

**BEFORE THE NATIONAL GREEN TRIBUNAL ADDITIONAL BENCH,
CHENNAI**

Original Application No. 17 of 2023

Between:

Link Valley Residents Association,
Represented by its General Secretary,
Kochi.

⋮ Applicant

And:

Union of India, MOEF & CC,
Rep. by its Deputy Director General of Forests (C),
Bangalore and others

⋮ Respondents

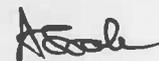
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Dated this the 2nd day of May, 2023.



(Abraham Joseph Markos)
Counsel for the 6th Respondent

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REPLY

Filed on behalf of the 6th Respondent

1. The 6th Respondent is filing this Preliminary Reply reserving its right to file detailed objections if found necessary or as and when directed by this Hon'ble Tribunal.
2. The Application is a false and frivolous action wholly without any basis. The Application is not made in good faith and is made with ulterior motives to harass this Respondent. The Construction executed by this Respondent was undertaken with all valid permits and was started more than five years and the residential apartment project is now completed. The filing of this Complaint at this late stage is mala fide. The present Application is clearly barred by limitation and without any merit. The Applicant has been forum shopping having filed similar Applications before various Authorities earlier without any success and this Application deserves to be dismissed for this reason alone. The Applicant has also arranged regular publication of

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reports in newspapers alleging that, the construction by this Respondent is creating a nuisance to them which are all untrue and clearly evidences malafide.

3. The Complaint of the Applicant is regarding alleged violation of Annexure A3 Environmental Clearance obtained by this Respondent. Annexure A3 Environmental Clearance clearly provides that instances of violation shall be taken up by the District Collector and in para 5 of the Application also the Applicant accepts that Complaints against violation of EC are to be made to the District Collector and that it has actually made such a Complaint as evidenced by Exhibit A6. Since this Complaint is being considered by the 4th Respondent who has also made inspection and conducted verification etc., pursuant thereto, it is respectfully submitted that the present application is not maintainable and this Hon'ble Tribunal has no jurisdiction to separately entertain an Application on the alleged violation of Annexure A3 Environmental Clearance.

4. The Applicant through its Secretary also filed a Complaint before the Ombudsman for Local Self Government Institutions at Trivandrum making various allegations including the present allegation regarding violation of Environmental Clearance conditions. However, since the Ombudsman passed Interim Orders beyond its jurisdiction this Respondent filed W.P.(C) No.26781 of 2021 and W.P.(C) No. 6706 of 2022. Suffice to say that the Single Judge of the Kerala High Court by Judgment dated 22.11.2022 allowed the Writ Petitions and found that the Ombudsman has no



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jurisdiction to entertain the Complaint made by the Petitioner. However, the Applicant filed Writ Appeal Nos. 1911 and 1912 of 2022 before a Division Bench of the Kerala High Court and the Kerala High Court has admitted the Writ Appeals and the matter is pending. The pendency of this Appeal again shows that the very same allegation/complaint now raised before this Tribunal is pending before the Kerala High Court.

5. Clearly the Applicant has suppressed the filing of these various Complaints while approaching this Honourable Authority and the Application ought to be dismissed for suppression of facts and for approaching this Hon'ble Authority with unclean hands. The fact that the Applicant has been filing Applications alleging the same complaint, either in its own name or in the name of its Secretary, before various authorities again shows the lack of bonafides on the part of the Applicant

6. The Application is in any event barred by limitation and the averment that the Application is within time is erroneous and denied. A mere perusal of the averments made by the Applicant in this Application and in various Forum earlier will show that the alleged complaint is existing even prior to 2017. In fact various correspondence and complaints made by residents of Link Valley to various authorities complaining of flooding show that this complaint was existing more than ten years prior to 2017 when this Respondent was not even in the picture. Clearly therefore this application is barred by limitation. The EC was received in 2017 and after this Respondent started construction the Applicant started filing complaints



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against this Respondent's Project also and that too when the same was nearing completion which again shows the lack of bonafides apart from the delay in approaching authorities.

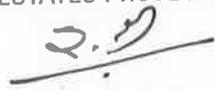
7. Without prejudice to the above it is submitted that the present Application alleging that the properties of the members of the Applicant are affected by lack of proper storm water drains in the project completed by the 6th Respondent and which has resulted in flooding of residential areas is absolutely incorrect and is denied. The Applicant does not have any cause of action against this Respondent and the cause of action claimed is false and imaginary.

8. This Respondent is a Limited Company engaged in the business of construction and has undertaken project in various parts of the country. This Respondent is undertaking construction of a residential and commercial project by name 'Prestige Hillside Gateway' in arrangement with the land owners Sri. Varghese P Ittoop and Sri Geevarghese Varghese at Kakkanad after obtaining all valid permits. This Respondent is not the owner of the land in question as alleged and instead is undertaking construction of the project in arrangement with the said land owners, who are however not seen to be made parties in the Application. The Application may therefore also be considered as bad for non-joinder of necessary parties.

9. The Chief Town Planner, Thiruvananthapuram had issued Layout Approval dated 30.09.2015, true copy of which with English Translation is produced

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herewith and marked as **Exhibit R6(a)**. Thereafter the 5th Respondent has issued Building Permit No.BA 1337/2013 dated 06.10.2015 which has thereafter been validated initially till 04.10.2021 and now till 04.10.2024. A true copy of the Building Permit dated 06.10.2015 is produced herewith and marked as **Exhibit R6(b)**. This renewal was issued after all inspections were carried out confirming that there are no violations. As is evident from the permits, the Project is executed in a residential cum mixed zone as per the approved structure plan of the Thrikkakara Municipality. Development Permit has also been issued by the 5th Respondent. No Objection Certificate has also been obtained from the Fire Department and Airport Authority and Environmental Clearance (Ext.A3) has also been obtained from the State Environment Impact Assessment Authority. In fact the issue of these permits and the carrying on the construction are all admitted.

10. The residential apartment project is complete and the Applicant has also obtained Occupancy Certificate dated 20.12.2022 with respect to the residential portion of the project, true copy of which, with English translation, is produced herewith and marked as **Exhibit R6(c)**. A perusal of the Occupancy Certificate will show that the work was inspected by the appropriate Authorities and certified as in accordance with the permit.

11. However, while the project was in progress, the Applicant and the Secretary of the Applicant interchangeably filed various Complaints and legal proceedings before various Authorities and Forum. The first of this was an Original Suit No.151/2020 filed on 05.02.2020 by the Applicant



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before the Honourable Munsiff Court, Ernakulam, true copy of which is produced herewith and marked as **Exhibit R6(d)**. In the Complaint, the Applicant has alleged, inter alia that this Respondent is attempting to encroach upon a 2 meter wide drainage said to be encircling the property of the Petitioner's members and the Applicant has also obtained an Interim Order of Injunction. This Respondent has denied the allegations and filed detailed Written Statement, a true copy of which is produced and marked **Exhibit R6(e)**. The case is still pending. A mere perusal of the Complaint will show that this was the first Complaint made with respect to drainage.

12. While so the Applicant through its Secretary filed a Complaint before the Ombudsman for Local Self Government Institutions at Trivandrum making various allegations including the present allegation made regarding violation of Environmental Clearance conditions. A true copy of the Complaint filed by the Applicant (without Annexures) is produced and marked **Exhibit P6(f)**. This Respondent filed detailed Written Statement, a true copy of which (without Annexures) is produced and marked **Exhibit P6(g)**. However, since the Ombudsman passed Interim Orders beyond its jurisdiction, (including Ann 5 order) this Respondent filed W.P.(C)No.26781 of 2021 and W.P.(C) No. 6706 of 2022. Suffice to say that the Single Judge of the Kerala High Court by Judgment dated 22.11.2022 allowed the Writ Petitions and held that the Ombudsman has no jurisdiction to entertain the Complaint made by the Petitioner. True copy of the said Judgment dated 22.11.2022 is produced herewith and marked as **Exhibit R6(h)**. In view of this Judgment Ann 5 Interim order has no



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relevance and the Applicant has filed the same malafide. Against the said Judgment, the Applicant filed WA Nos. 1911 and 1912 of 2022 before a Division Bench of the Kerala High Court. The Kerala High Court has admitted the Writ Appeals and the matter is pending before a Division Bench of the Kerala High Court. The pendency of this Appeal again shows that the very same allegation/complaint now raised before this Tribunal is pending before the Kerala High Court. For completion of record it is submitted that the Kerala High Court has also clearly held that there is no scope of any interim Order particularly in view of the fact that Occupancy Certificate has already been issued. True copy of the Interim Order dated 22.12.2022 of the Kerala High Court is produced herewith and marked as **Exhibit R6(i)**.

13. It is thereafter that the Applicant filed Ext.A6 Complaint before the 4th Respondent District Collector for the very same issue. The said Complaint is being considered by the 4th Respondent and a few meetings and inspections were also conducted by the 4th Respondent. While this is so the Applicant has now filed this Application before this Hon'ble Authority again making the same allegations, while at the same time accepting that the environmental clearance contemplates Complaint to be made to the 4th Respondent.

14. Without prejudice to the above contentions, all the averments and allegations made in the above Original Application filed by the Applicant save to the extent specifically admitted herein are denied. It is submitted



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that the averments in para 1 of the Application are not known to this Respondent and the Applicant is put to strict proof thereof. This Respondent also submits that the present Application filed in a representative capacity is not maintainable. This Respondent also understand there are different associations of residents in Link Valley who have different views on the subject matter of this Complaint. As to whether the Applicant represents all the Members of the Link Valley Residents Association is not known and the Applicant has not produced any proof with respect thereto.

15. With respect to the averments in para 2 it is submitted that this Respondent is not the owner of the land in question and instead is undertaking construction of the project in arrangement with the land owners Sri. Varghese P. Ittoop and Sri. Geevarghese, who are however not made parties in the Application. In any event, Annexure A3 Environmental Clearance was obtained after due process.

16. The averments in para 3 of the Application are not correct and are denied. The averment that the project property lie on three sides of residential colony of the Applicant is not entirely correct. This Respondent is filing herewith a Plan as **Exhibit R6(j)** which will show the actual location and lie of the project of this Respondent and the houses of the members of the Applicant and it is evident there from that only ten houses share a boundary with this Respondent's project on the eastern side. The portion of this Respondent's project lying to the western side of the Petitioners'

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property is not very wide and the major part of this Respondent's Project is on the northern side. The Petitioner's project actually comprises about 13 acres having about 123 plots and 80 residential villas and only ten houses share a boundary with this Respondent's project. In fact, the major portion of the Petitioner's Project has boundaries with other parties.

- 17. The lie of the properties of the Applicant and those surrounding them has been the same over the past more than 22 years. The Applicant's property lies in a valley and properties on the north and south of the same are more elevated. In fact, from the main road the access to the Petitioner's property is by the Palai Link Road (shown on the map) and the said main road itself is at a much more elevation than the Applicant property and so are all other neighbouring properties which share the bulk portion of the boundaries of the Applicant on the North and South sides. The present Application suggesting that water is flowing from this Repondent's project is clearly without any basis. It is also to be noted that on the Eastern Side of the Applicant's property lies the Info Park Project started by the State of Kerala. The Info Park was constructed by filling up low lying lands by the Kerala Government as a result of which it is also probably on a higher elevation than the Applicant's properties and probably this has impaired drainage of water into the Kadamprayar River. All this has nothing to do with this Respondent's project.
- 18. The natural lie of the properties would make the water flow from the higher levels to lower levels in a valley. In any case, the averment that the rain

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water is flowing from this Respondent's project to the Applicant's Property is not correct and is denied. In Annexure A3 Environmental Clearance Certificate, the Authority has dealt with this Respondent's Project area and the drains therein and not any other private party's areas or public drains. The Authority has directed that the drainage channel within the Respondent's project side must to be widened and connected to the storm water drain on the eastern side because the central portion of this Respondent's Project is also flat and can receive larger quantity of rain water. Accordingly, this Respondent submitted appropriate documents with respect to the same and the Authority accorded its clearance. In accordance with the requirements in Annexure A3, the storm water drain within this Respondent's project has been widened adequately to prevent any flooding and the drainage channels has been connected to the existing storm water drain on the eastern side. The storm water drain lying outside this Respondent's Project on the eastern side is not under the control of this Respondent and any widening of the same is to be undertaken by the public authorities. The EC could not also have directed this Respondent to do any construction on public drains. The drainage channel within this Respondent's site and situated on the boundary with the properties of the Applicant is widened to about 4 feet. At the same time the width of the drainage channel on either side of the Petitioner's property which connects to the Kadambra River is only between 2 and 3 feet. This drain is lying outside this Respondent's project and is not within the control of this Respondent. It would also appear that the Applicant and its members have



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encroached upon portions of this drain and covered the same preventing proper flow and this probably is a reason that there may have been flooding in the Petitioner's property. This Respondent has strictly complied with the directions in Annexure A3 and this has been accepted by all authorities also. This Respondent has also maximized rain water harvesting within its Project as mentioned in Annexure A3 by constructing a huge underground reservoir, thereby also reducing outflow of rainwater.

19. The allegations in para 4 of the Application is false and is denied. The allegation that this Respondent has not widened the existing drain is not correct and is denied. As already submitted this Respondent has widened the drains within its project site to about 4 feet which is adequate for dealing with any water flow. Narrower drains within or on either side the Petitioners property and on the Info Park side is a matter to be addressed by the Applicant or the local authorities. The allegation that this Respondent has not taken any steps as required under EC is false and is denied. In any event, the said directions in the EC are to safeguard the flatter area of this Respondent's Project. If rain water is not being drained from the Applicant's property the same is not on account of this Respondent and on the other hand clearly the Applicant's members are themselves to be blamed for encroaching upon the public drains resulting in those drains being less wide to carry the rain water. The photographs produced as A4 are denied and is out of context. There is no explanation as to when where and how these came to be taken. It is also important to note that since the EC was granted in 2017 the Applicant has conveniently

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produced photographs allegedly dated from 2017 whereas the lie of the property would indicate that the Applicant's property being in a valley would in any event have received similar water flows even prior. In fact residents of Link Valley has complained of this situation existing more than 10 years ago which clearly shows that this is not because of the construction made by this Respondent recently. One such complaint dated 09.08.2020 from a resident of the Applicant to the District Collector etc. points out that flooding has been happening for the last 22 years and a true copy of the said Complaint is produced as **Annexure R6(k)**. This Respondent has also assisted the Applicant's residents by repairing and maintaining roads and drains spending large sums of money and this is on record even in the meetings of the Applicant's Residents Association. The present complaint is filed only by a few residents with ulterior motives. In fact a communication signed by 20 residents of the Applicant's project points out the false case against this Respondents produced as **Annexure R6(l)**.

20. The averments in para 5 are not correct and are denied. As mentioned by the Applicant the 4th Respondent being the appropriate authority to receive complaints for violation of EC and the Applicant having already filed such a Complaint and the 4th Respondent is considering the same and has in fact made inspection and conducted verification etc it is not seen how a further Complaint can be filed before this Hon'ble Authority. Annexure A5 Interim Order of the Ombudsman has no relevance as the same was without jurisdiction and has been set aside by the Kerala High Court. The averment

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in para 6 is not entirely correct as A6 is not a mere representation but the actual Complaint filed before the 4th Respondent.

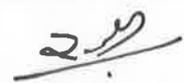
21. The allegations in para 7 are false and are denied. The allegation that authorities are supporting illegal activities of this Respondent is not correct. This Respondent has completed the project strictly in accordance with the plans and approvals received. This has been verified by the 5th Respondent and accordingly Completion Certificate has also been issued.

22. The averments in para 8 are also false and are denied. This Respondent has not violated the EC conditions and the allegations to the contrary are denied. All the concerned authorities have inspected this Respondent's project and granted approvals as well as compliance and Completion Certificates. This Respondent has constructed proper storm water drain within its property as required by the EC. The present averment that the 5th Respondent Municipality has not constructed proper drains is not a matter within the control of this Respondent. The averment that this Respondent has caused damages to nearby residents is false and is denied. No flooding or damage has been caused by this Respondent as this Respondent has completed constructions strictly in compliance with the EC. The claim for compensation is therefore without any basis and is denied.

23. The grounds raised in the application are without any basis and are denied. The allegation that proper drains have not been constructed by this Respondent in violation of EC conditions is incorrect and is denied. This



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Respondent has complied with all the EC conditions and the allegations to the contrary are denied.

24. The Applicants are not entitled to any reliefs and the reliefs claimed are without any basis. In any view of the matter the interim relief sought is clearly not maintainable. This Respondent is registered before the Real Estate Regulatory Authority (RERA) and has completed the project within the time granted by RERA and accordingly has already handed over the apartments to the allottees in compliance with agreement and RERA conditions. This has also been noted by the Kerala High Court while refusing any Interim Orders in the Writ Appeal filed by the Petitioner. It is important to note that on obtaining Completion Certificate this Respondent is obliged to hand over the apartments and this accordingly has been done to a large number of allottees who have already occupied the apartments and are the present owners.

25. The averment that the application is within the time of limitation under Section 14(3) is denied. Clearly, the Applicant itself admits that the cause of action has arisen more than six months before as is evident from the complaints made before the Ombudsman, letters sent to the District Collector etc.



For PRESTIGE ESTATES PROJECTS LTD.

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26. It is therefore humbly prayed that this Honourable Tribunal may be pleased to dismiss the Application with costs. This Respondent reserves its right to file detailed objections if found necessary or as directed by this Hon'ble tribunal and also to file additional documents

Dated this the 2nd day of May, 2023.

For Prestige Estate Projects Ltd



For PRESTIGE ESTATES PROJECTS LTD.


