

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 19TH DAY OF JANUARY 2021 / 29TH POUSHA, 1942

WP (C) .No.2366 OF 2015 (S)

PETITIONER/S:

STATE ENVIRONMENT PROTECTION COUNCIL
AGED 64 YEARS
CHELAD, KANNUR-670014. REPRESENTED BY ITS
PRESIDENT, SATHEESH KUMAR PAMBAN, S/O.LATE
T.RAGHAVAN, CHELAD, KANNUR-670014.

BY ADVS.
SRI.P.B.SAHASRANAMAN
SRI.T.S.HARIKUMAR
SRI.K.JAGADEESH
SRI.RAAJESH S.SUBRAHMANIAN

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY ITS PRINCIPAL SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM-695001, REPRESENTED
BY ITS SECRETARY.
- 2 KANNUR MUNICIPALITY
KANNUR P.O., KANNUR-670001, REPRESENTED BY ITS
SECRETARY.
- 3 TOWN PLANNER (VIGILANCE),
DEPARTMENT OF LOCAL SELF GOVERNMENT INSTITUTIONS,
THIRUVANANTHAPURAM-695001.
- 4 K.P.MOHAMMED ASHRAF
MANAGING DIRECTOR, EMAD BUILDING, GLOBAL VILLAGE,
BANK ROAD, KANNUR-670001.

R1 & R3 BY ADV. SURIN GEORGE IPE, SENIOR G.P.
R2 BY ADV. SMT.S.AMBILY
R4 BY ADV. DR.K.P.SATHEESAN (SR.)

R4 BY ADV. SRI.P.MOHANDAS (ERNAKULAM)
R4 BY ADV. SRI.S.VIBHEESHANAN
R4 BY ADV. SRI.K.SUDHINKUMAR
R4 BY ADV. SRI.S.K.ADHITHYAN
R4 BY ADV. SRI.MUHAMMED IBRAHIM ABDUL SAMAD
R4 BY ADV. SRI.SABU PULLAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19-01-2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

Dated this the 19th day of January, 2021

S. Manikumar, C. J.

State Environment Protection Council, Chelad, Kannur has filed the instant writ petition seeking for a writ of certiorari to quash Exhibit- P2, revised building permit dated 05.02.2010 for an additional area of upto six floors, Exhibit- P4 report dated 25.08.2014, and the action to regularize the construction.

2. Petitioner has also sought for a mandamus directing the Kannur Municipality, represented by its Secretary, Kannur, 2nd respondent to demolish the illegal constructions made by Mr. K. P. Mohammed Ashraf, Managing Director, Emad Building, Global Village, Kannur, 4th respondent.

3. Short facts leading to the filing of the writ petition are as under:-

According to the petitioner, the Secretary, Kannur Municipality, Kannur, the 2nd respondent had issued Exhibit- P2 building permit to

Mr. K. P. Mohammed Ashraf, Managing Director, Emad Building, Global Village, Kannur, 4th respondent, in violation of Rules 34(2) and 31(2) of the Kerala Municipal Building Rules, 1999. Acting on the complaint, the Town Planner, (Vigilance), Department of Local Self Government Institutions, Thiruvananthapuram, 3rd respondent, has conducted an enquiry and the Principal Secretary to the Government, Local Self Government (RB) Department, Government Secretariat, Thiruvananthapuram, 1st respondent, had directed the Secretary, Kannur Municipality, Kannur, the 2nd respondent, vide Exhibit-P3, to revoke the building permit and partial occupancy certificate already given.

Instead of taking necessary action, the Secretary, Kannur Municipality, Kannur, the 2nd respondent, has issued Exhibit-P5 stating that they were not aware of the amendment and it is only an omission and, therefore, necessary steps, be taken to regularize the same. Petitioner has further submitted that the unauthorized construction on the side of National Highway, wherein Multiplex is proposed to be started, would cause severe threat to the life of the people.

4. Counter affidavit filed by the Town Planner, Kannur, is reproduced hereunder:-

“3. It is hereby submitted that originally the 2nd respondent granted building permit dated 21.02.2008 for constructing a 7 storied commercial building with 2 basement floors, ground floor and 4 upper floors. Later, the permit was revised on 05.02.2010 by granting permission to construct 2 more upper floors and a stair room. The owner obtained No Objection certificate dated 30.06.2009 from the Executive Engineer, National Highway Division, Kannur and Initial No Objection Certificate from Fire and Rescue Services, bearing No.G1- 523/2010 dated 18.01.2010.

4. It is hereby submitted that Kerala Municipality Building Rules was amended by SRO No. 1070/2009 dated 16.12.2009. On an inspection conducted by the Senior Town Planner(Vigilance), the following 3 violations were noted:

- a) Open space having width of 5m was not available [(Violation of Rule 117(1)].
- b) Only 138 numbers of parking spaces are provided even though 188 numbers are required as per Rule 34 (2).
- c) No space is provided for loading and unloading as provided under Rule 34(6).

