

(2010) 11 KL CK 0337

In the High Court Of Kerala

Case No : Cont. case (C) . No. 1103 OF 2010 and I.A. No. 652 OF 2010

Mary Joseph,

APPELLANT

Vs

Ajit Patil, K.S. Subhash and V. Gopala Krishna Pillai

RESPONDENT

Date of Decision : 25-11-2010

Acts Referred:

Citation : (2010) 11 KL CK 0337

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : C.V. Manuvilsan, for the Appellant; M.K. Thankappan, SC, GCDA, for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—Read order dated 27.10.2010. The affidavit filed on behalf of the Respondents is taken on record. The said affidavit is sworn to by the secretary of the Corporation of Kochi. Having perused the said affidavit and the reasons stated thereon, it is seen that there is no willful neglect or default on the part of the persons who are arrayed as the Respondents. It appears that the plea is that there is an error or mistake by the earlier Town Planning Officer in the matter of issuing of a provisional prohibitory order and that the said order was later withdrawn. Recording this submission and the said affidavit, this contempt of court case is closed leaving the Petitioner with liberty to seek redressal of grievances, if any existing, through appropriate forum. It is, however, clarified that a copy of the Respondents' order will be issued to the Petitioner, on usual terms.

2. Having regard to the fact that this is a contempt of court case and since the matter has been closed, I do not find any necessity to order impleadment as sought for. I.A. is dismissed without prejudice.

ORDER

3. Having heard counsel on behalf of the third Respondent, he is discharged from these proceedings. The proceedings will continue only as against Respondents 1

and 2, as of now.

4. Personal appearance of the Respondents dispensed with.

5. I am totally dissatisfied with the counter affidavit filed by Respondents 1 and 2. Submissions are made on the basis of files. Reference is made to Sri. Babu Antony, Additional Secretary of the Corporation for having heard the concerned parties following the provisional order.

6. The provisional order is available as part of Annexure A7. It shows that the objection of the Corporation was that the builder Jain Constructions Ltd. had obtained a permit to put up a structure, ground + 19, whereas it put up two additional floors for car parking. It is this that is shown as the factual foundation for the provisional order against the said builder. It is quite surprising that the provisional order quotes Rule 24(5) of KMBR, which does not relate to the number of floors but relates to the clearance that a structure should have from the other proximate structures or boundaries of the land. While the counter affidavit proceeds to say that the provisional order was complied with and it was therefore, that the final order was not issued earlier and that as of now, provisional order has been affirmed, the Town Planning Officer of the Corporation, who is present in Court, is unable to say whether the building has been pulled down. It would not be possible to understand, from the file, as to how the defect noted in Annexure A7 as an objection to the structure, could have been cured by merely ensuring adherence to the distance rule since the objection of the Corporation was to the increase in the number of floors to provide additional car parking space, to the extent of two floors. Before proceeding further, I intend to provide Respondents 1 and 2 further opportunity to file counter affidavit touching all relevant aspects.

For better affidavit, post after three weeks.

H/o. Copy to all sides.