Authorized Signatory
THANKACHAN V. THOMAS
Authorized Signatory
6th Respondent

VERIFICATION

I, Thankachan Thomas, aged 62 years, son of V.U. Thomas, residing at Prestige Neptunes Courtyard, Marine Drive, Kochi, do hereby declare that I am the Authorized Signatory of the 6th Respondent Prestige Estate Projects Ltd., that as such I am able, competent and authorized to sign and verify this Objections on its behalf and that the facts stated in paragraphs 1 to 26 therein are true and correct to the best of my knowledge, information and belief.

For PRESTIGE ESTATES PROJECTS LTD.




Authorized Signatory
THANKACHAN V. THOMAS

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CHENNAI

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Kochi.

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And:-

Union of India, MOEF & CC,
Rep by its Deputy Director General of Forests (C),
Bangalore and others

∴ Respondents

AFFIDAVIT

I, Thankachan V. Thomas, aged 62 years, son of V.U. Thomas, residing at Prestige Neptunes Courtyard, Marine Drive, Kochi, do hereby solemnly affirm and state as follows:-

1. I am the Authorized Signatory of the 6th Respondent in the above case and as such I am conversant with the facts of the case and am able to depose to the same.
2. All the facts stated in paragraphs 1 to 26 of the Objections are true to the best of my knowledge, information and belief.

All the facts stated above are true.

Dated at Ernakulam on this the 2nd day of May 2023.



For PRESTIGE ESTATES PROJECTS LTD.

Authorised Signatory
Thankachan V. Thomas
Deponent

Solemnly affirmed and signed before me by the Deponent who is personally known to me on this the 2nd day of May, 2023 at my office at Ernakulam.

Isaac Thomas

Advocate

EXHIBIT-R(a) / 2

- 10) ചട്ടപ്രകാരം ലൈറ്റിംഗ് & വെന്റിലേഷൻ ലഭ്യമാകുന്നുണ്ടെന്നും ഹാൾ എൻട്രി കോപ്പി Stair ചട്ടപ്രകാരമാണെന്നും സെക്രട്ടറി ഉറപ്പുപറഞ്ഞു.
- 11) നിർദ്ദിഷ്ട സ്ഥലത്ത് വികസനപ്രവർത്തനങ്ങൾ/ നിർമ്മാണപ്രവർത്തനങ്ങൾ തടയുന്നതിന് ബാധകമായിട്ട് 2008 ലെ കേരള നഗരവ്യവസ്ഥാപനം - തണ്ണീർത്തട നിർമ്മാണവും അനുബന്ധ ഗവൺമെന്റ് സർക്കുലറുകൾക്കും/ KLU Order 1967 ന് അനുസൃതമാണെന്ന് സെക്രട്ടറി പരിശോധിച്ച് ഉറപ്പു വരുത്തേണ്ടതാണ്.
- 12) പ്രസിദ്ധ്യാലയം നഗരപഞ്ചായത്ത്, നഗരപഞ്ചായത്തിന്റെ പ്രവർത്തനം മൂലമോ പരിസരവാസികൾക്ക് ബുദ്ധിമുട്ട് ഉണ്ടാകുന്നില്ലെന്ന് സെക്രട്ടറി ഉറപ്പുപറഞ്ഞു.
- 13) കെ.എം.ബി.ആർ 39 ന്നും, അനുബന്ധശേഷികൾക്കും, നിലവിലുള്ള ബാധകമായ മറ്റു നിബന്ധനകൾക്കും നിർദ്ദിഷ്ട നിർമ്മാണം ഷാർട്ട്കോട്ട് ചെയ്യാൻ സെക്രട്ടറി ഉറപ്പു വരുത്തേണം.
- 14) ബന്ധപ്പെട്ട വകുപ്പുകളിൽ നിന്നും അംഗീകാരമോ, നിരസനപത്രമോ ആവശ്യമുള്ള പക്ഷം ആവശ്യ ലഭിച്ചതിനു ശേഷം മാത്രമേ സെക്രട്ടറി നിർമ്മാണാതൃക്കമ്പിക്ക് പരിഗണനിക്കാവൂ.
- 15) നിർദ്ദിഷ്ട പ്ലാട്ടിലെ എല്ലാ കെട്ടിടങ്ങളിലെയും ചട്ടം 31(1) പ്രകാരമുള്ള access ലഭ്യമാണെന്നും, ഇന്റേണൽ റോഡുകളിൽ നിന്നും എല്ലാ കെട്ടിടത്തിലേക്ക് ചട്ടം 33 (5) പ്രകാരമുള്ള തുറന്നുറയ്ക്കുന്ന സരലം ലഭ്യമാണെന്നും സെക്രട്ടറി ഉറപ്പുപറയുന്നതിനു ശേഷമേ പെർമിറ്റ് അനുവദിക്കാവൂ.
- 16) നിർദ്ദിഷ്ട നിർമ്മാണങ്ങൾക്ക് ചട്ടം 48 പ്രകാരമുള്ള ഫിറ്റ്റ്റ്, 55 (12) പ്രകാരമുള്ള സാമ്പിളുകൾ കെട്ടിടലിറ്റിംഗ്, 109 (8) പ്രകാരമുള്ള അമ്പലക്കുളിപ്പാലങ്ങൾ സംവിധാനങ്ങൾ എൻഡ് ലഭ്യമാക്കിയിട്ടുണ്ടെന്ന് ഉറപ്പുപറഞ്ഞു.
- 17) നിർദ്ദിഷ്ട പ്ലാട്ടിന് പുറത്തു നിന്നുള്ള 3 മീറ്റർ വീതിയുള്ള കെട്ടിട റോഡും, 10 മീറ്റർ വീതിയുള്ള ഇന്റേണൽ റോഡുമായി ബന്ധിപ്പിച്ചിട്ടുണ്ട് എന്ന് ഉറപ്പുപറഞ്ഞു.
- 18) അപേക്ഷകന്റെ പ്ലാട്ടിൽ ഉൾപ്പെട്ട വാസ്തുവാണ് കോക്കനാട് Info Park റോഡ് വികസനത്തിന് സൗകര്യം പരിമിതികളുള്ളതായി അതിന്റെ വിവരങ്ങൾ സെക്രട്ടറി പരിശോധിച്ചു. അതിൽ പുറംതൊഴിൽ മൂലം ഉൾപ്പെട്ടിട്ടില്ല എന്ന് ഉറപ്പു വരുത്തുകയും, ആവശ്യമെങ്കിൽ ബന്ധപ്പെട്ട വകുപ്പിന്റെ എൻ.ജി.സി ലഭ്യമാക്കിയ ശേഷം മാത്രം ടി റോഡ് കെ.ടി.സി ആയി ഉപയോഗിക്കാവുന്നതാണ്.

{അംഗീകരിച്ച സെറ്റ് പ്ലാൻ നമ്പർ 396/18}



കെ. മേനോൻ
ചീഫ് ടൗൺ പ്ലാനർ

സെക്രട്ടറി, തൃക്കാക്കര നഗരസഭ, എറണാകുളം
(ഐ സെറ്റ് പ്ലാൻ ഉള്ളടക്കം ചേർന്നു.)

- പകർപ്പ് 1. സിവിൽ ടൗൺ പ്ലാനർ, എറണാകുളം
- 2. മേനോൻ ഇട്ടപ്പി
- 3. പാലാർ കളപ്പുരയിൽ വീട്, കോക്കനാട്, തൃക്കാക്കര, എറണാകുളം
- 4. വെബ്സൈറ്റ്
- 5. കൗൺ ഫറാൻ
- 6. അധികം

5 20.02.15

This is the true copy of document marked Exhibit P 1 referred to in the writ petition.

99' 95'

ADVOCATE

True Translation of EXT. P 1

Proceedings of the Chief Town Planner

Thiruvananthapuram

SUB: Approval Order of Lay out by Urban and Rural Planning Division-Office of Chief Town Planner, Thiruvananthapuram for the construction of Residential cum Commercial complex situated in Kakkanad Village, Thrikkakara Municipality, Ernakulam District

Reference: 1) Letter No. D/2723/13/KDis dated 11/8/14, Letter No. D/380/2015 /KDis. dated 29/04/2015, Letter No. D/1488/15 / KDis dated 19/08/2015 of Senior Town Planner, Ernakulam

2) Letters No. TP1 / 1387/13 dated 20/12/13, 21/06/14, BA/1337/2013 dated 18/02/15, TP1/1337/2013 dated 24/06/2015, Letters No. TP: / BA / 1337/2013 dated 27/07/2015 of Thrikkakara Municipality

3) Letter No. C1 / 7965 / 2014KDis dated 16/10/14 and 19/06/2015 from the Chief Town Planner.

Order No. C1/8005/15/D Dis

Date: 30/09/15

Approval of layout of the buildings for the construction of Residential-cum-Commercial Complex having Built up Area of 209264.09 m³ at 5.05 hectares included in re-survey no. 671/1, 674/1 and 675/4 in Kakkanad Village under Thrikkakara Municipality, Ernakulam, is allowed to be done as per K M B R, 99 and subject to the following terms and conditions .

- 1) The Secretary shall inspect the documents relating to the ownership of the land, survey number, area, extent, boundaries, dimensions, measurements, ownership, construction permit and government land as per Rule 11 (1) of KMBR, 99.
- 2) NOC from Fire & Rescue Services Department and other appropriate departments must be obtained.
- 3) The safety provisions of Chapter XVII of the KMBR must be complied with.
- 4) The Secretary should ensure that arrangements are made for the treatment of solid-liquid wastes.

- 5) The Secretary shall ensure that the details as per the site plan are available at the construction site.
- 6) The Secretary of Panchayath shall inspect and ensure that there is no environmental pollution
- 7) If cutting and filling is required, NOC must be obtained from the concerned department
- 8) Ensure that if parking is provided in accordance with the rules, such parking is having convenient space for turning the vehicle and that it is not used for any other purpose in the future.
- 9) The Secretary should ensure that facilities for the physically challenged persons are provided as per the rules.
- 10) The Secretary shall ensure that the lighting & ventilation are provided in accordance with the rules and that the stair for fire escape is in accordance with the rules.
- 11) The Secretary shall check and ensure that the development works/construction works in the designated area is in accordance with Kerala Paddy land and Wetlands Act, 2018 and the relevant Government Circulars / KLU order 1967, if applicable.
- 12) The Secretary shall ensure that the residents are not inconvenienced by the institution or the activities of the institution.
- 13) The Secretary shall ensure that the proposed construction is fully compliant with K M B R, 99 and supplementary amendments and all other applicable laws.
- 14) The Secretary shall consider and issue the construction permit only after ensuring the approval or no-objection from the concerned department, if any.
- 15) The permit shall be issued only after the Secretary has confirmed that access stipulated under Rule 33 (1) is available to all the buildings in the proposed plot and open space as per Rule 33 (5) is available to all the buildings from the internal roads.
- 16) Ensure that Lifts under Rule 48, Sanitation Facilities as per Rule 55 (12) and rainwater harvesting systems as per Rule 109 (B) are provided for in the proposed constructions.
- 17) Ensure that two roads having 5 m width outside the plot and internal road having 10 m width are connected to each other.

18) If the property included in the applicant's plot has been surrendered for Kakkanad Info Park Road development, the Secretary shall check its details and ensure that it does not include puramboke land and, if required, this Road can be used as an access only after obtaining the NOC of the concerned department.

[Approved Site Plan No. 336/15]

K. Ramanan
Chief Town Planner

Secretary, Thrikkakara Municipality, Ernakulam
(One Site plan is enclosed)

Copy to: 1. Senior Town Planner, Ernakulam

2. Mathayi Ittoop,

Palar Kalappurayil Veedu, Kakkanad, Thrikkakara, Ernakulam

3. Website 4. Back-up File 5. Extra

True English Translation of E.O.P.

adw

TRUE COPY

Real

ADVOCATE

RENEWED PERMIT
 Permit No. BA 1337/13
 B.A. No. 1337/13
 Date of Renewal: 5/10/21
 Valid up to: 4/10/24
 Secretary
 Thrikkakara Municipality

MUNICIPAL COUNCIL, THRIKKAKARA

APPENDIX C

[See Rule 11(3)]

BUILDING PERMIT

No. BA 1337/2013 Date 6/10/15
 Secretary B. Varghese
 Ref. Application dated 16/12/13 from Sri/Smt Varghese P. Ittoop, Pres. etc.
Projects Ltd. No 32 Bay Parade Mall, Marina Drive
Cochin 31.



Permission is granted for the erection / re-erection / addition / alteration / demolition of building / hut / digging of well / Residential Com. Commercial (specify the construction) in building No. 671/1, 674/1, 675/A or near the building No. 671/1, 674/1, 675/A in Survey No. 671/1, 674/1, 675/A Taluk Kakkanadu (Village) District Kanayannur (Taluk) for Eonakulam (Pinf.) (specify the occupancy) purpose, subject to the conditions stated below:

- (1) IF ANY CONDITION IS ATTACHED TO THE PERMIT THE PERMIT WILL BE VALID ONLY IF NECESSARY STEPS WILL BE TAKEN TO COMPLY WITH THE SAME.
- (2) PROVIDE RAIN WATER HARVESTING TANKS & USE AS A STORAGE UNIT.
- (3) BUILDING CONSTRUCTION SHOULD BE UNDER PROVISIONS OF KMBR 1994.

Permit fees Rs. 16,70,000/-
 PE No. 01/11502119829
 dt. 5/10/15

Plinth area of the building is as follows:-

Basement	Block 1 (Retail & Assembly)	62872.36 m ²
Ground Floor	Block 2	17037.53 m ²
1st Floor	Block 3	20252.12 m ²
	Block 4	14902.69 m ²
	Block 5	12700.97 m ²
	Block 6	2785.06 m ²
	Block 7	12038.36 m ²
	8'6" x 14' 22' x 25'	7011.90 m ²
	15' x 21'	2920.26 m ²
	8'6" x 14' 22' x 25' (Car)	56760.09 m ²
	Security cahi	43.75 m ²
		<u>209264.09 m²</u>



SECRETARY
THRIKKAKARA MUNICIPALITY

[Signature]
 Date 6/10/15
 Signature and name of Secretary
 Municipal Engineer
 Municipal Office

- Notes:-
- (1) The development permit or building permit unless otherwise provided under these rules, shall be valid for three years from the date of issue and may be renewed twice each for three years.
 - (2) The application for renewal shall be submitted to the Secretary in white paper, typed or written in ink affixed with necessary court fee stamp and accompanied by copy of permit and approved plan.
 - (3) The fee for renewal of permit shall be fifty percent of the prevailing permit fee.
 - (4) The permits issued under the Kerala Building Rules, 1984 and remaining valid at the commencement of these rules shall be deemed to have been issued under these rules and may be renewed for like period and on like terms as a permit issued under these rules.

TRUE COPY

[Signature]

ADVOCATE

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THRIKKAKARA MUNICIPALITY

APENDIX F 2 (See Rule 17(5) (F), 20 (3) AND 88 (2)

PARTIAL OCCUPANCY CERTIFICATE OR USE CERTIFICATE

No: BA-1337/2013

Dated: 20.12.2022

Ref: Partial Completion certificate submitted by the VARGHESE P ITTOOP AND GEE VARGHESE, PRESTIGE ESTATES PROJECTS LTD, NO.801, PRESTIGE TMS SQUARE, PADIVATTOM, EDAPPALLY, PIN- 682024 dated 08.11.2022

Certified that the construction of building work under the Permit No: BA-1337/2013 dated 06.10.2015 issued to VARGHESE P ITTOOP AND GEE VARGHESE and supervised by Abhay Itty Zachariah (Reg.No.CA- 2010/47015) has been inspected by me and that the work executed is in accordance with the permit and the building is now fit for occupation/ use.

Date of Completion : 02.11.2022

Parking Levels	-	47792.85 m ²
Block 2 (Tower 1)	-	17795.98 m ²
Block 3 (Tower 2 & 3)	-	20799.28 m ²
Block 4 (Tower 4)	-	14946.85 m ²
Block 5 (Tower 5)	-	12800.97 m ²
Block 7 (Tower 6)	-	12193.28 m ²
Block 6 (Recreation Centre)	-	2268.28 m ²
Security cabins	-	28.00 m ²
Lift Area (Towers + Club)	-	<u>115.60 m²</u>
Total	-	<u>128741.10 m²</u>

- ടി നിർമ്മാണവുമായി ബന്ധപ്പെട്ട് ബഹു കോടതികൾ, ബഹു മേഖലികാരികൾ പുറപ്പെടുവിക്കുന്ന ഉത്തരവുകൾ കെട്ടിട ഉടമസ്ഥർ/ ബിൽഡർ എന്നിവർ പാലിക്കേണ്ടതാണ്.
- ടി നിർമ്മാണത്തിന്റെ പൂർത്തിയാക്കലിന് മുൻപായി SEIAA യുടെ നിർദ്ദേശത്തിന് അനുസരിച്ച് CSR ഫണ്ട് ഉപയോഗിച്ച് വെള്ളക്കെട്ട് ഒഴിവാക്കേണ്ട പ്രവൃത്തികൾ പൂർത്തിയാക്കേണ്ടതാണ്.
മേൽ നിബന്ധനകൾക്ക് വിധേയമായി പാർഷ്യൽ കെയ്റ്റപ്പൻസി സർട്ടിഫിക്കറ്റ് അനുവദിക്കുന്നു.

