

Abdul Rasheed vs Alappuzha Municipality

Abdul Rasheed vs Alappuzha Municipality

SooperKanoon Citation : sooperkanoon.com/1576026

Court : Kerala

Decided On : Nov-25-2022

Judge : Honourable Mr. Justice Shaji P.Chaly

Appeal No. : WP(C)/32988/2015

Appellant : Abdul Rasheed

Respondent : Alappuzha Municipality

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SHAJI P.CHALY
FRIDAY, THE 25TH DAY OF NOVEMBER 2022 / 4TH AGRAHAYANA,
WP(C) NO. 3430 OF 2015 PETITIONER/S: UNICE AGED 35 YEARS
S/O.POOKUNJU, VALLYACHENKILATH, ASRAMAM WARD,
AVALOOKKUNNU.P.O., ALAPPUZHA. 688 006. BY ADV
SRI.P.SHANES METHAR RESPONDENT/S:

1 STATE OF KERALA REPRESENTED BY THE PRINCIPAL
SECRETARY, DEPT. OF LOCAL SELF GOVERNMENT,
GOVERNMENT SECRETARIATE, THIRUVANANTHAPURAM-695 001.
2 THE DISTRICT COLLECTOR ALAPPUZHA. 688 001. 3 THE

ALAPPUZHA MUNICIPALITY M O WARD, ALAPPUZHA, REPRESENTED BY ITS SECRETARY. 688 001. 4 THE SECRETARY ALAPPUZHA MUNICIPALITY, M O WARD, ALAPPUZHA-688 001. 5 ANJU AGE NOT KNOWN, W/O.NOT KNOWN, MUNICIPAL ASSISTANT ENGINEER, ALAPPUZHA MUNICIPALITY, M O WARD, ALAPPUZHA. 688 001. 6 MOLLY KURIEN W/O.KURIEN, KALAVARA VEETTIL, KAYAL CHIRAYIL, ZILLA COURT WARD, ALAPPUZHA-688 001. BY ADVS. SRI. JOBY JOSEPH, SR. GP. SRI.T.R.RAJAN SRI.AZAD BABU, SC, ALAPPUZHA MUNICIPALITY -2-

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25.11.2022, ALONG WITH WP(C).9403/2015 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -3-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SHAJI P.CHALY FRIDAY, THE 25TH DAY OF NOVEMBER 2022 / 4TH AGRAHAYANA, WP(C) NO. 9403 OF 2015 PETITIONER/S: JAMA-ATH COUNCIL SOCIAL WELFARE TRUST AGED 49 YEARS DWARAKA, BEACH ROAD,ALAPPUZHA 688 001 REPRESENTED BY ITS CHAIRMAN NAZEER PUNNAKKAL,AGED 49, S/O.ABDUL AZEEZ PUNNAKKAL, VALIYAMARAM WARD,ALAPPUZHA. BY ADV SRI.P.SHANES METHAR RESPONDENT/S: 1 THE ALAPPUZHA MUNICIPALITY M O WARD,ALAPPUZHA, REPRESENTED BY ITS SECRETARY.688001 2 THE SECRETARY ALAPPUZHA MUNICIPALITY M.O WARD, ALAPPUZHA 688 001 3 MALLY KURIAN WO.KURIEN KALAVARA VETTEL,KAYAL CHIRAYIL,ZILLA COURT WARD,ALAPPUZHA 688 002. BY ADVS. SRI.AZAD BABU, SC, ALAPPUZHA MUNICIPALITY SRI.K.V.SADANANDA PRABHU SRI.T.R.RAJAN THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25.11.2022, ALONG WITH WP(C).3430/2015, FOLLOWING: -4-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SHAJI P.CHALY
FRIDAY, THE 25TH DAY OF NOVEMBER 2022 / 4TH AGRAHAYANA,
WP(C) NO. 32988 OF 2015 PETITIONER/S: ABDUL RASHEED AGED
51 YEARS S/O. MUHAMMED, AL-AMEEN MANZIL, MANAKKADU
P.O, THIRUVANANTHAPURAM BY ADVS. SRI.B.PRAMOD SMT.R.REJI
ATTINGAL RESPONDENT/S:

1 ALAPPUZHA MUNICIPALITY MUNICIPAL OFFICE, ALAPPUZHA
REPRESENTED BY ITS SECRETARY 688 001 2 THE SECRETARY
ALAPPUZHA MUNICIPALITY MUNICIPAL OFFICE ALAPPUZHA 688
001 3 THE DISTRICT COLLECTOR COLLECTORATE, ALAPPUZHA
688 001 4 THE DEPUTY THAHASILDARHQ TALUK OFFICE,
AMBALAPPUZHA 688 001 5 THE TALUK SURVEYOR
AMBALAPPUZHA TALUK 688 531 6 MOLLY KURIAN KAYALCHIRA
KALAVARA HOUSE, THATHAMPALLY P.OI, ALAPPUZHA 688 001 BY
ADVS. SRI. JOBY JOSEPH, SR. GP. SRI.AZAD BABU, SC,
ALAPPUZHA MUNICIPALITY SRI.P.C.CHACKO(PARATHANAM)
RAJAN T R THIS WRIT PETITION (CIVIL) HAVING COME UP FOR

ADMISSION ON 25.11.2022, ALONG WITH WP(C).9403/2015 AND
CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING: -5-

JUDGMENT

These writ petitions are filed alleging that an unauthorized and illegal construction is carried out by one Molly Kurien, Kalavara Vettill, Zilla Court ward, Alappuzha, the 6 th respondent in W. P. (C) No. 3430 of 2015. According to the petitioners, the 6 th respondent has not secured any permit from the Secretary of the Alappuzha Municipality and therefore the construction is liable to be removed, in accordance with law.

2. Sri. T. R. Rajan, learned counsel for the alleged encroacher

namely Molly Kurien, submitted that a detailed counter affidavit is filed in the writ petition wherein it is also stated that the alleged unauthorized construction of a temporary shed has already been removed by the said person.

3. Learned Standing Counsel for the Alappuzha Municipality, Sri. R. Azad Babu also submitted that already the unauthorized construction has been removed.

4. Therefore, going by the pleadings and the reliefs sought for by

-6- the petitioners, it can be seen that whatever reliefs sought for by the petitioners are no more in existence, consequent to the removal of the unauthorized construction. Therefore, the writ petitions are disposed of recording the said submission made by Mr. T. R. Rajan, learned counsel for the alleged encroacher namely Molly Kurien and learned Standing Counsel for the Alappuzha Municipality Sri. R. Azad Babu. However, I make it clear that if any unauthorized or illegal construction is carried out and still remaining, the liberty of the Secretary of the Alappuzha Municipality is left open, in accordance with law. Sd/- SHAJI P. CHALY JUDGE Eb ///TRUE COPY/// P. A. TO JUDGE -7- APPENDIX OF WP(C) 3430/2015 PETITIONER EXHIBITS EXHIBIT P1 TRUE COPY OF THE SALE DEED NO.2230/2012 OF S.R.O ALAPPUZHA ALONG WITH ITS TRANSLATED COPY. EXHIBIT P2 TRUE COPY OF THE COMPLAINT PREFERRED BY CHAIRMAN OF JCSW TRUST BEFORE DISTRICT COLLECTOR ALONG WITH ITS TRANSLATED COPY. EXHIBIT P3 TRUE COPY OF THE ORDER NO.C4 DISTRICT COLLECTOR ALAPPUZHA ALONG WITH ITS TRANSLATED COPY. EXHIBIT P4 TRUE COPY OF THE LETTER NO.C4-28112/2013 DATED 11.06.2013 OF THE DISTRICT COLLECTOR ALAPPUZHA ALONG WITH ITS TRANSLATED COPY. EXHIBIT P5 TRUE COPY OF THE BUILDING PERMIT

APPLICATION DATED 15.01.2013 SUBMITTED BY 6TH RESPONDENT BEFORE 2ND RESPONDENT ALONG WITH ITS TRANSLATED COPY. EXHIBIT P5(A) TRUE COPY OF THE BUILDING PERMIT APPLICATION DATED 15.01.2013 SUBMITTED BY 6TH RESPONDENT BEFORE 2ND RESPONDENT ALONG WITH ITS TRANSLATED COPY. EXHIBIT P6 TRUE COPY OF SKETCH PLAN SUBMITTED BY 6TH RESPONDENT ALONG WITH EXT.P5(A)- STYLING AS PREPARED BY TALUK SURVEYOR AMBALAPPUZHA. EXHIBIT P7 TRUE

