsequent purchaser, who allegedly put up the structures to the detriment of the petitioner as well as other owners of the tenements. Nevertheless, the third respondent has not chosen to enter his appearance to defend himself, despite an effort made by the petitioner to serve notice on him.

17. In the above facts and circumstances, especially going by Ext.P6 letter of undertaking given by the second respondent, I am of the considered opinion that it is entirely the responsibility of the second respondent to ensure that the illegal structures are removed so that the ventilation ducts are opened up for the benefit of the occupants of the building. At any rate, if the second respondent fails to discharge its

obligation, as has been undertaken, within a reasonable time, it is for the respondent Corporation to take all remedial steps available, including demolition of the illegal structures on its own and make the second respondent or any other person thereof liable for the costs and consequences in that regard.

18. At this juncture, the learned counsel for the second respondent has submitted that in tune with its Ext.P6 undertaking, the second respondent has already made efforts to remove the illegal structures, but could not succeed owing to blockage of access to the 11th floor by the third respondent. I do not see, any material filed or any efforts made to resolve the impasse in that regard by the second respondent.

19. Still, to subserve the interest of justice, taking note of the submission made by the learned counsel for the second respondent, this Court hereby observes that the second respondent is at liberty to make its efforts to find access to the 11th floor and remove the illegal structures. In that process, if it is denied access or faces any hurdle in the hands of the third respondent or any other person, it is at liberty to approach the

jurisdictional police, who are expected to render the necessary assistance to ensure access to the petitioner to the building in question.

With the above observations, the writ petition stands allowed. No order as to costs.

It is made clear that the entire exercise of removal of illegal structures either by the respondent Corporation or by the second respondent, as the case may be, shall be completed as expeditiously as possible, at any rate, within 30 days from the date of receipt of a copy of this judgment.

**Sd/-
DAMA SESHADRI NAIDU
JUDGE**

Scl.