Place: Thrikkakara
Date: 20.12.2022



HARIDASAN T.K
 Assistant Executive Engineer
 (Secretary In Charge)
 Thrikkakara Municipality
 അസി. എക്സി. എൻജിനീയർ
L. I.D & E.W
 തൃക്കാക്കര നഗരസഭ

THRIKKAKARA MUNICIPALITY

APENDIX F 2 (See Rule 17(5) (F), 20 (3) AND 88 (2)

PARTIAL OCCUPANCY CERTIFICATE OR USE CERTIFICATE

No: BA-1337/2013

Dated: 20.12.2022

Ref: Partial Completion certificate submitted by the VARGHESE P ITTOOP AND GEE VARGHESE, PRESTIGE ESTATES PROJECTS LTD, NO.801, PRESTIGE TMS SQUARE, PADIVATTOM, EDAPPALLY, PIN- 682024 dated 08.11.2022

Certified that the construction of building work under the Permit No: BA-1337/2013 dated 06.10.2015 issued to VARGHESE P ITTOOP AND GEE VARGHESE and supervised by Abhay Itty Zachariah (Reg.No.CA- 2010/47015) has been inspected by me and that the work executed is in accordance with the permit and the building is now fit for occupation/ use.

Date of Completion	:	02.11.2022
Parking Levels	-	47792.85 m2
Block 2 (Tower 1)	-	17795.98 m2
Block 3 (Tower 2 & 3)	-	20799.28 m2
Block 4 (Tower 4)	-	14946.85 m2
Block 5 (Tower 5)	-	12800.97 m2
Block 7 (Tower 6)	-	12193.28 m2
Block 6 (Recreation Centre)	-	2268.28 m2
Security cabins	-	28.00 m2
Lift Area (Towers + Club)	-	<u>115.60 m2</u>
Total	-	<u>128741.10 m2</u>

- Orders issued by the hon'ble courts and hon'ble higher authorities in respect of the said construction shall be complied with by the building owner/builder
- Before completion of the said construction, steps to prevent flooding shall be completed as directed by the SEIAA, by using CSR funds.

The Partial Occupancy Certificate is issued subject to the above conditions.

Place: Thrikkakara
Date: 20.12.2022



HARIDASAN T.K
 Assltant Executive Engineer
 (Secretary In Charge)
 Thrikkakara Municipality
 അസി. എക്സി. എൻജിനീയർ
 L.I.D & E.W
 തൃക്കാക്കര നഗരസഭ

TRUE COPY

ADVOCATE

BEFORE THE HON'BLE MUNSIFF'S COURT: ERNAKULAM

O. S. No. 151 of 2020

Link Valley Residents' Association and others : Plaintiffs

Vs.

Prestige Estate Projects Ltd. and another : Defendants

PLAINT SUBMITTED UNDER SECTION 26 AND ORDER 7

RULE 1 OF THE CODE OF CIVIL PROCEDURE

Full name and address of the Plaintiffs:

1. Link Valley Residents' Association, having registered office at Link Valley, Kusumagiri P.O., Kakkanad, Kakkanad Village, Kanayannur Taluk, Ernakulam, PIN – 682 030 represented by it's General Secretary presently Mr. Binod Hariharan , aged 49 years, S/o. M.R. Hariharan Nair, residing at 57, Link Valley, Kakkanad.
2. Mrs. Sreena Pradeep, aged 43 years, W/o. E.R. Pradeep, residing at 15, Link Valley, Kusumagiri P.O., Kakkanad, Kakkanad Village, Kanayannur Taluk, Ernakulam, PIN – 682 030.
3. Mr. P. N. Surendran, aged 72 years, S/o. Velayudhan, residing at 10, Link Valley, Kusumagiri P.O., Kakkanad, Kakkanad Village, Kanayannur Taluk, Ernakulam, PIN – 682 030.
4. Mr. M. D. J. Brinner, aged 53 years, S/o. M.O. Devassy, residing at 8, Link Valley, Kusumagiri P.O., Kakkanad, Kakkanad Village, Kanayannur Taluk, Ernakulam, PIN – 682 030.

Full name and address of the Defendants:

1. Prestige Estate Projects Ltd., 8th Floor, TMS Square, Opposite Oberon Mall, Anjumana, Edappally P.O., Edappally Village, Kanayannur Taluk, Ernakulam, PIN – 682 024 represented by it's Sr. Vice President Mr. Thankachan Thomas V.
 2. Mr. Varghese P. Ittoop, aged 60 years (approx), S/o. Late Ittoop, Palal Kalapurayil House, Kusumagiri P.O., Kakkanad Village, Kanayannur Taluk, Ernakulam, PIN – 682 030.
- A]** Address for service of summons etc. to the plaintiffs is that of their counsel M/s. PETER & KARUNAKAR, Lawyers, Alfa Towers, I.S. Press Road, Kochi- 682 018.
- B]** Address for service of summons etc. to the defendants are as shown above or their counsel if appointed.

**SUIT FOR PERMANENT PROHIBITORY INJUNCTION, MANDATORY
INJUNCTION AND DAMAGES**

1] The **1st plaintiff** is an association of owners and occupants of a residential housing colony namely, "Link Valley", at Kakkanad. It is registered under the provisions of Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 at Ernakulam having registration No. ER 405/2005. It was formed to represent the residents of 'Link Valley' with an objective to protect their interests and to maintain and improve the infrastructure, common properties, amenities and facilities of 'Link Valley'. The suit is filed by the 1st plaintiff representing its 120 members. It resolved to file

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this suit. And General Secretary of Association is the competent person to represent the Association and he is authorized to file this suit.

2] **2nd, 3rd and 4th Plaintiffs** are residents of 'Link Valley' residential housing colony, and owners of independent villas within its limits and they are members of 1st Plaintiff. The 2nd Plaintiff is the owner in possession of an extent of 1.16 Ares in Re-Survey No.674/1 & 674/2 of Kakkanad Village and a two storied residential building therein having Thrikkakara Municipality No. IX/639Z19 by virtue of Sale deed No. 1419 of 2003 of the Sub Registry Office, Thrikkakara, dated 10.07.2003. The 3rd Plaintiff is the owner in possession of an extent of 1.82Ares in Survey No. 674/2 of Kakkanad Village and a two-storied residential building therein having Thrikkakara Municipality No. IX/1863 by virtue of Sale deed No. 931 of 1999 of the Sub Registry Office, Thrikkakara, dated 01.07.1999. The 4th Plaintiff is the owner in possession of an extent of 2.52 Ares in Survey No. 674/1 and 674/2 of Kakkanad Village and a three-storied residential building therein having Thrikkakara Municipality Nos.9/639-T, 9/639-T1 and 9/639-T2 by virtue of Sale deed No.1429 of 1999 of the Sub Registry Office, Thrikkakara, dated 30.09.1999. The 2nd, 3rd & 4th plaintiffs hold both individual, exclusive rights, separate and independent cause of action and also do share their common rights and grievances jointly with 1st Plaintiff as members of 1st Plaintiff against the Defendants.

3] **1st and 2nd Defendants** are carrying out development and construction of a major residential cum commercial project in the properties adjacent to Plaintiffs neighboring western boundary. The 1st defendant is a major real estate developer and construction company. The 2nd defendant is the owner of property having an approximate extent of 50.514 Ares In Re-Survey No.671 , 674 and 675

in Block no. 09 of Kakkanad Village which is being developed and multi storied high rise residential apartment buildings, commercial shopping mall, public assembly halls are being constructed therein by the 1st defendant. Defendants got the Building and development permit No.BA1337/2013 dated 06.10.2015 from Thrikkakara Municipality for the project in the said property. The project namely "Prestige Hillside Gateway-Kakkanadu" proposed to have 602 apartments and a shopping Mall in 12 Number of buildings spread over 12.5 Acres extent of land.

4] **Plaint A schedule property** is owned and possessed by 1st plaintiff and the residents of Link Valley residential housing colony who are the members of 1st plaintiff. It has an extent of 12.5 Acres In Re-Survey No.674/1 & 2, 681/2, 682 In Block 9, of Kakkanad Village. It comprises the Roads, play grounds, community house, drainages, common areas, amenities owned , possessed and maintained by the 1st Plaintiff and about 120 private properties/ plots of individual owners. Private properties of 2nd, 3rd and 4th plaintiffs are also part and parcel of plaint A schedule property.

5] **Plaint B schedule property** is a 2 meter width – 2 meter depth drainage encircling the plaint A schedule property on its western side having an approximate length of 250 meters. The said drainage separates the property/ project site of defendants with the plaint A schedule property. The drainage was in existence from the time immemorial. It is an artery line for the smooth draining of excess surface/ rain/flood water from the high terrain large extent of land used as rubber plantation now turned into the present work site of 1st defendant which was owned by the 2nd defendant and family. There are many other drainages/ canals/ thodu connecting to and from the B Schedule drainage

with public drainages and canal which leads to Edachira canal on Eastern side of Infopark and further to Kadabrayar River.

6] **Plaint C schedule property** is a private road having an approximate average width of 8 meters and length of 150 meters in north- south direction situated within the A schedule property . The said road is originally developed by the promoter and developer for the exclusive use of the residents in the Link Valley residential housing colony. 1st Plaintiff had fixed and erected an iron gate and control bar at both opening/ending entry/ exit points of C schedule property at its northern and southern end. At both end points of C schedule road there are security cabins manned by security personnel appointed and salaried by 1st Plaintiff. C schedule road commences and ends at B Schedule drainage and crossed to public roads on both northern and southern ends of A schedule property. Northern end is leading to Kakkanad-Edachira-InfoPark Road situated on northern side. Southern end is connected to Municipal public roads.

7] Link Valley residential colony in **Plaint A schedule property** is a closed and secured multi property residential area developed and constructed by a builder group 'Link India Properties Pvt. Ltd.' in the property owned by the 2nd defendant and his family members. The said builder group and the 2nd defendant jointly marketed and sold individual residential plots, villas and properties to various buyers promising that this will be a gated community protected from external trespasses and the main Internal road will be secured by the gates and security personnel. In the marketing and sale brochure of "Link Valley independent villa project" promoted by "Link India Properties Pvt. Ltd." and the 2nd defendant it was promised that there will be a 8 meter wide tarred main road and modern drainage system all along the road which is connected to natural

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drainage away from the property. And it was also presented to Plaintiffs that there will be a compound wall enclosing the Link Valley residential housing colony and there will be a round the clock security service. And it was also represented that all infrastructure development in the said property are already in place and roads and drainages are designed and maintained to ensure high level of hygiene and cleanliness. About 700 persons reside and live now in the Plaintiff A schedule property. All buyers and occupants of Plaintiff A schedule property are enjoying the said features, facilities, amenities, easements including the said rights in Plaintiff B and C schedule properties.

8] There are separate agreements for infrastructure entered into between the "Link India Properties" and the buyers. The Link India Properties had the authority to represent the 2nd defendant. Plaintiff B and C schedule properties were in existence at the time of sale of villas and properties in plaintiff A schedule property to various buyers including 2nd, 3rd and 4th plaintiffs and other members of 1st plaintiff association by the 2nd defendant, his family and the builder promoter "Link India properties Pvt. Ltd." By virtue of an agreement made and executed on the 1st day of May, 2007 between Link India Properties Pvt. Ltd. and the 1st plaintiff association the common areas and facilities comprising roads including plaintiff A schedule property was handed over to the 1st plaintiff. By virtue of a gift deed registered as 4869 of 2007 of Book No.1 Volume No.651 pages 349 to 353 dated 26th November 2007 executed in favour of the 1st plaintiff, "Link India Properties" assigned 0.09 Ares of land which actually is a part of plaintiff C schedule property road intended for common use for the usage of Link Valley Colony.

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9] It is humbly submitted that the site of construction namely " Prestige Hillside Gateway- Kakkanadu" of Defendants was originally a large extent of Rubber plantation in higher terrain compared to land of the Plaintiffs. The said project site is in re-survey No.671/1, 675/4, 294/2, 297/3, 297/4, 297/5, 300/1E 9, 10, 19 of Kakkanad Village. It is further submitted that for which the 2nd defendant had availed the benefit of exemption under Section 81 of the Land Reforms Act and Kerala Land Ceiling Act since the land held by him were rubber plantation. Now changing the nature and terrain of the same into commercial is illegal.

10] Now it has turned out that the defendants, with an intention to make unlawful gain and enrichment by cheating, misrepresenting, misleading, suppressing material facts about the facilities of new project, had approached Municipal and Revenue authorities and managed to avail a permit for development and construction of large extent of land adjacent to A Schedule property.

11] There are two main suppression of facts by the defendants. One is regarding the nature of ownership and possession of Plaintiff B schedule property which is a drainage used by public and Plaintiffs. It cannot be a part of the property and project site of construction namely "Prestige Hillside Gateway- Kakkanadu" of Defendants. The Plaintiffs were frequently cleaning and maintaining the drainage with their own efforts and costs as it is very essential for the effective usage and enjoyment of A Schedule property. Now the said drainage is being altered and covered by concrete slabs by the 1st defendant. And no statutory distance between the said drainage is maintained in the project to multi storied buildings and other constructions made in the works site of 1st

32.

defendant. The compound of Plaintiffs is encircled by the Plaintiff B schedule drainage which was in existence when the properties were sold by the 2nd Defendant to Link India Properties Group and Plaintiffs. Link India Properties had built the drainage for its smooth and effective functioning and enjoyment of Plaintiff A schedule property.

12] A property which is being used for the benefit of public and by the public even if it is admittedly owned by a private person, the laws laid down by the legislature and precedents of honourable courts categorically declare it as a public drainage. This Plaintiff B schedule drainage is being used as a drainage by more than 120 families and several neighboring people, on its western side from time immemorial. Thrikkakara Municipality had provided drainage on both sides in continuation of Plaintiff B schedule drainage and the wish of the people is being carried out by the Thrikkakara Municipality by using public funds. Thrikkakara Municipality also had carried out improvements and maintenance of the Plaintiff B schedule drainage to protect the public interest. The slabs built and placed recently by the Defendants covering the Plaintiff B schedule drainage has to be removed by the defendants for ensuring the smooth flow of water and periodical maintenance of the drainage. The width of the Plaintiff B schedule drainage seems to be considerably reduced and the flow route was altered for the sole convenience of the defendants. At present polluted and contaminated waste water being pumped out by the defendants through this Plaintiff B schedule drainage which is causing much health problems to residents in Plaintiff A schedule property. Plaintiffs are very much aggrieved and suffering due to the highhanded actions of the 1st Defendant. Defendants has no right to use the Plaintiff B schedule drainage for draining sewage or polluted and contaminated waste water.

13] The 2nd suppression is regarding the Plaint C schedule property which is a private road exclusively used by Plaintiffs and ownership and possession of the same belonging only to the 1st plaintiff. But surprisingly, in the project application submitted before various authority by the defendants, the Plaintiffs now found that it is shown as public road. It is false and misleading. They have no right to do so. They are fully aware that the said private road cannot be used or classified as a public road and the representation to the effect that the said road can be a part of the project designed by the 1st defendant is misrepresentation amounting to fraud on government, municipality, buyers and Plaintiffs. Plaintiffs are in absolute and exclusive possession of C schedule property. Defendants never objected to the said usage, restriction and control over it by the 1st Plaintiff. No right in the C schedule property was ever exercised or used or enjoyed by the defendants. Even if 2nd Defendant has any right to usage of pathway for ingress and egress to his private residential property situated outside on the eastern boundary of the Plaint A schedule property, it is only a personal right joining with the Plaintiffs similar to 2nd, 3rd & 4th Plaintiffs, and moreover that is without any right of alienation. Hence, neither 1st nor 2nd defendant have right to assign it or to allow others to use that Plaint C schedule road for any purpose or even for ingress and egress.

14] The 1st defendant on 2nd January, 2020 has committed waste and destroyed a portion of Plaint B schedule drainage on the western side of the A schedule property. The intention of the defendant, it is understood, is to make use the B schedule property so as to benefit their project commercially. Plaintiffs went to their project office and objected to this misuse. They are planning to cover and use the B schedule property fully and exclusively. The defendant has no right to do so. Hence the slabs already placed to be removed by an order of

P/(b) 27

Mandatory Injunction. Any further actions from the part of the Defendants may be prohibited by an order of Prohibitory Injunction.

15] The defendants has no right to permit anybody else to use or pass through plaint C schedule property. On seeing the permit plan and application of 1st Defendant, Plaintiffs went to their project office and objected. The defendant then threatened the plaintiff that their construction vehicles will be taken through the C schedule property. 1st Defendant further threatened that they will take heavy vehicles through C schedule property so as to destroy the safety and security of the residential colony. 1st Defendant further threatened that they will remove and destroy the iron gate fixed and erected by the 1st Plaintiff at the both opening entry point of C schedule property at its northern and southern end and allow strangers to come in to C schedule property and spoil the peaceful life of the Plaintiffs.

16] 1st Defendant further threatened that they will use B and C schedule properties, immediately . If they execute the threat the plaintiffs will be put to irreparable injury loss and harm. Plaintiffs are law abiding citizen. The plaintiffs are not, and will not be able to withstand the threat of defendants. Plaintiffs approached Municipality and Police seeking help, but received no fruitful results. The defendants are highly influential and they has got the support of the local Politicians. The defendants are very affluent that they may influence the local authorities and police also. Committing any act in above nature will be detrimental to the peaceful life and enjoyment of the plaint A schedule property. In the above circumstances, the plaintiffs are unable to resist the illegal acts of the defendants without the assistance of this Hon'ble Court.

17] The 1st plaintiff has constructed the roads and drainage spending money from their members. The plaintiff had incurred an expense of Rs.5,00,000/- for construction of the roads and drainage in the plaint schedule property, in the year 2005. But due to closure and alteration of Plaintiff B schedule drainage the properties of 1st plaintiff was flooded in the monsoon of 2019 and internal roads and drainage lines were damaged. Flood water came through breaching boundaries and drainage system only due to the illegal actions of the defendants by altering and blocking of Plaintiff B schedule drainage. The plaintiffs have suffered damages to the tune of Rs. 2,00,000/- (Rupees Two lakhs only) because of destruction of the roads and drainage. Hence, the plaintiff is entitled for the damages sustained and has rights to claim the same by due process of law. The Defendants are liable to compensate the plaintiffs for the said loss of Rs. 2,00,000/- (Rupees Two lakhs only).

