

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 30TH DAY OF OCTOBER 2015/8TH KARTHIKA, 1937

WP(C).No. 29995 of 2015 (Y)

PETITIONER(S):

**ST AUGUSTINE'S ANCIENT CHURCH,
ARoor, PROTECTION COUNSEL,
REPRESENTED BY ITS SECRETARY JOHN PAUL.**

**BY SRI.S.SREEKUMAR (SENIOR ADVOCATE)
ADV. SRI.P.A.AJITH KUMAR**

RESPONDENT(S) :

- 1. THE DISTRICT COLLECTOR,
ALAPPUZHA- 688 001.**
- 2. SECRETARY,
ARoor GRAMA PANCHAYATH, ALLAPPUZHA DISTRICT- 688 534.**
- 3. REV.FR.ANTONY ANCHUTHAIKKAL, PARISH PRIEST,
ST.AUGUSTINE'S CHURCH, AROOR, AROOR-688 534.**

*** ADDITIONAL R4 TO R9 IMPLEADED**

- 4. THOMAS N.A., S/O.ANTHAPPAN,
NADUVILAVEETIL HOUSE, AROOR, ALAPPUZHA DISTRICT.**
- 5. K.C.THOMAS, S/O.K.V.CHANDI,
KOZHIPARAMBIL HOUSE, AROOR, ALAPPUZHA DISTRICT.**
- 6. T.A.JOSEPH, S/O.ANTHAPPAN,
THOPPIL PARAMBIL HOUSE, AROOR,
ALAPPUZHA DISTRICT.**
- 7. JOHNSON REBERO, S/O.FRANCIS REBERO,
VELIYIL GLINDA LAND, AROOR, ALAPPUZHA DISTRICT.**
- 8. JOSEPH JOB, S/O.K.V.JOSEPH,
KANNIYATTU HOUSE, AROOR, ALAPPUZHA DISTRICT.**

WP(C).No. 29995 of 2015 (Y)

**9. T.J.RAFEL, S/O.JOSEPH,
THEEKOOTTATHIL HOUSE, AROOR,
ALAPPUZHA DISTRICT.**

*** ADDITIONAL R4 TO R9 ARE IMPEADED AS PER ORDER DATED 30.10.2015
IN I.A.NO.14854 OF 2015.**

**R1 BY GOVERNMENT PLEADER SRI.MANOJ KUNJACHAN
R2 BY ADV. SRI.J.OM PRAKASH
R3 BY SRI.ABRAHAM VAKKANAL (SENIOR ADVOCATE)
ADV. SRI.PAUL ABRAHAM VAKKANAL
R4 TO R9 BY ADV. SRI.BABU S. NAIR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 30-10-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXT.P1: TRUE COPY OF APPLICATION OF THE 3RD RESPONDENT TO THE FIRST RESPONDENT DATED 02.06.2015.**
- EXT.P2: TRUE COPY OF THE PETITION BEFORE THE ARCHEOLOGICAL DEPARTMENT DATED 02.08.2013.**
- EXT.P3: TRUE COPY OF THE ORDER OF THE FIRST RESPONDENT DATED 29.09.2015.**
- EXT.P4: TRUE COPY OF THE ORDER OF THE MUNSIFFS COURT CHERTHALA IN I.A.NO.3416/13 IN O.S.NO.669/13 DATED 28.11.2013.**
- EXT.P5: TRUE COPY OF THE ORDER OF THE HON'BLE HIGH COURT IN O.P.NO2633 OF 2014 DATED 12.11.2014.**

RESPONDENT(S)' EXHIBITS :

