

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 30TH DAY OF MARCH 2021 / 9TH CHAITHRA,  
1943

WP(C).No.4700 OF 2021(J)

PETITIONER/S:

1 BIJU KURIAKOSE,  
NO. B7, KENT PARADISE,  
MAYFIRST ROAD,  
THAMMANAM,  
KOCHI - 682032.

2 S. DINESH,  
NO. A8, KENT PARADISE,  
MAYFIRST ROAD,  
THAMMANAM,  
KOCHI - 682032.

BY ADVS.

SRI.SAIBY JOSE KIDANGOOR  
SRI.BENNY ANTONY PAREL  
SMT.S.SIBHA  
KUM.PARVATHY VIJAYAN  
SHRI.ANOOP SEBASTIAN  
SMT.DEEPA VALENTINE LESLIE

RESPONDENT/S:

1 STATE OF KERALA  
REPRESENTED BY ITS SECRETARY,  
DEPARTMENT OF LOCAL SELF GOVERNMENT,  
TRIVANDRUM - 695001.

2 CORPORATION OF KOCHI,  
REPRESENTED BY SECRETARY,  
KOCHI CORPORATION,  
PARK AVENUE ROAD,  
MARINE DRIVE,  
ERNAKULAM - 682011.

3 BIJU VARGHESE,  
NO. B8, KENT PARADISE,  
MAYFIRST ROAD,  
THAMMANAM, KOCHI - 682032.

\*ADDL. KENT PARADISE OWNERS ASSOCIATION,  
R4 KENT PARADISE COMPLEX,  
MAY FIRST ROAD, THAMMANAM,  
KOCHI-682032,  
REPRESENTED BY ITS SECRETARY,  
SUMA JAYAN @ SUMATHI R,  
AGED 46 YEARS, D/O.RAJU,  
KENT HOME, E6, 2ND FLOOR,  
MAY FIRST ROAD,  
THAMMANAM, KOCHI-682032.

\*ADDL. SUMA JAYAN @ SUMATHI.R,  
R5 AGED 46 YEARS, D/O.RAJU,  
KENT HOME E6, 2ND FLOOR,  
MAY FIRST ROAD, THAMMANAM,  
KOCHI-682032,  
POONITHURA VILLAGE,  
KANAYANNUR TALUK.

ADDL.RESPONDENT NOS.4 AND 5 ARE IMPEADED AS PER  
ORDER DATED 8/3/21 IN IA NO.1 OF 2021.

R2 BY SHRI.K.JANARDHANA SHENOY, SC, KOCHI MUNICIPAL  
CORPORATION

R3 BY ADV. SRI.ENOCH DAVID SIMON JOEL

R3 BY ADV. SHRI.CIMIL CHERIAN KOTTALIL

R3 BY ADV. SRI.S.SREEDEV

R3 BY ADV. SRI.RONY JOSE

R4 & R5 BY PARTY IN PERSON- SMT.DEEPA VALENTINE  
LESLIE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
30.03.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**C.R.****P.B.SURESH KUMAR. J.**

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**W.P.(C) No.4700 of 2021**  
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**Dated this the 30<sup>th</sup> day of March, 2021.****J U D G M E N T**

Petitioners are residing in the villas constructed in a residential complex consisting of an apartment and 23 villas. The villa adjacent to the villa occupied by the first petitioner belongs to the third respondent. The villas in the residential complex were constructed identically by the developer on the same level of the land and later sold to various persons. During October 2020, the third respondent started raising the floor level of the building owned by him. The petitioners then lodged Exts.P1 and P1(a) complaints before the second respondent Corporation alleging that the work undertaken by the third respondent is likely to cause damage to the adjacent villas and the abutting road. Thereupon, the petitioners instituted W.P.(C) No.23352 of 2020 before this Court alleging that the complaints aforesaid are not being attended to by the officials of the Corporation. The