18] The plaintiff B schedule property is in the continuous, uninterrupted usage and enjoyment of the plaintiffs. Nobody else has any right to alter, change or cover the plaintiff B schedule property drainage restricting or regulating flow of water through plaintiff B schedule drainage. In the above circumstances, it has become highly necessary that the defendants and men under them be restrained by an order of permanent prohibitory injunction from altering, changing or covering the plaintiff B schedule property and destroying it or committing any waste therein.

19] The plaintiff C schedule property is in the absolute and exclusive possession, enjoyment and ownership of the plaintiffs and it is in the continuous, uninterrupted usage and enjoyment of the plaintiffs. Nobody else has any right over the property or has any right to trespass into the plaintiff C schedule

property. In the above circumstances, it has become highly necessary that the defendants and men under them be restrained by an order of permanent prohibitory injunction from entering into the plaint C schedule property and destroying it or committing any waste therein.

20] The cause of action for suit arose on 2nd January, 2020 has destroyed a portion of Plaint B schedule drainage on the western side of the A schedule property and also when they threatened the plaintiffs that they will trespass through Plaint C schedule road and on subsequent days in Kakkanadu village, Kanayannoor Taluk, a place within the jurisdiction of this Hon'ble Court and this Hon'ble Court is having jurisdiction to try the suit.

21] Valuation for the purpose of court fee and jurisdiction is shown under the heading Valuation.

It is therefore humbly prayed that this Hon'ble Court may be pleased to pass a decree in favour of the plaintiffs and against the defendants granting the following:

RELIEF

- a) pass an order of permanent prohibitory injunction restraining the defendants, their men or agents from altering, changing or covering the plaint B schedule property, committing any waste or doing any construction therein or from restricting or regulating flow of water through plaint B schedule drainage;
- b) pass an order of permanent prohibitory injunction restraining the defendants, from permitting any strangers to pass through, or taking or plying vehicles through plaint C schedule property;

- c) pass an order of permanent prohibitory Injunction restraining the defendants, their men or agents from committing any act which may be detrimental to their peaceful life and enjoyment of the plaint A schedule property;
- d) pass an order of mandatory injunction to remove the slabs built and placed by the Defendants covering the Plaint B schedule drainage and to restore the original lie and nature of Plaint B schedule drainage to ensure smooth flow of water and periodical maintenance of the drainage;
- e) allow the plaintiff to realize a sum of Rs.2,00,000/- (Two Lakhs) with interest at the rate of 9% per annum from the date of suit till realization from the 1st defendant towards damage caused due to illegal action by the 1st defendant;
- f) allow the plaintiff to realize the cost of the proceedings from the defendants; and
- g) grant such other and further reliefs as deem fit and proper in the facts and circumstances of the case.

Valuation

Valuation for Relief A to d	:	Rs. 2,000.00
Court fee payable there on under Section 27 (c) of the Kerala Court fees and Suit Valuation Act	:	Rs. 80.00
Valuation for Relief E	:	Rs. 2,00,000.00
Court fee payable there on under Section 22 of the Kerala Court fees and Suit Valuation Act	:	Rs. 18,400.00

E/ (b) 24-11-19

Total Valuation	:	Rs. 2,02,000.00
Total Court Fees	:	Rs. 18,480.00
1/10 th Court fee paid under Section 4A of the Act	:Rs.	1,850.00
1% Legal Benefit fund to be paid	:	Rs. 2,020.00
Legal Benefit fund paid	:	Rs. 210.00
Balance Court fee payable	:	Rs. 16,630.00
Balance Legal Benefit fund payable	:	Rs. 1,810.00

Dated this the 5th day of February 2020.

Counsel for the Plaintiffs

Plaintiffs:

- 1.
- 2.
- 3.
- 4.

PLAINT SCHEDULE PROPERTY

SCHEDULE A

District	:	Ernakulam
Taluk	:	Kanayannoor
Village	:	Kakkanadu
Survey No.	:	674/1 & 2, 681/2, 682
Extent	:	50.58 Ares

DESCRIPTION OF SCHEDULE PROPERTY

All that pieces and parcels of land owned, possessed and maintained by 1st plaintiff and the residents of Link Valley residential housing colony having an extent of 50.58 Ares equal to 12.5 Acres in Re-Survey No.674/1 & 2, 681/2, 682 in Block 9, of Kakkanad Village comprises of Roads, play grounds, community house, drainages, common areas, amenities including private properties of 2nd, 3rd and 4th plaintiffs with all trees, buildings situated therein with easement appurtenant thereto.

BOUNDARIES

East	:	Property of Infopark
West	:	B Schedule and Property of Defendants
North	:	Property of Infopark and public road
South	:	Property of Infopark and public road

SCHEDULE B

A 2 meter width – 2 meter depth drainage encircling the plaintiff A schedule property on its western side having an approximate length of 250 meters and separates the property/ project site of defendants with the plaintiff A schedule property.

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SCHEDULE C

A private road having an approximate average width of 8 meters and length of 150 meters in north- south direction situated within the A schedule property for the exclusive use of the residents in the Link Valley residential housing colony commences and ends at B Schedule drainage on both northern and southern ends of A schedule property.

VERIFICATION

We, 1. Link Valley Residents' Association, Link Valley, Kusumagiri P.O., Kakkanad, PIN - 682 030 represented by its General Secretary presently Mr. Binod Hariharan , aged 49 years, S/o. M.R. Hariharan Nair, residing at 57, Link Valley, Kakkanad, 2. Mrs. Sroena Pradeep, aged 43 years, W/o. E.R. Pradeep, 3. Mr. P. N. Surendran, aged 72 years, S/o. Velayudhan, 4. Mr. M. D. J. Brinner, aged 53 years, S/o. M.O. Devassy, all residing at Link Valley, Kusumagiri P.O., Kakkanad, Kakkanad Village, Kanayannur Taluk, Ernakulam, PIN - 682 030 declares that what we have stated above are true to the best of our knowledge, belief and information.

Dated this the 5th day of February 2020.

Plaintiffs:

1.

2.

3.

4.

List of Documents

Sl. No.	Date	Description	Original/Copy
1]	25.05.2005	Society Registration Certificate of 1 st Plaintiff	Copy
2]	07.01.2020	True extract of minutes of Managing committee of 1 st Plaintiff	Original
3]	06.08.2018	Land tax receipt of 2 nd Plaintiff	Copy
4]	07.11.2019	Building tax receipt of 2 nd Plaintiff	Copy
5]	04.10.2019	Land tax receipt of 3 rd Plaintiff	Copy
6]	04.10.2019	Building tax receipt of 3 rd Plaintiff	Copy
7]	09.12.2019	Land tax receipt of 4 th Plaintiff	Copy
8]	13.01.2020	Building tax receipt of 4 th Plaintiff	Copy
9]	Extract of marketing Brochure issued by 1 st defendant company	Copy
10]	Rough Sketch of the properties	Copy

Dated this the 5th day of February 2020.

COUNSEL FOR THE PLAINTIFFS

Handwritten signature
A. S. R.

BEFORE THE HON'BLE MUNSIFF'S COURT: ERNAKULAM

O. S. No. _____ of 2020

Link Valley Residents' Association and others : Plaintiffs

Vs.

Prestige Projects and another : Defendants

AFFIDAVIT

I, Mr. Binod Hariharan, aged 49 years, S/o.M.R.Hariharan Nair, General Secretary, Link Valley Residents' Association, Link Valley, Kusumagiri P.O., Kakkanad, Kakkanad Village, Kanayannur Taluk, Ernakulam, PIN – 682 030, do hereby solemnly affirm and state as follows:

1. I am the General Secretary of 1st plaintiff Association in the above suit. I know the facts of the case and I am competent to swear this affidavit on behalf of other plaintiffs also. Plaintiffs 2 to 4 are residents and members of 1st plaintiff Association. The above suit is filed for Injunction and for recovery of money. There is no option other than to approach and file this case before this Honourable court for the proper, speedy and efficacious legal remedy.
2. All documents produced herewith are true with best of my knowledge and belief.
3. I have not filed any suit/ petition seeking similar or identical reliefs in respect of the subject matter earlier other than which stated above.
4. The reliefs sought for in this suit are just and highly essential to be granted or else I will be put to loss and hardship.

All the facts stated above are true and correct to the best of my knowledge, information and belief.

Dated this the 5th day of February 2020.

Deponent

Solemnly affirmed and signed before me by the above deponent who is personally known to me on this the 5th day of February 2020 in my office at Ernakulam.

Advocate.

Presented on: 06.02.2020

BEFORE THE HON'BLE
MUNSIFF COURT :
ERNAKULAM

O.S. No. 15 / of 2020

Plaintiffs: Link Valley Residents'
Association and others
Vs.
Defendants : Prestige Estate
Projects and another

**SUIT FOR PERMANENT
PROHIBITORY
INJUNCTION, MANDATORY
INJUNCTION AND DAMAGES**

Valuation for Relief A to D : Rs. 2,000/-
Valuation for Relief E : Rs. 2,00,000/-
Total Valuation : Rs. 2,02,000/-
Total Court Fees : Rs. 18,480/-
1/10th Court fee paid : Rs. 1,850/-
1% Legal Benefit fund : Rs. 2,020/-
Legal Benefit fund paid : Rs. 210/-
Balance Court fee payable : Rs. 16,630/-
Balance L B F payable : Rs. 1,810/-

By Advocates:

M/s PETER & KARUNAKAR

Lawyers

I.S. Press Road, Kochi - 18

Counsels for Plaintiffs

TRUE COPY

Asal
ADVOCATE

BEFORE THE HONOURABLE MUNSIFF'S COURT, ERNAKULAM

O.S. No. 151 of 2020

BETWEEN

Link Valley Residents Association and others : Plaintiffs

AND

Prestige Estate Project and another. : Defendants

WRITTEN STATEMENTFiled by the 1st Defendant Under Order VIII Rule 1 of the Code of Civil Procedure 1908The 1st Defendant herein humbly submits as follows :-

1. All the averments and allegations in the plaint, save those that are specifically admitted or otherwise dealt with hereunder are denied.
2. The suit is not maintainable in law or on facts. The suit is a false and speculative action filed without any bonafides.
3. The Plaintiffs have no locus-standi to file the suit. The Plaintiffs do not claim any right or interest in the Plaint Schedule properties and as such the Plaintiff is not entitled to any of the reliefs claimed.
4. The 1st Plaintiff is not a legal person and has no right to institute a suit. The 1st Plaintiff has no right or authority to institute a suit. The suit is also bad for non joinder of necessary parties.
5. The averments in paragraph 1 and 2 of the plaint are denied. The 1st Plaintiff is not a legal person and has no right to institute a suit. The averment that the suit is filed by the 1st Plaintiff representing its 120 members is denied. The person representing the 1st Plaintiff is not competent to represent the 1st Plaintiff and the 1st Plaintiff has no authority to represent the residents of "Link

Valley". The Suit is not properly instituted and therefore liable to be rejected. There is no defined area called "Link Valley" as stated in the Plaint. The 2nd to 3rd Plaintiffs have no manner of right or interest in the Plaint Schedule Properties. The 2nd to 4th Plaintiff have not produced their title documents and a perusal of the same will show that they have suppressed material facts and have not approached this Hon'ble Court with clean hands. The 2nd to 4th Plaintiffs have only a right to use the roads and have no right of ownership. The averments that 2nd to 4th Plaintiffs hold both individual, exclusive rights, separate and independent cause of action and also share common rights and grievances with the 1st Plaintiff against the Defendants are false and are denied. The 2nd to 4th Plaintiffs have only right of use of roads.

5. The averment in Paragraph 3 of the Plaint that the 1st and 2nd Defendants are carrying out construction of a residential cum commercial Project is admitted but the averment that it is being carried on in properties adjacent to Plaintiff's neighbouring western boundary is denied. The construction is being carried out after obtaining all permits and sanctions.

6. The averments in Paragraph 4 of the Plaint are not correct and therefore denied. The averment that the 1st Plaintiff and its members own and possess the Plaint A Schedule property is false and is denied. The 1st Plaintiff has only right of usage over 0.22 cents of land which was gifted to it by Dr. Anil Gupta for the only purpose of erecting a security guard cabin and the same does not form part of Plaint A Schedule Property. The averment that members of the 1st Plaintiff together own an extent of 12.5 acres in various survey numbers is denied. It is also denied that the Plaint A Schedule Property comprises the roads, play grounds, community house, drainage, common areas, amenities owned possessed and maintained by the 1st Plaintiff.

7. The averments in paragraph 5 of the plaint are not fully correct. The description of the B schedule property is incorrect and denied. The B Schedule property is not part of the A Schedule Property and the averment that it is a 2 meter width 2 meter depth drainage encircling the A Schedule Property on its western side is false and is denied. The B Schedule Property is lying outside the A Schedule Property and the averment that the drainage was in existence from time immemorial is also denied. The present drain was constructed by the 1st Defendant with the knowledge and concurrence of the Plaintiffs for the purpose of connecting the existing drains on the north and south of Plaintiff A schedule Property and the said drain is also maintained by the 1st Defendant. The property in which the drainage is constructed belongs to the 2nd Defendant and the 2nd Defendant is paying tax for the same.

8. The averments in paragraph 6 of the plaint are denied. The averment that C schedule property is situated within A schedule Property and is developed by the promoter and developer for the exclusive use of the residents of the Link Valley residential housing colony is denied. The averment that Plaintiff C Schedule Property is a private road is denied. Plaintiffs have only right to use the road. The owner of the road property is the 2nd Defendant and one Mr. Anil Gupta and the residents of the housing colony have only the right to use the said road. The gates fixed by the residents of the colony will not confer any exclusive right over the said road. The security cabin is situated in the land gifted by Anil Gupta for the purpose of constructing the security cabin. The further averment that the C schedule road commences and ends at B schedule drainage and crossed to public roads on the northern and southern ends of A schedule property is not correct and denied. Both the roads are private roads one is Palal Link Road and the other one is Palal Kalappurackal Road and is a connecting link to the properties in Sy.No 675/4 part. The owner of the property in Survey No. 675/4 is the 2nd Defendant and he is paying the tax for the said land. Dr. Anil Gupta and

the 2nd Defendant has executed a mutual Agreement along with the Promoter of Link India Properties Pvt Ltd on 5-11-2014 permitting mutual right of usage of roads. Access from Info Park Road (Kakkanad – Edachira Road) through Palal Link Private Road, the southern part of which, situated in Sy.No.671/1, belongs to the 2nd Defendant, and right of usage is provided for Dr.Anil Gupta and persons who derives interest from him by the 2nd Defendant and right of usage over C schedule property is provided for the 2nd Defendant and his successors in interest. The Plaintiffs claim of exclusive right of Plaintiff C Schedule Property is false and is denied. The Plaintiffs have only the right assigned to them by the original owners including the 2nd Defendant and cannot have any better title or right than what is provided to them under their respective title deeds, if any.

9. The averments in paragraph 7 of the plaint are also denied. The averment that the builder and the second Defendant jointly marketed and sold individual residential plots, villas and properties to various buyers promising that this will be a gated community protected from external trespass and the main internal road will be secured by gates security personnel is also denied. The amenities promised by the promoter have already been given. The averment that the Promoter and the 2nd Defendant promised that the B Schedule drainage and C Schedule road will be for the exclusive use of the residents in the Link valley villa project is false. On the contrary buyers of Plots in the Project has been given only right to use the roads and the ownership of the roads rested with the Vendors with right to give similar usage rights to others. The Plaintiffs cannot claim and does not have any exclusive right or ownership over Plaintiff B and C schedule properties. The averments in para 7 with respect to the amenities easements or facilities promised to the Plaintiffs are denied.

10. The averments in paragraph 8 of the plaint are also denied. The averment that the Link India Properties had the authority to represent the 2nd Defendant is denied. The ownership over B and C schedule properties is with the 2nd

Defendant and only a usage right over the roads have been given to the Plaintiffs and other persons in the colony. This is clear from the sale deeds executed in favour of the plaintiffs and other persons. The averment that Plaintiff B schedule property was in existence at the time of sale of villa plots in Plaintiff A schedule property is denied. Plaintiff B Schedule drain is constructed and maintained by the 1st Defendant in land belonging to the 2nd Defendant. The averment that by agreement dated 1st May, 2007, the common areas and facilities comprising roads, including Plaintiff A schedule property was handed over to the 1st plaintiff is denied. Plaintiff C schedule Property is only an access road with rights of usage to Link India Properties Pvt Ltd and its successors in interest and the 2nd Defendant and his successors in interest. The 1st Plaintiff has ownership over only 0.09 Ares of land given by virtue of Gift Deed No. 4869 of 2007 for the exclusive purpose of constructing a security cabin and the averment that it forms part of C Schedule Road is false and is denied. The property comprising the road belongs to the 2nd Defendant and Mr. Anil Gupta who has granted right of usage to each other also and the Plaintiffs have no exclusive right over the same.

11. The averments in paragraph 9 of the plaint are denied. The properties in Sy.No.671/1, 675/4, 294/2, 297/3, 297/4, 297/5, 300/1E,9,10 and 19 are as per village records purayidom and not land exempted under Section 81 of the Kerala Land Reforms Act. In any event the said lands belong to the 2nd Defendant and the 2nd Defendant has exclusive right to use the same and the averments that using the same for construction is illegal is false and is denied.

12. The averments in Paragraph 10 of the plaint are also denied. The municipal and revenue authorities has permitted the development and construction in the property only after complying with all legal requirements and after satisfying that there is no bar for the development in the property. The building permit has in fact been granted as early as in 2015 and the Plaintiffs are well aware of the same.