- EXT.R3(A): TRUE COPY OF THE REPLY UNDER RTI ACT RECEIVED FROM THE DISTRICT REGISTER DATED 05.10.2015.**
- EXT.R3(B): TRUE COPY OF THE LETTER DATED 18.04.2013.**
- EXT.R3(C): TRUE COPY OF THE REPORT OF THE ASSOCIATION OF GEO TECHNICAL AND STRUCTURAL CONSTRUCTION OF KERALA DATED 06.06.2013.**
- EXT.R3(D): TRUE COPY OF THE REPORT DATED 20.11.2014.**
- EXT.R3(E): TRUE COPY OF THE LETTER DATED 16.12.2014.**
- EXT.R3(F): TRUE COPY OF THE CERTIFICATE ISSUED BY THE CHARTED ENGINEER DATED 17.04.2015.**
- EXT.R3(G): TRUE COPY OF THE MINUTES OF THE GENERAL BODY DATED 24.05.2015.**
- EXT.R3(H): TRUE COPY OF THE LETTER DATED 30.01.2014.**
- EXT.R3(I): TRUE COPY OF THE LETTER OF THE TAHSILDAR TO THE DISTRICT COLLECTOR DATED 15.07.2015.**
- EXT.R3(J): TRUE COPY OF THE REPORT DATED 23.07.2015.**
- EXT.R3(K): TRUE COPY OF THE SOIL TEST RESULT REPORT DATED 24.08.2009.**

WP(C).No. 29995 of 2015 (Y)

**EXT.R3(L): TRUE COPY OF THE LETTER OF THE DISTRICT POLICE CHIEF
DATED 29.07.2015.**

**EXT.R3(M): TRUE COPY OF THE REPORT OF THE SUB COLLECTOR
DATED 28.07.2015.**

//TRUE COPY//

P.S.TO JUDGE.

Msd.

A.MUHAMED MUSTAQUE, J.

~~~~~

**W.P.(C).No.29995/2015**

~~~~~

Dated this the 30th Day of October, 2015

J U D G M E N T

The petitioner challenging an order of the District Collector, granting permission to the third respondent to construct a church, has approached this Court.

2. The dispute revolves around construction of a new church and demolition of an old church. There is an old church in the premises. A suit as, O.S.No.669 of 2013, was filed to protect the old church before the Munsiff's Court, Cherthala. The learned Munsiff passed an order of injunction. The third respondent proposed to undertake construction of a new church. Petitions were filed against reconstruction of the church before the District Collector. The District Collector, taking note of the injunction order passed by the learned Munsiff, allowed the Church authorities to construct a new Church. Ext.P3 is the said order. The District Collector ordered as follows:

“Since there is no restriction to construct a new church,

- : 2 : -

the church authorities can proceed with the construction strictly complying with the order of Hon'ble Munsiff Court Cherthala, but what ever construction done would be at their risk. Since any subsequent order not to demolish the old church by any constitutional authority would be binding on them and they cannot claim any relief on account of the construction proposed to be undertaken now, at that time. The Secretary Aroor Grama Panchayat should obtain an undertaking from the church authorities in this regard before issuing permission to proceed with the construction of new church."

4. The petitioner submits that the impugned order is illegal. The Church authorities cannot construct a church building without permission from the District Collector in terms of manual of guidelines to Prevent and Control Communal Disturbances and to Promote Communal Harmony, 2005 and also without obtaining permit from the local authority.

5. Heard the learned Senior Counsel S.Sreekumar appearing for the petitioner and the learned Senior Counsel Shri Abraham Vakkanal appearing for the third respondent and Shri Babu S.Nair for the additionally impleaded respondents.

6. This Court is of the view that the impugned order is the one granting permission as per the above manual. There is no necessity for any further permission from the District Collector. Further, it is to be noted

- : 3 : -

that the issue now relating to the Church is not an issue of a communal disorder to fall within the meaning of public order as contemplated under the manual. The main attempt of the petitioner appears is to retain old heritage Church. Since the proposed construction is a new construction, the third respondent is free to undertake construction based on the permission granted by the District Collector. However, the third respondent cannot undertake construction without obtaining necessary permit from the Local Authority, Learned Senior Counsel Shri Abraham Vakkanal undertook before this Court that the Church Authorities would construct Church only after obtaining permit from Local Authority. In that view of the matter, the writ petition is disposed of as follows:

- i. The respondent shall not undertake construction without obtaining permit from the Local Authority.
- ii. The third respondent need not obtain any further permission from the District Collector for construction of the new Church in the light of Ext.P3.

**Sd/-
A.MUHAMED MUSTAQUE, JUDGE**

ms