said writ petition was disposed of by this Court in terms of Ext.P3 judgment directing the Corporation to consider and take appropriate action on the complaints preferred by the petitioners with notice to the petitioners and the third respondent. On 27.11.2020, the petitioners were issued a notice by the Secretary of the Corporation directing them to appear for the hearing scheduled on 04.12.2020 pursuant to Ext.P3 judgment. The petitioners did not attend the hearing. Consequently, on 04.12.2020, the Assistant Engineer of the Corporation issued Ext.P4 No Objection Certificate to the third respondent stating that he is free to raise the floor level of the building without causing any damage to the structure of the building and danger to the adjoining buildings. The case set out by the petitioners in the writ petition is that though they made a request for adjournment of the hearing scheduled pursuant to Ext.P5 notice, the proceedings initiated on their complaints pursuant to the direction issued by this Court has been dropped without considering the request for adjournment made by them. It is also the case of the petitioners that the work undertaken by the third respondent would amount to alteration of the building and such a work can be undertaken only after obtaining building permit from the Corporation. According to the petitioners, Ext.P4 No Objection Certificate is, therefore, unsustainable in law. The

petitioners, therefore, seek orders quashing Ext.P4 No Objection Certificate and orders directing the Corporation to prevent the work undertaken by the third respondent.

2. A counter affidavit has been filed by the third respondent in the matter stating, among others, that he has purchased the villa only very recently; that it was noticed after the purchase that the land on which the villa is constructed is low-lying; that there would be water logging in the land during rainy season; that sewage and waste from adjacent canal used to flow into the land; that the foundation of the building has become very weak and that he was advised in the circumstances, to strengthen the foundation of the building by employing mechanical jack lifting technology. It is also stated by the third respondent in the counter affidavit that though he approached the Corporation for permission to undertake the said work, the Corporation maintained the stand that permission of the Corporation is not necessary for strengthening the foundation of the building. It is further stated by the third respondent in the counter affidavit that it is in the said circumstances that he started the work of raising the floor level of the building. It is further stated that while so, he came to know about Ext.P3 judgment of this court and immediately thereafter, he preferred Ext.R3(b) application before the

Corporation for a No Objection Certificate for undertaking the work proposed by him. It is stated by the third respondent that it is on the said application that he was issued Ext.P4 No Objection Certificate, after dropping the proceedings initiated pursuant to Ext.P3 judgment on the complaints lodged by the petitioners. It is asserted by the third respondent in the counter affidavit that he was prepared to obtain building permit for the construction undertaken by him; that he could not obtain the building permit on account of the stand taken by the Corporation, and that he cannot, therefore, be blamed for having not obtained the building permit for undertaking the work. It is also asserted in the counter affidavit that the work undertaken by him cannot be termed as an alteration in terms of the Building Rules. It is further asserted by the third respondent in the counter affidavit that there is absolutely no reason for the petitioners to be aggrieved by the work undertaken by him as he is only raising the floor level of the building, retaining the level of the land as it is. It is also stated that having come to know about the writ petition, by way of abundant caution, he has preferred Ext.R3(c) application before the Corporation for building permit to undertake the work, and the same is pending consideration.

3. Heard the learned counsel for the petitioners, the learned Standing Counsel for the Corporation, the learned

counsel for the third respondent as also the additional fifth respondent, who appeared in person.

4. Placing reliance on the provisions of the Kerala Municipality Building Rules, 2019 (the Rules), the learned counsel for the petitioners contended that the work undertaken by the third respondent would amount to 'alteration' in terms of the Rules and the third respondent is therefore bound to obtain building permit for undertaking the said work and the work undertaken by the third respondent is therefore wholly unauthorised.

5. The learned Standing Counsel for the Corporation, however, maintained that the work undertaken by the third respondent would not amount to 'alteration' in terms of the Rules. On a query from the court, the learned Standing Counsel clarified that the third respondent has in fact sought the permission of the Corporation for undertaking the subject work along with the plan of the proposed work and action was not taken on the said application since permission of the Corporation is not required for undertaking the same.

6. The learned counsel for the third respondent pointed out that the third respondent is not raising the level of the land, but only lifting the building and such a work would not fall within the scope of 'alteration' in terms of the Rules.