13. The averments in paragraph 11 of the plaint are also denied. There is no suppression of facts as alleged. The B schedule property is neither owned by the Plaintiffs nor is it a drainage used by the public or Plaintiffs. B Schedule property lies in Sy.Nos 681, 682 and 674 and the 2nd Defendant is the owner of the B schedule property and paying tax for the same. The drain was constructed by the 1st Defendant at the request of the 2nd Defendant with the knowledge of the Plaintiffs to connect the drains on the North and South of Plaintiff A schedule. The averment that Plaintiffs were frequently cleaning and maintaining the drainage with their own efforts and costs and it is essential for usage and enjoyment of the A Schedule Property is denied. The further averment that the Link India properties built the drainage for the smooth and effective functioning and enjoyment of the Plaintiff A Schedule property is also denied. The drainage is outside the residential colony of the 1st Plaintiff. Infact the drainage was constructed for the benefit of the entire area including the property of the 2nd Defendant. The present drain is constructed by the 1st Defendant and the maintenance is done by the 1st Defendant with amounts contributed by the Defendants 1 and 2 and for maintaining and protecting the drainage, the 1st Defendant also covered the same by concrete slabs. The averment to the effect that the drainage is altered is absolutely false and denied. The construction of the Prestige Hillside Gateway is strictly in compliance with the KMBR and other regulations and the averment that no statutory distance is maintained between the drainage and the project is denied.

14. The averments in paragraph 12 of the plaint are denied. The ownership over the property in which the drainage is situated is with the 2nd Defendant. The Defendants never obstructed the use of the same by the Plaintiffs or anybody else. The slabs erected for covering the drainage is for protecting the same and also for safety reasons. The Thrikkakara Municipality has no connection with the drain whatsoever and has not carried out any improvements

or maintenance of the said drain and the averments to the contrary are denied. The allegation that the width of the B schedule drainage is considerably reduced is also false and denied. The slab placed on the drainage was made for the protection of the drain and can be removed for the purpose of cleaning the drainage. The allegation that polluted and contaminated waste water being pumped out by the Defendants through the drainage is also denied. At the same time the Defendants have every right use the drainage.

15. The averments in paragraph 13 of the plaint are denied. There is no suppression regarding the Plaint C schedule road and a public road as alleged has never been shown in the plan. The averment that it is private road exclusively used by the Plaintiffs and is in the possession and control of the Plaintiffs is false and is denied. As already stated the Plaintiffs have only right of usage of Plaint C schedule Property along with the 2nd Defendant and his successors in interest. The permission given to the 1st Plaintiff to erect gates will not change the character of the road or the rights to use. The averment that no right in the C Schedule property was ever exercised used or enjoyed by the Defendants is denied. The 2nd defendant have always used the said road without any obstruction for access to his other properties and through him the 1st Defendant has also used the said road ever since the grant of permission for construction of the Project. The averment that the 2nd Defendant has no right to assign his usage rights or to allow others to use the Plaint C Schedule Property is false and denied. The right of usage granted to the 2nd Defendant and exercised by him all these years is by law and he has the right to assign the same and allow others to use the C schedule Property. The 2nd Defendant has allowed the 1st Defendant to use the same and Defendants intend to allow usage rights only to the successors in interest of the remaining properties of the 2nd Defendant and this includes the owners of plots and apartments being constructed on the properties of the 2nd Defendant.

16. The averments in paragraph 14 of the plaint are denied. The allegation that the Defendants have committed waste and destroyed a portion of the B schedule drainage is false and denied. As already stated the slabs were erected for protecting the drainage and also for safety. What the Defendants have done is perfectly within their right and authority.

17. The averments in paragraph 15 of the plaint are denied. The Defendants are entitled to use the C schedule property including for the construction of the project of the Defendants and to permit others to use the same as already stated above. The Plaintiffs have no manner of exclusive right of usage of the C schedule property and cannot in any manner seek to restrict the usage of the same by the Defendants. The further allegation that the Defendants threatened the Plaintiffs etc. are false and denied and such allegations are made only for the purpose of the suit. None of the Defendants have threatened to destroy any part of the gates in Plaintiff C Schedule Property. The Defendants have also not threatened the safety of any of the Plaintiffs. The Plaintiffs have only usage rights over C Schedule Property along with similar rights to Defendant 2 and his successors

18. The averments in paragraph 16 of the plaint are denied. The Defendants have every right to use the B and C schedule properties and there is no question of threatening the defendants as alleged. The Plaintiffs have misrepresented and concealed material facts in the suit and have not approached this Hon'ble Court with clean hands. A mere perusal of the title deeds with respect to plots in Plaintiff A schedule Property will show that the residents have only usage rights over the road described in Plaintiff C Schedule by the Plaintiffs have concealed this crucial aspect. If the Plaintiffs did not get any assistance from the municipality and the Police it is because they were not able to convince the authorities of their exclusive rights. If the Plaintiffs had produced their title deeds and the relevant

deeds with respect to the use of the Plaintiff B and C Schedule drain and road no manner of relief would be granted to the Plaintiffs by this Hon'ble Court.

19. The averments in paragraph 17 of the Plaintiff are denied. The averment that the plaintiffs have constructed the roads and drainage spending money from their members is false. The road was constructed by the Developers and the drain by the Defendants and the same is maintained by the Defendants. The averment that due to the closure and alteration of the B schedule drainage, the properties of the 1st Plaintiff was flooded in the monsoon in 2019 and the internal roads and drainage lines were damaged is false and denied. The claim for compensation is without any basis and is denied.

20. The averments in paragraph 18 of the plaintiff are also denied. The averment that Plaintiff B Schedule Property is in the continuous and uninterrupted usage and enjoyment of Plaintiffs is false and is denied. The Plaintiffs have no manner of exclusive right over Plaintiff B Schedule and the drain in question is being maintained by the Defendants. The Plaintiffs are not entitled to any injunction as claimed with respect to Plaintiff B Schedule Property and the averments to the contrary are denied.

21. The averments in paragraph 19 of the plaintiff are also denied. The Plaintiff c, schedule property is not in the exclusive possession of the plaintiffs as alleged. The Plaintiffs have only a right of usage and Defendants have also right to use the same as the Plaintiffs. Since the Defendants have the right to use the same, there is no question of the Defendants trespassing into the C schedule property. The Plaintiffs are not entitled to any injunction as claimed with respect to Plaintiff C Property and the averments to the contrary are denied

22. There is no cause of action for the suit and the cause of action stated in the plaintiff is false and imaginary and made for the purpose of the suit. No part of Plaintiff B Schedule Property was destroyed as alleged.

23. The suit is not properly valued and court fee paid is insufficient.
24. The boundaries of the Plaint Schedule Properties shown in the Plaint are wrong. The Western side is not property of Info Park and is in fact property of 2nd Defendant. The Northern side is Palal Link Private Road and other properties. The Southern side is Palal Kalapurakkal Private properties and other properties.
25. The Plaintiffs are not entitled for the reliefs claimed in the suit as prayed.
26. Therefore it is respectfully prayed that this Hon'ble Court may be pleased to dismiss the suit with costs.

Dated this the 20th day of December, 2021

For Prestige Estate Projects Ltd

Thankachen Thomas V.
Senior Vice President
(1st Defendant)

Abraham Joseph Markos,
Advocate for the 1st Defendant.

VERIFICATION

I, Thankachan Thomas V, aged 62 years, son of late V.U. Thomas, residing at Prestige Neptunes Courtyard, Marine Drive, Cochin RSenior Vice President of the 1st Defendant do hereby solemnly affirm and state that all the facts stated above are on the basis of personal knowledge, from the records and the information made over to me by 1st Defendant, are true to the best of my knowledge, information and belief. This Written Statement is verified and signed by me at the office of my counsel at Ernakulam on this the 20th day of December 2021.

Thankachan V Thomas.

54- 11

EXHIBIT-R6(e)/11

BEFORE THE HONOURABLE MUNSIFF'S COURT, ERNAKULAM

O.S. No. 151 of 2020

BETWEEN

Link Valley Residents Association and others : Plaintiffs

AND

Prestige Estate Project and another. : Defendants

AFFIDAVIT

In Support of Written Statement

I, Thankachan Thomas V, aged 62 years, son of late V.U. Thomas, residing at Prestige Neptunes Courtyard, Marine Drive, Cochin do hereby solemnly affirm and state as follows :

1. I am the Senior Vice President of the 1st Defendant in the suit and as such I am fully conversant with the facts of the case and I am able, authorised and competent to file this affidavit and depose to the same.
2. All that is stated in paragraph 1 to 26 of the Written Statement is true to the best of my knowledge, information and belief.

All the facts stated above are true.

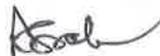
Dated this the 20th day of December, 2021.

Thankachan Thomas V,
Deponent

Solemnly affirmed and signed before me by the deponent, who is personally known to me, at my office at Ernakulam on this the 20th day of December, 2021.

TRUE COPY

Abraham Joseph Markos,
Advocate.



ADVOCATE

Before the Ombudsman for the Local Self Government Institutions

Constituted under Section 271G of the Kerala Panchayat Raj Act, 1994 (13 of 1994)

Complaint number:

465 / 21

Complainant:

Brinner M.D.J.
 Joint Secretary
 Link Valley Residents Association
 Residing at
 LIVRA - 8, Link Valley
 Kusumagiri P.O., Kakkanad
 Kochi - 682030

Respondents:

1. The Secretary
 Thrikkakara Municipality
 Kakkanad, Ernakulam
2. Prestige Estates Projects Ltd.
 Represented by Shri.Thankachan Thomas
 801, 8th Floor, Prestige TMS Square
 NH 66, Bypass, Padivattom, Edappally
 Kochi - 682 024

- 1 Name of Complainant: Brinner M.D.J.
- 2 Name of Father: M.O.Devassy
- 3 (a) Age 54 years
 (b) Occupation Business
- 4 Permanent Address:
 - (a) Name Brinner M.D.J.
 - (b) Home name/number LIVRA 8
 - (c) Village Kakkanad
 - (d) Post Office Kusumagiri - 682030
 - (e) Taluk Kanayannur
 - (f) District Ernakulam

5 Nature of Complaint, explanations and details:

- a) I am a resident in the gated community 'Link Valley' near Kusumagiri, Kakkanad. I am also the Joint Secretary of the Link Valley Residents' Association. Near to my house and surrounding the Link Valley gated residential colony, the 2nd respondent M/s.Prestige Constructions had started building a residential cum commercial project named 'Prestige Hillside Gateway' in 2017.
- b) Initially, the 2nd respondent had assured that they would comply with all the existing rules and regulations related to the construction activities of the said building and they will not cause any harm to the neighbourhood. But by the end of 2019, they encroached into our surrounding common drains, and they started violating all the Municipal Building Rules and Regulations and committing waste to my property as well as to the nearby houses and plots.
- c) At that juncture, I had filed a complaint before the Municipality on 29-01-2020 on behalf of my Residents' association. On the same day, a stop memo was issued by the Municipality and the 2nd respondent was forced to put green net on the buildings in the construction site. Thereafter various complaints were preferred by the association as well as various residents and members especially those

staying adjacent to the construction site about the illegal construction activities carried out by the 2nd respondent.

- d) Construction activities were interrupted due to the 1st and 2nd wave of Covid -19 and by June 2021 all the green net was damaged. Recently the construction activities started in full steam and on 31st August 2021, I had filed a petition before the Thrikkakara Municipality pointing out that the construction activities are not complying with the Kerala Municipality Building Rules.
- e) The 2nd respondent had taken Environmental Clearance from the State Environmental Impact Assessment Authority on 30-01-2017 in which it is clearly mentioned that the existing public drain must be widened to provide sufficient capacity for storm water passage to ensure that there is no flooding in the surrounding areas including Link Valley. The 2nd respondent suppressed this fact, and the setback was fixed by including the public drain as their property. At the same time, the 2nd respondent had submitted the existence of the public drain before the State Environment Impact Assessment Authority and obtained Environmental Clearance.
- f) The 2nd respondents have also been pumping untreated sewage waste into the public drains surrounding our area, which in turn is flowing into our properties and contaminating our groundwater sources. This was repeatedly pointed out by the Kerala State Pollution Control Board (KSPCB) on multiple occasions in their notices issued to the 2nd respondent, based on their site visits. The situation of our residential colony is that even for a small rain the effect of waterlogging becomes a major issue for the residents, and many find it even difficult to get out of their houses.
- g) The driveway of any building should be built exclusively as a driveway for smooth transportation purposes. Instead, the 2nd respondent is constructing a multi-storied car parking in the name of a driveway and a multi-storied building by violating all building rules and setback provisions. This construction is in clear violation of all existing building construction rules. The setback for the driveway itself is not meeting the standards. The driveways are built touching the buildings in many areas and columns are constructed connected to the main building and the driveways. This is also a clear violation of the existing building rules.
- h) There are major violations of Building Rules in the construction which have been pointed in my complaint before the Secretary, Thrikkakara Municipality on 31-08-2021. On 01-11-2021 the Municipality had issued a stop memo to the 2nd respondent, but the 2nd respondent has not yet complied with any of the directions, and they are continuing with the work with the help of the 1st respondent. Presumably due to extraneous considerations, the 1st respondent closed their eyes to the violations in the building construction.
- i) I had approached the 1st respondent several times for implementing the Stop memo issued by the Municipality but presumably due to the political and financial influence, the officials are totally reluctant to take any further actions. On 09-11-2021, our Residents' association again filed a complaint against this illegal construction pointing out various violations. But so far, no action has been taken by the municipal authorities on that complaint as well.
- j) Based on various complaints the Kerala State Pollution Control Board had also issued various notices to the 2nd respondent and have also issued a consent revoke notice to the 2nd respondent. On the complaints filed before the Municipality, I had attached copies of the various notices issued by the PCB as well.
- k) Due to the 2nd respondent's illegal constructions in the public stormwater drain, free flow of water is now seriously affected. It is worth noting that this is the only

drainage facility available for draining out water to the Edachira canal from all the surrounding properties. The 1st respondent is legally bound to protect the public drain, but the 2nd respondent has taken a building permit not showing the public drain. This is illegal and against all prevailing laws. Even from the neighbouring flats like Chelloor El Dorado, Royal Crown Apartments, and new flats under construction by Confident group (Confident Whiteberry), etc. and from the Municipal roads in the upper areas all the rainwater and other drainage water is now being channelised by the 2nd respondent by constructing canals under their buildings and pumping it into the public drains surrounding our area (LinkValley). In any of the drawings submitted by the 2nd respondent for getting approvals from various authorities including the Municipality, they have not shown these underground public drains and constructing the buildings over such drains, which is also illegal.

l) In the report of the SEIAA, it is crystal clear that there existed a public drain and the same was proposed by the 2nd respondent for getting the EC from SEIAA. Even in my complaint I had specifically pointed this out and produced a copy of the EC obtained by the second respondent. The 2nd respondent has also made obstructions and is committing waste in the common drains thereby restricting the free flow of water.

m) It is the bounden duty of the 1st respondent to ensure that the 2nd respondent follows the directions of the various authorities including the SEIAA, KSPCB, Fire & Rescue Services, KSDMA, etc. But the 1st respondent is reluctant to even move a little finger against the 2nd respondent. The 1st respondent became a silent spectator, and the 2nd respondent is constructing buildings violating all the prevailing laws of the land. Even a layman can see with his naked eye that the construction activities carried out by the 2nd respondent are against all Municipal building rules. But, presumably due to extraneous considerations, the Municipality continues to close their eyes to the violations and gives silent permission to finish the construction activities.

n) It is very clear that the Municipality is helping the violators so the Hon'ble Ombudsman for LSGI may direct the Regional Joint Director for Urban Affairs or any other higher officials to immediately visit the said property and to file a report and sketch showing the status quo and the extent of violations done, and other relevant details and to give effective instructions for strict implementation of the STOP MEMO. Further, for the purpose of proper investigation, I am requesting the Hon'ble Ombudsman to visit the work site, to have first-hand information about the violations that are being carried out by the 2nd Respondent.

6 Name and Address of persons (if any) whom the complainant considers that they know the facts regarding the complaint and desires to summon them before the Ombudsman

Schedule will be provided later

7 Description of documents produced with the complaint:

1. Copy of the complaint given to the Municipality on 31-08-2021
2. Copy of the complaint given to the Municipality by our Residents' Association on 09-11-2021
3. Copy of the Stop Memo issued by the Thrikkakara Municipality dated 01-11-2021

TRUE COPY

ADVOCATE

- 4. Copy of the Environmental Clearance issued by the State Environmental Impact Assessment Authority on 30-01-2017
- 5. Copy of letter issued by the KSPCB, Ernakulam 22-04-2021
- 6. Copy of the consent revoke notice issued by the KSPCB, Ernakulam on 24-09-2021

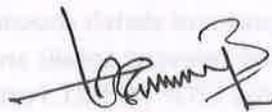
The inaction on the part of the Municipality to enforce its order with police help, if necessary, amounts to mal- administration within the cognisance of the Hon. Ombudsman

Reliefs sought:

- 1. Requesting the Hon'ble Ombudsman to visit the construction site as part of the investigation connected with this complaint
- 2. Issue immediate direction to the 1st respondent to stop the illegal construction activities and consider the various complaints which were filed against the illegal building construction activities of Prestige Hillside Gateway in its true letter and spirit after hearing the complainant.
- 3. Give urgent directions to the 1st Respondent to enforce the stop memo and to ensure that the construction is done only within the limits of the 2nd Respondent's property and strictly following the Building Rules.
- 4. Regional Joint Director for Urban Affairs may be directed to visit the property with notice to all concerned within 3 days and file a report and sketch showing status quo, extent of violations done, and other relevant details and to give effective instructions for strict implementation of the STOP MEMO.