Subsequently, the Owner has increased the area of the Plot by purchasing the adjoining properties. The violations pointed out as (a) and (c) were rectified and the shortage of parking spaces was reduced from 50 to 32. On the basis of the report of the Senior

Town Planner(Vigilance), the 2nd respondent issued a notice on 27.02.2013 directing demolition of unauthorized construction carried out in the building. Later, the 2nd respondent issued Occupancy Certificate on 09.01.2014 upto 4th Floor subject to production of consent from the Kerala State Pollution Control Board and final No Objection Certificate from the Fire and Rescue Services.

5. It is hereby submitted that the owner also submitted an application for regularizing the construction effected on the 5th and 6th floors on the building in question as per the Provisions of Kerala Municipality Building(Regularization of unauthorized construction) Rules, 2014 and the matter is pending before the Government. At present, no application is pending in response of commencement of a multiplex Theatre complex in the building in question.”

5. On this day, when the matter came up for further hearing, Mr. P. B. Sahasranaman, learned counsel for the petitioner submitted that in view of the counter affidavit filed by the Town Planner, Kannur stating that an application has been filed by Mr. K. P. Mohammed Ashraf, Managing Director, Emad Building, Global Village, Kannur, respondent No. 4, for regularization of the construction effected, i. e. of 5th and 6th floors of the building in question, as per the provisions of the Kerala Municipality Building (Regularization of unauthorized

construction) Rules, 2014, writ petition may be disposed of. Said submission of the learned counsel is placed on record.

6. Heard Mr. P. B. Sahasranaman, learned counsel for the petitioner, Mr. Surin George Ipe, learned Senior Government Pleader for respondents 1 and 3, Smt. S. Ambily for the Kannur Municipality, represented by its Secretary, Kannur, 2nd respondent, Dr. K. P. Satheesan, learned Senior Counsel appearing for the 4th respondent, and perused the pleadings and the material on record.

7. Name of the petitioner is described as the State Environment Protection Council. NGOs or associations or societies, should not give any impression, to the public at large that, it is a statutory body, under any enactment, State / Central, as the case may be. However, in the case on hand, we are of the view that the petitioner gives an impression, as if the petitioner is a statutory body. Needless to say that NGOs or association, or societies, registered under the Kerala Societies Registration Act, 1860, as far as possible, should avoid, using the name 'Central' or 'State' or 'National'.

8. Though, the instant writ petition is regarding the alleged

construction of a building and violations, taking note of the fact that public at large, should not be misled by any institution, giving an impression that it is a statutory body, because of the nomenclature with the description, Central or State or National, under the provisions of the Kerala Societies Registration Act, 1860, in exercise of the powers under Article 226 of the Constitution of India, we deem it fit to implead the Inspector General of Registration, State of Kerala, as additional 5th respondent to this writ petition, for the limited purpose of considering, as to whether, such NGOs or association or societies, be permitted to register, with the specific words, Central or State or National.

9. We direct the registering authority to take a decision that, while registering, no private body should give an impression that, it is a statutory body. Inspector General of Registration, State of Kerala, is directed to take appropriate decision, within two months from the date of receipt of a copy of this judgment.

In the light of the fact that Mr. K. P. Mohammed Ashraf, Managing Director, Emad Building, Global Village, Kannur, 4th respondent, has submitted an application for regularizing the

construction effected on the 5th and 6th floors of the building in question, and placing on record the submission of Mr. P. B. Sahasranaman, learned counsel for the petitioner, with the observations stated supra, writ petition is disposed of.

Sd/-

**S. MANIKUMAR
CHIEF JUSTICE**

Sd/-

**SHAJI P. CHALY
JUDGE**

Eb

///TRUE COPY///

P. A. TO JUDGE

APPENDIX

PETITIONER'S/S EXHIBITS:

- | | |
|------------|--|
| EXHIBIT P1 | TRUE COPY OF THE APPLLLICATION MADE TO THE 2ND RESPONDENT DATED 29.09.2014 |
| EXHIBIT P2 | TRUE COPY OF THE REVISED BUILDING PERMIT BEARING NO.E3/BA/249/08 DATED 05/02/2010 ISSUED BY THE 2ND RESPONDENT . |
| EXHIBIT P3 | TRUE COPY OF THE COMMUNICATION BEARING NO.30503/RB2/2014/LSGD DATED 04.06.2014 ALONG WITH THE REPORT OF THE 3RD RESPONDENT . |
| EXHIBIT P4 | TRUE COPY OF THE REPORT GIVEN BY THE 2ND RESPONDENT DATED 25/08/2014 . |
| EXHIBIT P5 | TRANSLATION OF EXHIBIT-P4 . |
| EXHIBIT P6 | TRUE COPY OF THE PARTIAL OCCUPANCY CERTIFICATE DATED 09/01/2014 ISSUED BY THE 2ND RESPONDENT . |