COPY OF THE QUESTIONNAIRE SUBMITTED

BY THE PETITIONER BEFORE PUBLIC INFORMATION OFFICER, AMBALAPPUZHA TALUK OFFICE UNDER RTI ACT ALONG WITH ITS TRANSLATED COPY. EXHIBIT P7(A) TRUE COPY OF THE INFORMATION BY THE PUBLIC INFORMATION OFFICER, AMBALAPPUZHA TALUK OFFICE UNDER RTI ACT ALONG WITH ITS TRANSLATED COPY. EXHIBIT P8 TRUE COPY OF THE BUILDING PERMIT DATED 30.06.2014 ISSUED BY 2ND RESPONDENT. EXHIBIT P9 TRUE COPY OF THE COMPLAINT DATED 5.11.2014 REFERRED BY THE CHAIRMAN OF JCSW TRUST BEFORE THE 3RD RESPONDENT ALONG WITH ITS TRANSLATED COPY. -8- EXHIBIT P10 TRUE COPY OF THE NOTICE ISSUED BY THE

3RD RESPONDENT DATED 28.09.2012 CONFIRMING THAT THE BUILDING IN 5TH RESPONDENT'S PROPERTY IS UNAUTHORIZED STRUCTURE SINCE 1997-1998 ALONG WITH ITS TRANSLATED COPY.

EXHIBIT P11 TRUE COPY OF STOP MEMO NO.E5 36065/14 DATED 08.12.2014 ISSUED BY 3RD RESPONDENT ALONG WITH ITS TRANSLATED COPY. EXHIBIT P12 TRUE COPY OF THE COMPLAINT DATED 24.12.2014 BEFORE THE 3RD RESPONDENT ALONG WITH ITS TRANSLATED COPY. -9- APPENDIX OF WP(C) 9403/2015 PETITIONER EXHIBITS EXHIBIT P1 EXHIBIT P1 TRUE COPY OF THE SALE DEED NO.2230/2012 OF S.R.O.AMBALAPPUZHA EXHIBIT P2 EXHIBIT P-2 TRUE COPY OF THE NOTICE

NO.G1(T2)019538/12 ISSUED BY THE 1ST RESPONDENT DATED 28.09.2012 CONFIRMING THAT THE BUILDING IN 3RD RESPONDENTS PROPERTY IS UNAUTHORIZED STRUCTURE.

EXHIBIT P3 EXHIBIT P-3 TRUE COPY OF THE NOTICE NO.H3-36997/14 DATED 9.12.2014 EXHIBIT P4 EXHIBIT P-4 TRUE COPY OF THE NOTICE NO.E5-41407/14 DATED 15.1.2014 ISSUED BY THE 1ST RESPONDENT. EXHIBIT P5 EXHIBIT P-5 TRUE COPY OF THE COMPLAINT DATED 20.02.2015 REFERRED BY THE PETITIONER BEFORE THE 2ND RESPONDENT -10- APPENDIX OF WP(C) 32988/2015 PETITIONER EXHIBITS EXHIBIT P1 TRUE

COPY OF THE COMPLAINT SUBMITTED BEFORE THE 3RD RESPONDENT
EXHIBIT P2 TRUE COPY OF THE REPORT PREPARED BY THE TALUK
SURVEYOR EXHIBIT P3 TRUE COPY OF THE SKETCH SHOWING THE
ENCROACHMENT EXHIBIT P4 TRUE COPY OF THE LETTER DATED 27-02-
2013 ISSUED BY THE 4TH RESPONDENT EXHIBIT P5 TRUE COPY OF THE
LETTER DATED 04-04-2013 ISSUED BY THE 3RD RESPONDENT EXHIBIT P6
TRUE COPY OF THE LETTER DATED 10-04-2013 TO 5TH RESPONDENT
EXHIBIT P7 TRUE COPY OF THE LETTER DATED 11-06-2013 ISSUED BY THE
3RD RESPONDENT EXHIBIT P8 TRUE COPY OF THE LETTER DATED 21-01-
2015 ISSUED BY THE 4TH RESPONDENT TO THE 2ND RESPONDENT
EXHIBIT P9 TRUE COPY OF THE BUILDING PERMIT GRANTED BY THE 2ND
RESPONDENT

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com