7. The additional fifth respondent who appeared in person supported the case of the petitioners.

8. The fact that the third respondent is undertaking the work of raising the floor level of the building owned by him upto a height of 3 feet is not in dispute. It is this work that is objected to by the petitioners as also additional respondents 4 and 5. As noted, the case of the petitioners is that the said work would fall within the definition of 'alteration' in terms of the Rules and the same cannot therefore be undertaken without obtaining building permit, whereas, the case of the Corporation and the third respondent is that the said work would not amount to 'alteration' in terms of the Rules and permission of the Corporation is not required for undertaking such a work. If the work aforesaid would amount to 'alteration' in terms of the Rules, the third respondent is bound to obtain building permit in terms of Rule 5(1)(b) of the Rules. Neither the Corporation nor the third respondent disputed the said fact. The first and foremost question to be considered therefore, is as to whether the work undertaken by the third respondent would amount to 'alteration' in terms of the Rules.

9. For considering the question aforesaid, it is necessary to understand the nature of the work undertaken by the third respondent. It was pointed out that floor elevation is

normally undertaken when the structure of the building gets pushed down below the road level due to addition of layers to the road, so as to prevent flow of water and filth from the road into the building during rainy season. It was also pointed out that mechanical jack lifting technology is normally employed for undertaking the said work. It is submitted that buildings could be raised from the ground level using the said technology by placing large number of manually-operated jacks on steel girders or beams inserted under the building and then by evenly and slowly elevating the building by operating the jacks and thereafter by filling the gap using concrete or other means.

10. Rule 2(f) of the Rules which defines 'alteration' reads thus:

“(f) 'alteration' means a structural change, such as an addition to the area or height, or addition of floor / floors or mezzanine floors within any existing floor height or change of existing floor or changing the roof to concrete slab or reconstruction of existing walls or construction of concrete beam and columns amounting to structural change or construction of internal walls for sub dividing the existing rooms with the intention of changing the use of rooms which amounts to change in occupancy group of the building under these rules or closing of any required means of ingress or egress to the building;”

As explicit from the extracted definition, a structural change resulting in an addition to the height of the building would fall

within the scope of "alteration". Rule 2(bf) of the Rules that defines "height of building" reads thus:

“(bf) ‘height of building’ means the vertical distance measured from the average proposed ground level contiguous to the building;

(i) in the case of flat roofs, to the highest point of the flat roof;

(ii) in the case of pitched roofs and gabled roofs, to the midpoint between the eaves level and the ridge;

(iii) in the case of domed roofs, to the highest point of the dome:

Provided that architectural features appurtenant roof structures like staircase tower, overhead tanks, air-conditioning plant rooms, lift rooms, cellular telecommunication equipments, tower structures, chimneys, rooftop helipad, open swimming pools, parapet walls and similar roof structures other than pent houses shall not be included in the height of the building.

**Note:** for arriving at the average proposed ground level, the average of the law is the proposed ground level and the highest the proposed ground level contiguous to the building shall be taken“

Height of building being the vertical distance measured from the average proposed ground level contiguous to the building, there is no doubt that when the floor level of the building is raised applying mechanical jack lifting technology, the work would certainly result in an addition to the height of the building. If so, the work would amount to "alteration", requiring building permit in terms of Rule 5(1)(b) of the Rules.

11. Having held that the work of lifting the floor level of the building resulting in the height of the building would

amount to alteration requiring building permit in terms of the Rules, it is necessary to consider the incidental question as to what shall be the consideration of the competent authority on such applications for building permit. I am constrained to consider this question as I find that except Rule 24 of the Rules which provides that the maximum height of the building or part thereof shall not exceed twice the width of the street abutting the plot plus twice the width of the yard from the building to the abutting street, there is no other provision in the Rules which could be applied in the context of considering an application for building permit to raise the floor level of the building. In other words, going by the scheme of the Rules, if an application for building permit is preferred for lifting the floor level of the building, the only consideration would be as to whether the increased height of the building would contravene Rule 24 of the Rules. This might be the reason for the Corporation for holding that a building permit is not required for lifting the floor level of the building.