Place: ERNAKULAM

Date: 15/11/2021



Signature of the complainant

It is hereby declared that the facts given above are true and correct to the best of my knowledge and belief.

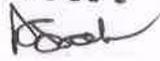
Signature:

Date:



15/11/2021

TRUE COPY



ADVOCATE

Presented on : 10.01.2022

BEFORE THE HONOURABLE OMBUDSMAN FOR LOCAL SELF GOVERNMENT INSTITUTIONS AT THIRUVANANTHAPURAM Saphalyam Complex, TRIDA Building, University P.O., Palayam, Thiruvananthapuram-695 034.

O.P. No. 465 of 2021

Between:- Brinner M.D.J. :: Complainant

And:- The Secretary, Thrikkakkara Municipality, Kakkanad, Ernakulam and another :: Respondents

WRITTEN STATEMENT Filed on behalf of the 2nd Respondent

ABRAHAM JOSEPH MARKOS ISAAC THOMAS CHANDAPILLAI ABRAHAM P.G. ALEXANDER JOSEPH MARKOS & SHARAD JOSEPH KODIANTHARA Counsel for the 2nd Respondent

JOSEPH & KURIYAN Advocates 42/2260, Providence Road Kochi - 682 018.

BEFORE THE HONOURABLE OMBUDSMAN FOR LOCAL SELF
GOVERNMENT INSTITUTIONS AT THIRUVANANTHAPURAM

O.P. No. 465 of 2021

Between:-

Brinner M.D.J.

::: Complainant

And:-

The Secretary, Thrikkakkara Municipality,
Kakkanad, Ernakulam and another

::: Respondents

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14.	<u>Annexure R2(m):-</u> True copy of the Written Statement dated 20.12.2021 filed by this Respondent in O.S.No.151/2020.	97 - 107
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Dated this the 10th day of January 2022.

ISAAC THOMAS
Counsel for the 2nd Respondent

BEFORE THE HONOURABLE OMBUDSMAN FOR LOCAL SELF
GOVERNMENT INSTITUTIONS AT THIRUVANANTHAPURAM
Saphalyam Complex, TRIDA Building, University P.O.,
Palayam, Thiruvananthapuram-695 034.

O.P. No. 465 of 2021

Between:-

Brinner M.D.J. :: Complainant

And:-

The Secretary,
Thrikkakkara Municipality,
Kakkanad, Ernakulam and another :: Respondents

WRITTEN STATEMENT
Filed on behalf of the 2nd Respondent

1. All the averments and allegations contained in the Complaint save to the extent specifically admitted herein are false and are denied.
2. The Complaint is a false and frivolous action wholly without any basis. The Complaint is not made in good faith and is made with ulterior motives to harass this Respondent. The Construction being executed by this Respondent is being undertaken with all valid permits and is going on for the past more than five years and a major part is nearing completion. The filing of this Complaint at this late stage is mala fide.

For Prestige Estates Projects Ltd.



Thankachan Thomas V.
Senior Vice President

3. The Complainant does not have any cause of action against the 2nd Respondent and the cause of action claimed is false and imaginary. The Complainant does not share any boundary with the Project being executed by the 2nd Respondent and is not affected by the Construction being carried on in the Project site of this Respondent. The Complaint is seen filed by the Complainant in his personal capacity though the Complainant also refers to correspondence issued by the Link Valley Residents Association of which the Complainant is a member.

4. To better understand the factual situation this Respondent is placing before the Hon'ble Ombudsman the facts relating to the project being undertaken by this Respondent.

5. The 2nd Respondent is undertaking construction of a residential cum commercial project by name Prestige Hillside Gateway in arrangement with the land owners Sri.Varghese P Ittoop and Sri.Gee Varghese Varghese at Kakkanad after obtaining all valid permits. The Chief Town Planner, Thiruvananthapuram had issued layout approval dated 30.09.2015, true copy of which is produced herewith and marked as **Annexure R2(a)**. Thereafter the 1st Respondent has issued Building Permit No.BA 1337/2013 dated 06.10.2015 which has thereafter been

For Prestige Estates Projects Ltd.

Thankachan Thomas V.
Senior Vice President



validated initially till 04.10.2021 and now till 04.10.2024. A true copy of the building permit dated 06.10.2015 which is produced herewith and marked as **Annexure R2(b)**. As is evident from the permits, the Project is coming up in an area of 505.1344 Ares in Kakkanad Village in Kanayannur Taluk. The property in question lies in a residential cum mixed zone as per the approved structure plan of the Thrikkakara Municipality. Development Permit has also been issued by the 1st Respondent. No Objection Certificate has also been obtained from the Fire Department and Airport Authority and Environmental Clearance has also been obtained from the State Environment Impact Assessment Authority. The Kerala State Pollution Control Board has also issued Integrated Consent to establish and the same has been renewed till 31.01.2023 as evidenced by Certificate dated 30.12.2021 a true copy of which is produced herewith and marked as **Annexure R2(c)**. In fact the issue of these permits and the carrying on the construction are all admitted.

6. While so, an association of residents in a project by name Link Valley, which is adjacent to the area being developed by this Respondent, has been harassing this Respondent by filing

For Prestige Estates Projects Ltd.



Thankachan Thomas V.
Senior Vice President

complaints before various forum. They have also filed a Suit O.S.No.151/2020 before the Hon'ble Munsiff Court, Ernakulam. They have also arranged regular publication of reports in news papers alleging that the construction by this Respondent is creating a nuisance to them which are all untrue and is made malafide. The construction is being carried out strictly in compliance with all the permits and approvals obtained for the project.

7. Without prejudice to the above, the various averments in paragraph 5 (a) to (n) of the Complaint are false and are denied. This Respondent denies all averments made in the Complaint, to the extent the same are contrary to or inconsistent with what is stated herein below. Nothing contained in the Complaint should be deemed to be admitted by this Respondent for want of traverse or otherwise unless specifically accepted or admitted herein.

8. The averments in para 5(a) of the Complaint that this Respondent's project is surrounding the Link Valley Residential Colony is not correct and is denied. A perusal of the Plan produced herewith as Annexure R2(d) will show the actual location and lie of both the Projects of this Respondent and the

For Prestige Estates Projects Ltd.

Thankachan Thomas V.
Senior Vice President



houses of the Link Valley Residents Association and will show that only 10 houses of Link Valley share a boundary with the project site on the eastern side. The Link Valley project comprises an extent of about 13 acres with about 123 plots and has about 80 Luxurious residential Villas and only 10 houses share the boundary with the project site of the 2nd Respondent. The Complainant who has filed the complaint in his personal capacity does not share a boundary with the project site of this Respondent. The construction of the 2nd Respondents residential project was commenced in 2015 and not in 2017 and is now nearing completion and in fact the completion period as per RERA approval is 31stDecember 2022 and any delay in completion will attract penalties and orders of compensation.

9. The averments in para 5(b) that by the end of 2019 this Respondent encroached into surrounding common drains of the Link Valley Residents Association and started violating Municipal Building Rules and Regulations and committing waste to adjacent properties are all false and are denied. The averments are vague and no specifics are mentioned. This Respondent has not encroached into any adjacent properties or drains.

For Prestige Estates Projects Ltd.



Thankachan Thomas V.
Senior Vice President

10. The averments in para 5(c) that a stop memo was issued by the 1st Respondent on 29.01.2020 is not correct and it is submitted that the 1st Respondent had directed to incorporate safety measures and for covering the site with Green Net and did not allege any illegal construction. This Respondent complied with all such directives and on being satisfied of the same the 1st Respondent dropped further proceedings. From the beginning of the construction this Respondent has always put up safety green net around the construction site and the 1st Respondent was convinced of the same. This Respondent is not aware of any other complaints preferred by the Link Valley Residents Association or other Residents against this Respondent.

11. The averments in para 5(d) are not entirely correct and are denied. While construction activity was interrupted due to Covid 19, this Respondent has always ensured safety and covered the construction site with green net. Almost 85% of the construction work of the residential complex is completed at site and for painting the exterior this Respondent had removed green net covering in some of the Towers. Clearly when the work itself was complete and only the exterior painting was to be done there could not have been any issue with respect to dust or

For Prestige Estates Projects Ltd.



Thankachan Thomas V.
Senior Vice President

debris. The Complaint dated 31.08.2021 is without any basis and the allegation with regard to lack of set back, STP etc. are not based on facts and are denied.

12. The averments in para 5 (c) with regard to the drain is also not correct and is denied. In the Environmental Clearance Certificate dated 30.01.2017 the authority has dealt with this Respondent's project area and not public drains. A perusal of the Certificate will show that the Authority has only directed that the drainage channel within the 2nd Respondent's Project site must be widened with connectivity to the storm water drain on the eastern side. Accordingly this Respondent submitted appropriate documents with respect to the same and pursuant thereto the committee had accorded its clearance. In accordance with the requirements the storm drain within the 2nd Respondent's project site has been widened adequately to prevent any flooding and the drainage channel has been connected to the existing storm water drains on the eastern side. It is submitted that the storm water drain on the eastern side is not within this Respondent's project site and any widening of the same is to be undertaken by the public authorities and the Authority could not also have directed this

For Prestige Estates Projects Ltd.



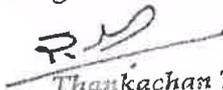

Thankachan Thomas V.
Senior Vice President

EXHIBIT-R(9) 1/13

- 69 - 8

EXHIBIT-R(9) 1/11

Respondent to do any construction on the same. The drainage channel within the 2nd Respondent's site and situated on the boundary with the properties of the Link Valley Residents Association is widened to about four feet. At the same time the width of the drainage on either side of the properties of the Link Valley Residents Association which connects to the Kadampra river is only between two and three feet. This drain is lying outside this Respondent's construction site and is not within the control of this Respondent. This Respondent has not suppressed any material as alleged and the allegation that the set back was fixed by including a public drain as the property of this Respondent is absolutely incorrect and is denied. There is no public drain within this Respondent's project property.

13. The averments in para 5 (f) are totally false and are denied. This Respondent has not pumped any untreated sewage waste into public drain. The sewage treatment plan for the project is not yet completed and as per the plans and sanctions will be completed only nearer to the time when the project itself is being completed. The workers engaged by the contractor executing the work for the 2nd Respondent are put up in an adjacent property and not in the project site itself. This property is 139

For Prestige Estates Projects Ltd.

[Handwritten Signature]

*Thankachan Thomas V.
Senior Vice President*



meters away from the nearest house in the neighbouring Link Valley Residents Association and accordingly there is no chance of any kind of ingress of sewage water from the camp to the Link Valley Colony. In any event a suitable SIP has been constructed for treating and dealing with the waste in that property. The Pollution Control Board was satisfied with the action taken by this Respondent and accordingly has not pursued the matter based on the complaint made against this Respondent. The situation of the Link Valley Residential Colony is probably in a lower lying area and water logging of that area was there even before this Respondent commenced construction of the project. This was because of the poor drainage facility. The drainage from the Link Valley to the Kadambayar was narrowed by filling of land. There is no water logging caused because of the project being constructed by this Respondent.

14. The averments in para 5 (g) are also false and is denied. The construction of a multi storied car parking is based on plans and approvals and there is no violation of Building Rules or setback provision. All the constructions including the Drive way are carried out as per the approved plans only. The construction is

For Prestige Estates Projects Ltd.

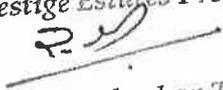

Thankachan Thomas V.
Senior Vice President



EXHIBIT-R 6(9)/13

EXHIBIT-R 6(9)/13

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being carried out in compliance with all statutory Rules and permits granted. The averments to the contrary are denied.

15. The averments in para 5(h) are also incorrect and are denied.

Based on the complaint of the Complainant, the 1st Respondent had issued a notice dated 01.11.2021 to this Respondent. A reading of the said document clearly shows that the same is only a notice and not a stop memo. Clearly the Complainant misled the Hon'ble Ombudsman by alleging that the document is a stop memo and the 2nd Respondent is continuing with the construction work despite the same. In reply to this notice this Respondent filed its reply dated 11.11.2021, true copy of which is produced herewith and marked as Annexure R2(e). The reply is clearly self explanatory and the 1st Respondent was obviously satisfied with the same and therefore had not taken any further action. It is only by misleading the Hon'ble Ombudsman that in the interim order dated 25.11.2021 it was mentioned that the notice of the Municipality is actually a stop memo. However, the 1st Respondent misunderstood the Interim Order of this Hon'ble Ombudsman as a direction to stop the construction and accordingly the 1st Respondent issued Order dated 25.11.2021 directing this Respondent to stop the

For *Prestige Estates Projects Ltd.*

*Thankachan Thomas V.
Senior Vice President*



construction work in view of the Interim Order of this Hon'ble Ombudsman. True copy of the Order dated 25.11.2021 is produced herewith and marked as **Annexure R2(f)**. This Respondent therefore preferred W.P.(C) No. 26781/2021 before the Hon'ble High Court of Kerala on 26.11.2021. The Learned Single Judge initially ordered notice to be given to the Complainant and thereafter on 30.11.2021 was pleased to stay the impugned notice and permit continuation of the construction subject to conditions. True copy of the said High Court Order dated 30.11.2021 is produced herewith and marked as **Annexure R2(g)**. This Respondent immediately complied with the conditions to the satisfaction of the 1st Respondent. This Respondent has also filed a compliance Affidavit dated 9-12-2021 with additional documents before the Hon'ble High Court, true copy of which is produced herewith and marked as **Annexure R2(h)**. Thereafter the 1st Respondent has also filed a Statement dated 13-12-2021 before the Hon'ble High Court of Kerala, true copy of which is produced herewith and marked as **Annexure R2(i)** confirming compliance by this Respondent. It is important to note that the Learned Single Judge heard the Complainant before passing the Interim Order and after taking

For Prestige Estates Projects Ltd.


Thankachan Thomas V.
Senior Vice President



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note of the various complaints as pointed out by his Counsel at the time of hearing. This Respondent fails to understand how this complaint continues to be maintainable thereafter. It is also important to note that the complainant thereafter also preferred W.A.No. 1734/2021 before a Division Bench of the Kerala High Court which however was dismissed by Judgment dated 23.12.2021, true copy of which is produced herewith and marked as **Annexure R2(j)**.

16. The averments in para 5(h) and (i) that the 1st Respondent has not taken any action against the 2nd Respondent for alleged illegal construction is not correct and is denied. Obviously this Respondent is satisfied that there is no illegal construction. The 1st Respondent has visited this Respondent's project site many times as submitted by them before the Hon'ble High Court of Kerala and it is based on such site inspection that the 1st Respondent has pointed out certain issues in the notice dated 01.11.2021. These issues have been redressed to the satisfaction of the 1st Respondent as is evident from the Statement filed by the 1st Respondent before the Hon'ble Kerala High Court.

For Prestige Estates Projects Ltd.



Thankachan Thomas V.
Senior Vice President

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17. With respect to the averments in para 5(j), it is submitted that in response to the Notice issued by the Pollution Control Board, this Respondent had filed Reply dated 7-10-2021, true copy of which is produced herewith and marked as Annexure R2(k) and pursuant thereto no further action was taken by the Pollution Control Board as it was satisfied that there was compliance from this Respondent. In fact the renewal of the Integrated Consent order thereafter will further support this view.

18. The averments in para 5(k) are not correct and are denied. It is denied that due to construction activity free flow into public storm water drain is seriously affected. The averment that the 2nd Respondent has taken a building permit without showing the public drain is misleading incorrect and is denied. There is no public drain within the project site of this Respondent and this Respondent has made adequate arrangements for widening the drain within the project site as directed in the Environmental Clearance Certificate and to ensure that there is no flooding. SEIAA has accepted the proposals of this Respondent and finally approved the application for issuance of Environmental Clearance as per the recommendations of the SEAC with incorporating the Environmental management Plan an mitigation

For Prestige Estates Projects Ltd.



Thankachan Thomas V.
Senior Vice President

measures. The averment that this Respondent is constructing building over public drain is absolutely false and is denied.

19. The averments in para 5(l) are also false and are denied. As already submitted, there is no public drain in the project site and the Environmental Clearance Certificate was only concerned with the removal of water from the project site and for this purpose as directed this Respondent to widen the drain in the project site. This Respondent has not made any obstruction or committed any waste to the common drains restricting free flow of water.

20. The averments in para 5 (m) are also false and are denied. This Respondent is constructing and completing the construction in the project site with all valid approvals and complying with all directions and permits issued by various authorities. The Municipality has also conducted periodical inspection and satisfied that there no violations as alleged by the Complainant. There are various other apartment complexes and other residents adjacent to this Respondent's project, but none of them have raised any complaint against this Respondent.

21. The averments in para 5(n) are also incorrect and are denied. This Respondent is constructing the project based upon valid

For **Prestige Estates Projects Ltd.**



Thomas V.
Thomas V.
Senior Vice President

permits and sanctions and when the authorities which have given permissions and sanctions have no case of any violation the prayer for inspection by the Regional Joint Director of Urban Affairs or other officials is clearly without any basis and any such inspection would be without jurisdiction. It is respectfully submitted that the Complaint is an absolute abuse of the process of law. In any view of the matter the Complainant itself has been heard by the Hon'ble High Court before passing the interim Order and the Hon'ble High Court itself being seized with the subject matter of the Complaint, the proper procedure will be to await the final decision of the Hon'ble High Court of Kerala on this issue.

