

The Director Vs. O.V.Antony

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Court : Kerala

Decided On : Jun-20-2014

Judge : Honourable Mr.Justice V.Chitambaresh

Appellant : The Director

Respondent : O.V.Antony

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE V.CHITAMBARESH FRIDAY, THE 20^H DAY OF JUNE 2014 30TH JYAISHTA, 1936 OP(C).No. 1382 of 2014 (O) ----- IA.NO.605/2014 IN O.S.NO.146/2011 OF SUB COURT, PERUMBAVOOR. PETITIONERS/PETITIONERS/4TH AND 5^H DEFENDANTS: -----

1. THE DIRECTOR, ASSET HOME PVT.LTD., NO.4, ANCHORAGE, OFF FORESHORE ROAD, PALLIYIL LANE, KOCHI - 682 016. (V.SUNILKUMAR, S/O.T.V.VASUDEVAN PILLAI, B-102, SANTHI APARTMENT, LOUISE LANE, KOCHI - 682 020).

2. ASSET HOMES PVT.LTD., NO.4, ANCHORAGE, OFF FORESHORE ROAD, PALLIYIL LANE, KOCHI - 16, REP.BY ITS DIRECTOR, K.ANIL VARMA, S/O.KERALA VARMA, BHARANI HOUSE, SANSKRIT COLLEGE ROAD, NADAMA DESOM, NADAMA VILLAGE. BY ADV. SRI.PEEYUS A.KOTTAM
RESPONDENTS/PLAINTIFF/DEFENDANTS 1 TO 3

----- 1. O.V.ANTONY, S/O. VARGHESE, OORUTH HOUSE, MANAKKAKKUDY BHAGOM, KIZHAKKAMBALAM VILLAGE, KUNNATHUNADU TALUK.

2. M.G.VASAN, S/O.MUTHUNAKAN, H.NO.N-24, PANCHASHEEL PARK STREET, NEW DELHI - 110 017.

3. THOMAS ABRAHAM, S/O.C.T. ABRAHAM, H.NO.80/10 A, MANVYA NAGAR, NEW DELHI.

4. KRISHNADAS, S/O.P.K.DAS,THULASEEVANAM, KAVALAPPARA PO, OTTAPPALAM TALUK, PALAKKAD DISTRICT. THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON2006-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Kss OP(C) NO.1382/2014 (O) APPENDIX PETITIONER'S EXHIBITS: EXT.P1: COPY OF THE PLAINT DATED2009/2008 IN O.S.NO.314/2008 FILED BY THE1T RESPONDENT BEFORE THE MUNSIFF'S COURT, PERUMBAVOOR. EXT.P2: COPY OF THE WRITTEN STATEMENT DATED1901/2009 FILED BY THE DEFENDANTS BEFORE THE MUNSIFF'S COURT, PERUMBAVOOR IN O.S.NO.314/2008. EXT.P3: COPY OF THE

JUDGMENT

DATED0611/2008 OF THIS HONOURABLE COURT IN WPC.NO.30601/2008(R) PASSED ON THE BASIS OF THE REPORT SUBMITTED BY THE CHIEF ENVIRONMENTAL ENGINEER, KERALA STATE POLLUTION CONTROL BOARD. EXT.P4: COPY OF THE

ORDER

DATED0706/2014 OF THE SUB COURT, PERUMBAVOOR IN I.A.NO.605/2014 IN O.S.NO.146/2011. RESPONDENT'S EXHIBITS: N I L /TRUE COPY/ P.S.TOJUDGE Kss V.CHITAMBARESH, J.

----- O.P (C) No.1382 of 2014 ----- Dated this the 20th day of June, 2014

JUDGMENT

Order XXVI Rule 10 Sub-Clause (3) is as follows:- 10. Procedure of Commissioner:- (1) x x x x x (2) x x x x x (3) Commissioner may be examined in person:- Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit. Thus the court below has all the powers to direct such further enquiry if it is dissatisfied with the proceedings of the Advocate Commissioner. The court below cannot be faulted with in deputing a fresh Advocate Commissioner to conduct a local inspection with the assistance of an expert engineer. The evidence of Chief Environmental Engineer (DW3) and the Civil Engineer (DW5) are already on record. I am sure that the court below will advert to their evidence also along with the fresh report to be filed by the Advocate Commissioner at the time of trial.

2. There is therefore no necessity for the OP (C) No.1382/2014 2 Chief Environmental Engineer (DW3) and Civil Engineer (DW5) to accompany the Advocate Commissioner. The Advocate Commissioner shall seek the assistance of the expert as directed by the court below and submit a report forthwith. Whether the damages allegedly caused to the building are the direct result of the piling operation is a matter to be decided in the suit on the basis of evidence. The petitioners/defendants 4 and 5 are undoubtedly entitled to file their objections to the report if any filed by the Advocate Commissioner deputed under the impugned order. I do not find any error of jurisdiction in the order impugned warranting interference. The Original Petition is dismissed subject to the above reservation. Sd/- V.CHITAMBARESH, Judge. nj.

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