12. Reverting to the case on hand, the highlight of the arguments advanced by the petitioners is that the work undertaken by the third respondent is one that affects the safety of the neighbouring structures as also the people residing therein. Though lifting the floor level of buildings is a work that is

widely undertaken in the State, there is no provision in the Rules dealing with the same. Needless to say, the safety and related issues concerning the said work is not addressed in the Rules. Safety issues, if any, to the neighbouring structures involved while undertaking the work of lifting the floor level of existing buildings cannot be ignored. But, in the absence of any provision in the Rules, the competent authority may not be able to take care of the safety issues. In this context, it is relevant to note that Rule 109 of the Rules provides that the Government shall have power, if any doubt arises with regard to the interpretation or otherwise of any of the provision in the Rules or if any difficulty arises in the implementation of any of the provisions in the Rules, to clarify the doubt or to issue necessary directions for removing the difficulty. In the light of the said provision in the Rules, according to me, it is a matter for the State Government to issue appropriate clarifications in this regard either under Rule 109 of the Rules or by making appropriate amendment to the Rules. It is all the more so since mechanical Jack lifting technology is widely employed in the State not only for moving the existing building vertically, but also for moving the existing building horizontally.

13. The petitioners alleged in the writ petition that the work undertaken by the third respondent would result in

water logging in the neighbouring villas. In the counter affidavit, the third respondent has undertaken that he is only raising the floor level of the building and he is not filling up the land and thus the level of the land on which the building is constructed will remain to be the same after the work. If that be so, there is no basis for the said allegation.

14. Having found that the work undertaken by the third respondent is one for which a building permit is required, should this court interdict the third respondent from continuing the work undertaken by him is the next question to be resolved. I have already indicated that the apprehension of the petitioners that there would be water logging is without any basis. Similarly, I have held that going by the rules as it exist now, the work undertaken by the third respondent cannot be interdicted if it does not contravene Rule 24 of the Rules. The petitioners do not have a case that the work undertaken by the third respondent would contravene Rule 24 of the Rules. Further, as indicated earlier, the third respondent was willing to obtain whatever permission that is required for undertaking the work from the Corporation and it is on account of the stand of the Corporation that a building permit is not required for undertaking the work proposed by him that he could not secure the building permit. In this context, it is also to be noted that no one would carry out a

work of this nature by spending substantial amount unnecessarily. The specific case of the third respondent is that the foundation of his building is weak and it needs to be strengthened and the floor level of the building needs to be raised so as to prevent flow of sewage and waste from adjacent canal. The third respondent, cannot therefore be found fault with for having undertaken the said work to protect his property. Needless to say, I do not find any justification to interdict the third respondent from continuing the work proposed by him. At the same time, in the absence of any rules, it is necessary to rule out the anxiety expressed by the neighbouring property owners as to the safety of their structures.

In the result, the writ petition is disposed of permitting the third respondent to prefer an application in the prescribed form for building permit for the work undertaken by him, and directing the Corporation to process the application and grant the building permit, if the same does not contravene any of the provisions of the Building Rules. It is, however, made clear that the construction, if any, undertaken by the third respondent during the pendency of the application for building permit would be at the risk of the third respondent. The second respondent is also directed to cause an inspection to be made at the site of the building of the third respondent forthwith and ensure that there

are no safety issues to the adjoining lands and the building therein on account of the construction undertaken by the third respondent. While granting the building permit, the second respondent would be free to impose appropriate conditions also to ensure the safety of the adjoining lands and the buildings. Registry shall forward a copy of the judgment forthwith to the Secretary to Government, Department of Local Self Government Institutions, Government of Kerala. It is also directed that the State Government shall, at the earliest, issue necessary directions to the Local Self Government Institutions concerning the procedure to be followed and the measures to be taken while dealing with the application for building permit for raising existing buildings by employing mechanical jack lifting technology.