- 22 With respect to the issue of the drain in this Respondent's project site the Link Valley Residents' Association has already filed a Suit before the Hon'ble Munsiff Court, Ernakulam, the existence of which has been suppressed by the Complainant. True copy of the Plaint and the Written Statement in the case are produced herewith and marked as Annexure R2(l) and (m) respectively. The question as to whether the drains in question are public drains or not is therefore subjudice and the Association having separately thought it fit to have this matter

For Prestige Estates Projects Ltd.



Thankachan Thomas V.
Senior Vice President

adjudicated by a Court of competent jurisdiction, it is not open to again raise this issue before the Hon'ble Ombudsman and this Hon'ble Ombudsman has no jurisdiction to enquire into matters relating any matter pending before a Court.

23 The nature of the Complaint filed by the Complainant is clearly outside the jurisdiction of this Hon'ble Ombudsman. The power and jurisdiction of this Hon'ble Ombudsman is laid down in the Act. There is no power to make a roving enquiry into allegations of violations of building permit. It is also important to note that apart from this Complaint, the Complainant and the Residents Association have also preferred Complaint before the District Collector and other authorities on the same subject matter and filed a suit in the Munsiff Court, Ernakulam. The Complaint ought to be dismissed on this ground alone.

24 The reliefs sought in the Complaint are clearly outside the jurisdiction of the Hon'ble Ombudsman. Admittedly there was no stop memo issued and therefore the prayer for issuing orders to enforce the stop memo is clearly misleading and is only to be rejected. It is also respectfully submitted that this Hon'ble Ombudsman has no jurisdiction to direct stoppage of construction activities. The prayer for visiting property for this

For Prestige Estates Projects Ltd.



Thomas V.
Thomas V.
Senior Vice President

EXHIBIT-R 6(9)/20

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purpose to give directions to stop construction is again malafide and with ulterior motives apart from being without jurisdiction. Accordingly it is respectfully submitted that none of the prayers sought for fall within the jurisdiction of this Hon'ble Ombudsman.

For these and other grounds to be urged at the time of hearing, it is humbly prayed that this Hon'ble Ombudsman may be pleased to dismiss the complaint with costs.

Dated this the 10th day of January 2022.

For Prestige Estate Projects Ltd

For Prestige Estates Projects Ltd.



[Handwritten Signature]

**Thankachen Thomas V.
Senior Vice President**

**Thankachen Thomas.V
Vice President
2nd Respondent**

Kochi
10.01.2022

I, Thankachen Thomas, Vice President of the 2nd Respondent hereby declares that the facts given above are true and correct to the best of my knowledge and belief.

For Prestige Estates Projects Ltd.



[Handwritten Signature]

**Thankachen Thomas V.
Senior Vice President**

**Thankachen Thomas.V
10th January 2022**

TRUE COPY

[Handwritten Signature]

ADVOCATE

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE T.R.RAVI

TUESDAY, THE 22ND DAY OF NOVEMBER 2022 / 1ST AGRAHAYANA, 1944

WP(C) NO. 26781 OF 2021

PETITIONER:

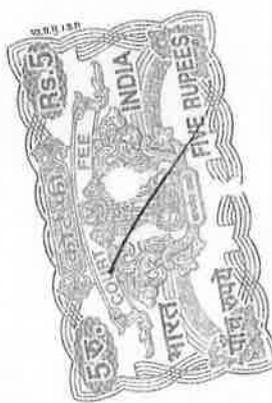
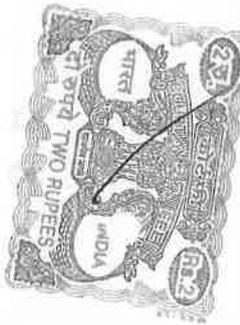
PRESTIGE ESTATES PROJECTS LIMITED
801, 8TH FLOOR,
PRESTIGE TMS SQUARE, NH 66,
BYPASS, PADIVATTOM, EDAPPALLY,
KOCHI-682024,
REPRESENTED BY ITS ASSISTANT VICE PRESIDENT,
MR. SUNIL KUMAR. K.

BY ADVS.

SRI JOSEPH MARKOSE (SR.)
SRI ALEXANDER JOSEPH MARKOS
SRI SHARAD JOSEPH KODANTHARA
SRI V. ABRAHAM MARKOS

RESPONDENTS:

- 1 THE SECRETARY
THRIKKAKARA MUNICIPALITY,
KAKKANAD,
ERNAKULAM,
KOCHI-682030.
- 2 BRINNER. M. D. J,
JOINT SECRETARY,
LINK VALLEY RESIDENTS ASSOCIATION,
RESIDING AT LIVRA-8,
LINK VALLEY,
KUSUMAGIRI. P. O.,
KAKKANAD,
KOCHI-682030.



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3 THE OMBUDSMAN FOR LOCAL SELF GOVERNMENT INSTITUTIONS,
SAPHALYAM COMPLEX,
4TH FLOOR,
TRIDA BUILDING, UNIVERSITY.P.O,
THIRUVANANTHAPURAM-695034.

BY ADVS.

S.JAMAL (SC)
SRI MANU RAMACHANDRAN
SMT.DEEPA K.R., SPL.GOV.T.PLEADER(LSGD)
MS.ANSU VARGHESE
SRI M.KIRANLAL
SRI R.RAJESH (VARKALA)
SRI T.S.SARATH
SRI SAMEER M NAIR
SRI SABIKH MOHAMMED V.S
MS.GEETHU KRISHNAN
MS.HARSHA SUSAN SAM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
31.3.2022, ALONG WITH WP(C).6706/2022, THE COURT ON
22.11.2022, DELIVERED THE FOLLOWING:

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T.R. RAVI, J.

W. P. (C).Nos.26781 of 2021 & 6706 of 2022

Dated this the 22nd day of November, 2022

JUDGMENT

The two writ petitions are filed by the same petitioner and the primary challenge in these writ petitions is to the jurisdiction of the 3rd respondent (Ombudsman for Local Self Government Institutions) in entertaining complaints against the construction of buildings based on building permits issued by the Local Self Government Institutions.

2. The petitioner is a company that is undertaking the construction of residential and commercial projects. They have undertaken the construction of the Prestige Hillside Gateway in Kakkanad. The petitioner obtained all necessary permissions and building permits as early as in 2015. The petitioner submits that 3 of the towers are practically completed, and 2 other towers are getting ready. It is stated that there are 353 allottees already in the project. The petitioner has obtained registration under the Real Estate Regulatory Authority (RERA) and obtained consent for the completion of the project on or before 31.12.2022. The documents referred to are as referred to in W.P.(C)No.6706/2022.

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3. Ext.P1 is the layout approval dated 30.09.2015 issued by the Chief Town Planner, Thiruvananthapuram. Ext.P2 is the building permit dated 06.10.2015 issued by the 1st respondent. On 01.11.2021, the 1st respondent issued Ext.P3 notice to the petitioner, titled as notice/stop memo. The notice refers to a complaint submitted by the 2nd respondent. The notice directs the petitioner to carry out some changes in the construction. There is a direction to remove certain electrical equipment which have been fixed below the driveway. It directs the petitioner to produce documents relating to ownership within 7 days. There is also a direction to consider the complaint of the neighboring residents that the petitioner is not following the security requirements while making the construction which results in the accumulation of a lot of dust and other construction materials on the properties of the neighbours. The petitioner submitted Ext.P4 explanation on 11.11.2021. The 2nd respondent approached the 3rd respondent with a complaint and the 3rd respondent issued Ext.P5 order directing the petitioner to stop the construction work and further directing the 1st respondent to seek the advice of the City Police Commissioner, Kochi to implement Ext.P3 stop memo. The order was issued *ex-parte* without noticing the fact that the petitioner had submitted his explanation to Ext.P3 notice. On receipt of

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Ext.P5 order, the 1st respondent immediately responded by issuing Ext.P6 order directing the petitioner to stop construction. Reference is made in Ext.P6 to Ext.P5 order issued by the 3rd respondent. The petitioner approached this Court by filing WP(C) No.26781 of 2021 praying to quash Ext.P5 order and Ext.P6 stop memo. On 30.11.2021, this Court granted an interim stay of Ext.P3 notice on condition that the petitioner carries out the conditions provided in the Environmental Clearance and takes appropriate steps to see that the complaints raised by the 2nd respondent and the residents' association are redressed without delay. It was ordered that the apprehension expressed regarding the operation of the aerial crane and the falling of debris shall be appropriately addressed by the petitioner. There is also a direction to the petitioner to address the complaints regarding the discharge of effluents and waste into the drainage and to make the STP functional at the earliest. The Municipality has been directed to take appropriate steps for permitting the petitioner to continue the construction activity after conducting due inspections. On receipt of the complaint which had been filed before the 3rd respondent, the petitioner filed their written statement. The 3rd respondent issued an order on 19.01.2022 (Ext.P15). The order does not show that the contentions of the petitioner had been considered.

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The 3rd respondent noted that there are averments and counter averments regarding the question whether the construction is in accordance with the Rules, and directed the Regional Joint Director of Urban Affairs to inspect the construction and report whether there is any violation since the 3rd respondent was of the view that it would be better to stop illegal constructions at the earliest stage instead of permitting the construction to go on, which will only result in waste. Pursuant to Ext.P15, the Regional Joint Director issued Ext.P16 notice on 23.02.2022 informing the petitioner that an inspection will be carried out on 03.03.2022 at 11.00 a.m. W.P. (C)No.6706 of 2022 has been filed praying to quash Ext.P15 order and to quash Ext.P12 complaint filed before the 3rd respondent and for staying the operation and implementation of all further proceedings pursuant to Exts.P15 & P16 in O.P. No.465/2021 pending before the 3rd respondent. On 02.03.2022, this Court admitted the second writ petition and ordered to keep in abeyance all further proceedings pursuant to Ext.P15.

4. The 2nd respondent has filed a counter affidavit. It is stated that Ext.P12 complaint has been preferred since the 1st respondent failed to address various violations committed by the petitioner despite being pointed out by the 2nd respondent, and hence there is a case of maladministration on the part of the 1st

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respondent, which can be looked into by the 3rd respondent. Reference is made to O.S.No.151/2020 preferred by the Link Valley Residential Community residents. A complaint dated 31.08.2021 submitted by the 2nd respondent before the 1st respondent has been produced as Ext.R2(a), wherein the violations have been narrated. It is further stated that the 3rd respondent has been approached through Ext.P12 complaint seeking action in terms of Chapter XXV A of Kerala Panchayat Raj Act, the provisions of which have been made applicable to Municipalities. It is contended that the action initiated by the 3rd respondent is very much within the jurisdiction and is in accordance with the powers available under Section 271(J) of the Kerala Panchayat Raj Act read with Rule 17 of the Ombudsman for Local Self Government Institutions (Inquiry of Complaints and Service Conditions) Rules, 1999.

5. Heard Sri.Joseph Markose, Senior Advocate instructed by Sri.Abraham Markos on behalf of the petitioner, Sri.S.Jamal on behalf of the 1st respondent, Sri.Manu Ramachandran on behalf of the 2nd respondent and Smt.K.R. Deepa, Special Government Pleader, LSGD on behalf of the State.

6. Chapter XXVB of the Kerala Panchayat Raj Act, 1994 contains the provisions relating to Ombudsman for Local Self

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Government Institutions. Section 271(F)(1)(b) defines allegation in the following manner:

"(1) For the purpose of this Chapter-

(a) xxxxxxxx xxxxxxxx xxxxxxxx

(b) 'allegation'-

(a) in relation to a public servant means, any affirmation that such public servant-

(i) has abused his position as such for any gain or favour to himself or to any other person or to cause undue harm or hardship to any other person;

(ii) was actuated in the discharge of his functions as such public servant by personal interest or improper or corrupt motives;

(iii) is guilty of corruption, favouritism, nepotism or lack of integrity;

(iv) is guilty of any action as public servant which facilitates or causes to make any loss, waste or misapplication of money or other property of the Local Self Government Institution.

(b) in relation to a Local Self Government Institution means any affirmation that such Local Self Government Institution has defaulted or acted in excess of its powers in the discharge of its functions imposed on it by law or in implementing the lawful orders and directions of the Government;

(c) 'Complaint' means a statement of allegation that a public servant or a Local Self Government Institution is guilty of corruption or maladministration and includes any reference to an allegation in respect of which suo motu enquiry has been proposed or

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recommendation for enquiry has been made by Government;

(d) 'Corruption' includes anything publishable under Chapter X of the Indian Penal Code (Central Act 45 of 1860) or under the Prevention of Corruption Act, 1988 (Central Act 49 of 1988);

(e) 'Maladministration' means action taken or purporting to have been taken in the exercise of administrative function in any case.-

(i) Where such action, administrative procedure or practice governing such action is unreasonable, unjust, oppressive, discriminatory or nepotistic and will make illegitimate gain or loss or will deny deserving benefits; or

(ii) Where there is wilful negligence or delay in taking such action, or the administrative procedure or method regulating such action will cause undue delay and includes the action leading to loss or waste or misuse of fund by malfeasance or misfeasance."

The contention is that the inaction on the part of the 1st respondent on the complaint submitted by the 2nd respondent amounts to maladministration and hence the Ombudsman for Local Self Government Institutions is having necessary jurisdiction to entertain the complaint.

7. Section 29 of the Kerala Municipalities Act states that the administration of the Municipality shall vest in the Council. Section 30 of the Act deals with the powers, functions, and

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responsibilities of the Municipality and says that the Council has the duty of administering the Municipal area in respect of matters which have been enumerated in the First Schedule. The First Schedule contains mandatory functions and general functions. The first category stated in mandatory functions is the regulation of building construction. It is hence contended that an administrative function of the Municipality, if not properly performed will amount to maladministration. Section 271(J) deals with the functions of the Ombudsman. It includes investigation into any allegation contained in a complaint or on a reference by Government or that has come to the notice of the Ombudsman. The Ombudsman can also enquire into any complaint in which corruption or maladministration of a public servant, or a Local Self Government Institution is alleged.

8. A Division Bench of this Court in **Mayor of Kochi V. Ombudsman For Local Self Government Institutions** reported in **[2004 (2) KLT 621]** considered the question whether the Ombudsman appointed is competent to proceed against a Municipality or a Municipal Corporation. This Court held that the Ombudsman has jurisdiction over the Panchayat as well as Municipalities which are both institutions of Local Self Government. A learned Single Judge of this Court in **Reghuvara Panicker R. V.**

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Secretary, Maranallur Grama Panchayat & Anr. reported in **[2009 (4) KHC 170]** considered a complaint of inaction on the part of the Panchayat Secretary and held that the Ombudsman can direct the Panchayat Secretary to take a decision on the complaint. It was found that inaction will confer jurisdiction on the Ombudsman to interfere in a matter. In **Krishnan Nair V. Secretary, Corporation of Thiruvananthapuram** reported in **[2010 (2) KLT 128]**, a learned Single Judge held that the Local Self Government Institutions are duty bound to carry out commands of the LSGI Tribunal and failure to do so, would amount to maladministration. In **Kulukkalloor Grama Panchayat V. Ombudsman for Local Self-Govt. Institutions & Ors.** reported in **[2013 (2) KHC 133]**, an order was issued by the Ombudsman directing payment in a complaint alleging that the Panchayat has failed to make a payment towards the cost of material supplied by the complainants. The Court noticed that the word "maladministration" is defined as any action taken or purporting to have been taken in the exercise of administrative functions in any case where such action, administrative procedure or practice governing such actions is unreasonable, unjust, oppressive, discriminatory, or nepotistic and will make an illegitimate gain or loss or will deny deserving benefits and that it included willful

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negligence or delay in taking decisions. This Court found that in a case where the claim is for money based on materials supplied and where the claim is disputed, the same will not come under the purview of allegation or complaint or maladministration as defined under Section 271(F). In **Fr.Laberin Yesu V. K.Biju, I.A.S. and Others** reported in **(2020 (5) KHC 552)** this Court was considering a complaint before the Ombudsman regarding a building permit that was alleged to have been issued by the officials of the Corporation flouting statutory provisions. This Court held that going by Section 271(M) of the Kerala Panchayat Raj Act, 1994, the Ombudsman is interdicted from enquiring into any matter in respect of which remedy is available to the complainant before the Tribunal for Local Self Government Institutions. The Court held that as far as a building permit is concerned, if the contention is that the rule has been flouted, the remedy is to challenge the building permit before the Tribunal. The Court agreed with the contention of the petitioner therein that the Tribunal cannot grant relief against the officials of the Corporation who are alleged to have abused their position as public servants. The Court however found that, sustainability or otherwise of the building permit has to be first gone into and it is only after the petitioner is able to successfully challenge the building permit before the

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Tribunal, that the question regarding abuse of position as public servant for personal gain in the matter of issuing building permit will arise. Even though reference was made to Rules 17 and 13 of the Ombudsman for Self Government Institutions (Enquiry of Complaint and Service Conditions) Rules, 1999 in support of the contention that the Ombudsman has jurisdiction, the same may not be relevant in this case. Rule 17 deals with the power of the Ombudsman to suspend temporarily any action which is the ground for a complaint. If the action complained of is the grant of a building permit or the manner in which the building permit is being put to use, necessarily, there cannot be an action over which the Ombudsman can have jurisdiction in view of Section 271M. Rule 19 is the power of the Ombudsman to get the matter investigated by any Police Officer or other Government Officers or any Technical Experts. Such orders can also be issued only if the complaint itself is entertainable by the Ombudsman in the teeth of Section 271M(4).