Sd/-

**P.B.SURESH KUMAR, JUDGE**

rkj/Mn

## **APPENDIX**

### **PETITIONER'S/S EXHIBITS:**

- EXHIBIT P1                      TRUE COPY OF THE REPRESENTATION FILED BY THE 1ST PETITIONER DATED 27.10.2020 ALONG WITH ACKNOWLEDGEMENT.
- EXHIBIT P1 (a)                TRUE COPY OF THE REPRESENTATION FILED BY THE 2ND RESPONDENT PETITIONER DATED 27.10.2020 ALONG WITH ACKNOWLEDGEMENT.
- EXHIBIT P2                      TRUE COPY OF THE NOTICE ISSUED BY THE RESIDENTS ASSOCIATION DATED 12.10.2020.
- EXHIBIT P3                      TRUE COPY OF THE JUDGMENT DATED 02.11.2020 IN WP(C) NO. 23352/2020.
- EXHIBIT P4                      THE TRUE COPY OF THE NO OBJECTION ISSUED BY THE 2ND RESPONDENT CORPORATION.
- EXHIBIT P5                      THE TRUE COPY OF THE NOTICE OF HEARING SENT BY THE 2ND RESPONDENT.
- EXHIBIT P6                      TRUE COPY OF THE REQUEST LETTER SEEKING ALTERNATIVE DATE HEARING DATED 03.12.2020.
- EXHIBIT P3(a)                TRUE COPY OF THE JUDGMENT DATED 02.11.2020 IN W.P(C)NO.23352/2020 ON THE FILES OF THIS HON'BLE COURT.
- EXHIBIT P3(b)                TRUE COPY OF THE APPLICATION DATED 18.11.2020 ALONG WITH THE BUILDING PLAN SUBMITTED BY THE 3RD RESPONDENT BEFORE THE 2ND RESPONDENT.

- EXHIBIT P3(c) TRUE COPY OF THE APPLICATION FOR BUILDING PERMIT DATED 09.03.2021 ALONG WITH THE PROPOSED BUILDING PLAN SUBMITTED BY THE 3RD RESPONDENT BEFORE THE 2ND RESPONDENT.
- EXHIBIT P3(d) TRUE COPY OF THE RECEIPT DTD.09.03.2021 ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT P3(e) TRUE COPY OF THE ORDER DATED 06.02.2021 IN I.A.NO.2/2020 IN O.S.NO.1094/2020 ON THE FILES OF IIND ADDL.MUNSIFF'S COURT, ERNAKULAM.

RESPONDENT'S/S EXHIBITS:

- EXHIBIT R4a TRUE COPY OF THE ASSOCIATION BY LAW.
- EXHIBIT R4b PHOTOGRAPH OF THE KENT VILLA/APARTMENT.
- EXHIBIT R4c TRUE COPY-AGREEMENT BETWEEN RESPONDENT 3 AND THE CONTRACTOR IN THE WRIT PETITION.
- EXHIBIT R4d TRUE COPIES REPRESENTATION MADE BY THE IMPLDING PETITIONERS TO THE CORPORATION SECRETARY.
- EXHIBIT R4e TRUE COPY REPRESENTATION MADE TO COCHIN CORPORATION AS PER IT ACT FOR REQUIRED DOCUMENTS.
- EXHIBIT R4f TRUE COPY-MARKED AS DECLARATION BY THE RESPONDENTS 3 CONTRACTOR.
- EXHIBIT R4g TRUE COPY REQUEST FOR NOC TO CORPORATION BY THE RESPONDENTS 3.
- EXHIBIT R4h TRUE COPY OF THE UNDERTAKING SUBMITTED IN THE CASE OS NO.1094/2020.
- EXHIBIT R4i TRUE COPY OF THE NOC ISSUED BY CORPORATION.

**EXHIBIT R4j**

**TRUE COPY OF APPROVED BUILDING PLAN OF  
THE RESPONDENTS 3 VILLA NO.B8.**

**EXHIBIT R4k**

**TRUE COPY OF REPRESENTATION MADE BY THE  
IMPLEADING PETITIONER TO CORPORATION  
OFFICE.**