9. In the case on hand, a reading of the complaint filed before the Ombudsman would show that it relates to the manner in which the petitioner is carrying out the construction on the strength of the building permit which has been issued to him. The allegations are that the construction is made violating the Building

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Rules and that even though complaints were filed before the Secretary of the Municipality, action is not being taken. It is stated that the Municipality is helping violators and hence the Ombudsman may intervene. A reading of the complaint would show that without a finding by appropriate authority regarding the violation of the Building Rules in the construction that has been effected by the petitioner, an action before the Ombudsman would not be possible in terms of Section 271M(4). The Municipality Building Rules contains several provisions regarding the manner in which the construction is to be carried out and the power of the Secretary to regulate construction that is being made on the basis of building permit which has been issued. A complaint regarding violation can only be taken up before the Tribunal and if the Tribunal renders a finding in favour of the 3rd respondent, necessarily, the 3rd respondent will be able to maintain an application before the Ombudsman, if he has a case that the violations have been permitted by the Officials of the Corporation by action or inaction which can be brought within the meaning of the word "maladministration". I am in respectful agreement with the view expressed by this Court in **Fr.Laberin Yesu (supra)**.

In the above view of the matter, the petitioner is entitled to succeed in these writ petitions. The order Ext.P5 dated

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23.11.2021 in W.P.(C)No.26781 of 2021 is quashed. The order Ext.P15 issued by the 3rd respondent and Ext.P16 issued by the 4th respondent in W.P.(C)No.6706 of 2022 are also quashed. It is declared that Ext.P12 complaint is not maintainable before the 3rd respondent. The Secretary of the Thrikkakara Municipality, who is the 1st respondent, has to consider whether Ext.P6 stop memo dated 25.11.2021 has to be continued, untrammelled by the orders issued by the 3rd respondent. It is made clear that this Court has not expressed any view regarding the merits of the allegations contained in the complaint filed by the 2nd respondent, before the 3rd respondent and all the contentions of the 2nd respondent as against the construction that is being effected by the petitioner are left open to be agitated before the appropriate forum.

Sd/-
T.R. RAVI
JUDGE

Pn/dsn

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APPENDIX OF WP (C) 26781/2021

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE LAYOUT APPROVAL DATED 30.09.2015 OF THE CHIEF TOWN PLANNER, THIRUVANANTHAPURAM.
- Exhibit P2 TRUE COPY OF THE BUILDING PERMIT NO.BA 1337/2013 DATED 06.10.2015 ISSUED BY THE 1ST RESPONDENT
- Exhibit P3 TRUE COPY OF THE NOTICE NO.TP1-12828/21 DATED 01.11.2021 ISSUED BY THE 1ST RESPONDENT.
- Exhibit P4 TRUE COPY OF THE REPLY DATED 11.11.2021 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT ALONG WITH ACKNOWLEDGEMENT.
- Exhibit P5 TRUE COPY OF THE ORDER DATED 23.11.2021 ISSUED BY THE 3RD RESPONDENT OMBUDSMAN FOR LOCAL SELF GOVERNMENT INSTITUTIONS IN IA NO.03/2021 IN OP NO.465/2021
- Exhibit P6 TRUE COPY OF THE STOP MEMO DATED 25.11.2021 ISSUED BY THE 1ST RESPONDENT
- Exhibit P7 TRUE COPY OF THE REPORT APPEARING IN MALAYALA MANORAMA DAILY, KOCHI EDITION ON 24.11.2021.
- Exhibit P8 TRUE COPY OF THE REPORT APPEARING IN INDIAN EXPRESS, KOCHI EDITION ON 16-11-2021.
- Exhibit P9 PHOTOGRAPHS EVIDENCING THE PETITIONER COVERED THE BUILDINGS UNDER CONSTRUCTION WITH GREEN NETS.
- Exhibit P10 PHOTOGRAPH EVIDENCING THE PROCESS OF DISMANTLING.
- Exhibit P11 TRUE COPY OF THE REPLY DATED 07/10/2021 FILED BY THE PETITIONER BEFORE THE KERALA STATE POLLUTION CONTROL BOARD.
- Exhibit P12 PHOTOGRAPHS EVIDENCING THE ARRANGEMENTS FOR PROPER MANAGEMENT OF WASTE WATER FROM THE LABOUR CAMP.
- Exhibit P13 PHOTOGRAPH OF THE SITE PLAN OF THE PETITIONER'S CONSTRUCTION SITE.

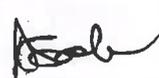
✓

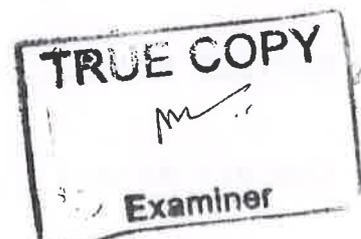
RESPONDENTS' EXTS:

- EXHIBIT R2 (A): THE TRUE COPY OF THE LETTER DATED 21.03.2018 ISSUED BY THE LINK VALLEY RESIDENTS ASSOCIATION TO THE PETITIONER.
- EXHIBIT R2 (B): THE TRUE COPY OF THE EMAIL DISCUSSIONS BETWEEN THE LINK VALLEY RESIDENTS ASSOCIATION AND SRI. THANKACHAN THOMAS, VICE-PRESIDENT, PRESTIGE CONSTRUCTIONS DATED 04.10.2018 AND 06.10.2018
- EXHIBIT R2 (C): THE TRUE COPY OF THE EMAIL DATED 06.12.2019 CONTAINING DETAILS OF PAYMENTS MADE BY THE WRIT PETITIONER TO LINK VALLEY FOR REMEDIAL MEASURES
- EXHIBIT R2 (D): TRUE COPY OF THE PLAINT IN O.S NO.151/2020 ON THE FILES OF MUNSIFF'S COUR-II, ERNAKULAM.
- EXHIBIT R2 (E): TRUE COPY OF AD-INTERIM INJUNCTION DATED 7.2.2020 IN OS NO.151/2020 ON THE FILES OF MUNSIFF'S COURT-II, ERNAKULAM.
- EXHIBIT R2 (F): TRUE COPY OF ENVIRONMENTAL CLEARANCE VIDE NO.588/SEIAA/EC3/4504/2014 DT.30.1.2017 GRANTED IN FAVOUR OF THE WRIT PETITIONER.
- EXHIBIT R2 (G): THE TRUE COPY OF THE COMPLAINT DATED 10.12.2019 ALONG WITH THE RECEIPT DATED 11.12.2019
- EXHIBIT R2 (H): THE TRUE COPY OF THE COMPLAINT DATED 23.01.2020 PREFERRED BY THE LINK VALLEY RESIDENTS ASSOCIATION TO THE 1ST RESPONDENT.
- EXHIBIT R2 (I): THE TRUE COPY OF THE STOP MEMO VIDE NO. TP1-1561/2020 DATED 29.01.2020 TO THE WRIT PETITIONER
- EXHIBIT R2 (J): THE TRUE COPY OF THE NOTICE VIDE NO.PCB/EKM/DO- 1/2/18 DATED 28.01.2020 ISSUED BY PCB TO WRIT PETITIONER
- EXHIBIT R2 (K): THE TRUE COPY OF THE REPRESENTATION DATED 29.01.2020 PREFERRED BY THE 2ND RESPONDENT TO THE 1ST RESPONDENT
- EXHIBIT R2 (L): THE TRUE COPY OF THE LETTER NO.PCB/EKM/DO-1/GEN-13/11 DATED 07.02.2020 ISSUED BY THE PCB TO THE WRIT PETITIONER
- EXHIBIT R2 (M): THE TRUE COPY OF THE LETTER NO.T.P1-1561/2020 DATED 07.02.2020 ISSUED BY THE 1ST RESPONDENT TO THE WRIT PETITIONER
- EXHIBIT R2 (N): THE TRUE COPY OF THE COMPLAINT DATED 12.01.2021 PREFERRED BY THE LINK VALLEY RESIDENTIAL ASSOCIATION TO THE 1ST RESPONDENT
- EXHIBIT R2 (O): THE TRUE COPY OF THE COMPLAINT DATED

- 19.03.2021 PREFERRED BY THE LINK VALLEY RESIDENTIAL ASSOCIATION TO THE PCB WITH RECEIPT
- EXHIBIT R2 (P) : THE TRUE COPY OF THE RECEIPT VIDE No.M2-398/2021/TDCEKM DATED 13.04.2021 WITH FILE NO.DCEKM/857/2021-M2 ISSUED BY THE OFFICE OF THE DISTRICT COLLECTOR.
- EXHIBIT R2 (Q) : THE TRUE COPY OF THE LETTER VIDE FILE No.DCEKM/857/2021-M2 FORWARDED BY THE DISTRICT COLLECTOR TO THE 1ST RESPONDENT AND PCB.
- EXHIBIT R2 (R) : THE TRUE COPY OF NOTICE VIDE NO.PCB/EKM/DO-1/ GEN-37/21 DATED 22.4.2021 ISSUED BY THE PCB TO THE WRIT PETITIONER
- EXHIBIT R2 (S) : THE TRUE COPY OF THE COMPLAINT DATED 05.08.2021 PREFERRED BY THE LINK VALLEY RESIDENTIAL ASSOCIATION BEFORE PCB.
- EXHIBIT R2 (T) : THE TRUE COPY OF THE SHOW-CAUSE NOTICE DATED 24.09.2021 ISSUED BY THE PCB TO THE WRIT PETITIONER
- EXHIBIT R2 (U) : THE TRUE COPY OF THE COMPLAINT DATED 31.08.2021 PREFERRED BY THE 2ND RESPONDENT TO THE 1ST RESPONDENT ALONG WITH RECEIPT
- EXHIBIT R2 (V) : THE TRUE COPY OF THE ORIGINAL PETITION No.465/2021 ON THE FILE OF THE 3RD RESPONDENT.
- EXHIBIT R2 (W) : THE TRUE PHOTOGRAPHS SHOWING THE INTERNAL ROADS OF THE LINK VALLEY RESIDENTIAL ASSOCIATION BEING COVERED WITH THICK MUDDY WATER.
- EXHIBIT R2 (X) : THE PHOTOGRAPHS SHOWING THE CONSTRUCTION OF DRIVE WAY WITH PARKING FACILITY AND HIGH RISE BUILDING WITHOUT REQUISITE SET BACK AND DAMAGE CAUSE TO NEARBY BUILDING.
- EXHIBIT R2 (Y) : TRUE COPY OF INTERIM ORDER DT.19.1.2022 BY 3RD RESPONDENT OMBUDSMAN IN COMPLAINT No.465/2021.

TRUE COPY


ADVOCATE



IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

Thursday, the 22nd day of December 2022 / 1st Pousha, 1944
- WA NO. 1911 OF 2022

AGAINST COMMON JUDGMENT DATED 22.11.2022 IN WP(C) 6706/2022 OF THIS COURT

APPELLANT/2ND RESPONDENT:

BRINNER M.D.J., AGED 56 YEARS , S/O M.O DEVASSY, LIVRA-8, LINK
VALLEY, KUSUMAGIRI P.O, KAKKANAD, KOCHI - 682030.

BY ADVS.M/S. MANU RAMACHANDRAN, M.KIRANLAL,
R.RAJESH (VARKALA), ANSU VARGHESE, SAMEER M NAIR,
DHANALAKSHMI V.K., GEETHU KRISHNAN & SAILAKSHMI MENON

RESPONDENTS/WRIT PETITIONER & RESPONDENTS 1,3 & 4:

1. PRESTIGE ESTATES PROJECTS LIMITED, 801, 8TH FLOOR, PRESTIGE TMS
SQUARE, NH 66, BYPASS, PADIVATTOM, EDAPPALY,
KOCHI-682024. REPRESENTED BY ITS SENIOR VICE PRESIDENT MR.
THANKACHAN V. THOMAS.
2. THE SECRETARY THRIKKAKARA MUNICIPALITY, KAKKANAD, ERNAKULAM, KOCHI-
682030.
3. THE OMBUDSMAN FOR LOCAL SELF GOVERNMENT INSTITUTIONS, SAPHALYAM
COMPLEX, 4TH FLOOR, TRIDA BUILDING, UNIVERSITY
P.O., THIRUVANANTHAPURAM - 695034.
4. THE REGIONAL JOINT DIRECTOR, DEPARTMENT OF URBAN AFFAIRS, BROADWAY,
MARINE DRIVE, ERNAKULAM, KOCHI - 682031.

BY SENIOR ADVOCATE SRI.JOSEPH MARKOS FOR R1

STANDING COUNSEL SMT.P.K.RESHMA FOR R3

Prayer for interim relief in the Writ Appeal stating that in the
circumstances stated in the appeal memorandum, the High Court be pleased
to stay the operation of the common judgment dated 22.11.2022 in W.P.(C)
No.6706/2022 passed by the learned Single Judge of this Hon'ble Court,
pending disposal of the writ appeal.

This Writ Appeal coming on for orders along with connected case on
22/12/2022 upon perusing the appeal memorandum, the court on the same day
passed the following:

98.
S. Manikumar, C.J.

&

Shaji P. Chaly, J.

W.A.Nos.1911 & 1912 of 2022

Dated this the 22nd day of December, 2022

ORDER

S. Manikumar, C.J.

Instant writ appeals are filed by respondent No.2 in W.P. (C)Nos.26781 of 2021 and 6706 of 2022, challenging the common judgment of the learned single Judge dated 22.11.2022, by which the writ court granted the reliefs sought for and allowed the writ petitions.

2. Before the writ court, the petitioner in W.P.(C)No.26781 of 2021 - Prestige Estates Projects Limited, Kochi, has sought for the following reliefs:

- “(i) Call for the records relating to Exhibit P15 Order of the 3rd Respondent and quash the same by issue of a writ of certiorari or such other appropriate writ, direction or order;
- (ii) Call for the records relating to Exhibit P12 complaint filed before the 3rd respondent and quash the same by issue of a writ of certiorari or such other appropriate writ, direction or order;

W.A.Nos.1911 & 1912 of 2022

-:2:-

(iii) Stay the operation and implementation of all further proceedings pursuant to Exts. P15 and P16 and further proceedings in O. P. No. 465 of 2021 before the 3rd Respondent pending final disposal of the present writ petition."

3. Yet another writ petition, W.P.(C)No.6706 of 2022, was also filed by the very same petitioner for the following reliefs:

- "(i) Call for the records relating to Exhibits P5 Order dated 23.11.2021 issued by the 3rd Respondent and Exhibit P6 Stop Memo dated 25.11.2021 issued by the 1st Respondent and quash the same by issue of a writ of certiorari or such other appropriate writ, direction or order;
- (ii) Stay the operation and implementation of all further proceedings pursuant to Exts. P5 and P6 pending final disposal of the present writ petition."

4. As both the writ petitions pertain to the jurisdiction of the Ombudsman for Local Self Government Institutions in entertaining complaints against construction of buildings based on building permits issued by the Local Self Government Departments, they were taken up together and after considering the rival submissions; Chapter XXVB of the Kerala

W.A.Nos.1911 & 1912 of 2022

-:3:-

Panchayat Raj Act, 1994, in particular, Section 271(F)(1)(b), Sections 29 and 30 of the Kerala Municipalities Act and the decisions of this court in **Mayor of Kochi v. Ombudsman For Local Self Government Institutions** reported in 2004 (2) KLT 621, **Reghuvara Panicker R. v. Secretary, Maranallur Grama Panchayat & Anr.** reported in 2009 (4) KHC 170, **Krishnan Nair v. Secretary, Corporation of Thiruvananthapuram** reported in 2010 (2) KLT 128, **Kulukkalloor Grama Panchayat v. Ombudsman for Local Self-Govt. Institutions & Ors.** reported in 2013 (2) KHC 133 and **Fr.Laberin Yesu V. K.Biju, I.A.S. and Others** reported in (2020 (5) KHC 552), writ court, vide judgment dated 22.11.2022, ordered thus:

"9. In the case on hand, a reading of the complaint filed before the Ombudsman would show that it relates to the manner in which the petitioner is carrying out the construction on the strength of the building permit which has been issued to him. The allegations are that the construction is made violating the Building Rules and that even though complaints were filed before the Secretary of the Municipality, action is not being taken. It is stated that

= 101.

EXHIBIT-R 6(i) / 5

W.A.Nos.1911 & 1912 of 2022

-:4:-

the Municipality is helping violators and hence the Ombudsman may intervene. A reading of the complaint would show that without a finding by appropriate authority regarding the violation of the Building Rules in the construction that has been effected by the petitioner, an action before the Ombudsman would not be possible in terms of Section 271M(4). The Municipality Building Rules contains several provisions regarding the manner in which the construction is to be carried out and the power of the Secretary to regulate construction that is being made on the basis of building permit which has been issued. A complaint regarding violation can only be taken up before the Tribunal and if the Tribunal renders a finding in favour of the 3rd respondent, necessarily, the 3rd respondent will be able to maintain an application before the Ombudsman, if he has a case that the violations have been permitted by the Officials of the Corporation by action or inaction which can be brought within the meaning of the word "maladministration". I am in respectful agreement with the view expressed by this Court in **Fr.Laberin Yesu** (supra).

In the above view of the matter, the petitioner is entitled to succeed in these writ petitions. The order Ext.P5 dated 23.11.2021 in W.P.(C)No.26781 of 2021 is quashed. The order Ext.P15 issued by the 3rd respondent and Ext.P16 issued by the 4th respondent in W.P.(C)No.6706 of 2022 are also quashed. It is declared that Ext.P12 complaint is not

← 102

EXHIBIT-R 6(i)/6

W.A.Nos.1911 & 1912 of 2022

-:5:-

maintainable before the 3rd respondent. The Secretary of the Thrikkakara Municipality, who is the 1st respondent, has to consider whether Ext.P6 stop memo dated 25.11.2021 has to be continued, untrammelled by the orders issued by the 3rd respondent. It is made clear that this Court has not expressed any view regarding the merits of the allegations contained in the complaint filed by the 2nd respondent before the 3rd respondent and all the contentions of the 2nd respondent as against the construction that is being effected by the petitioner are left open to be agitated before the appropriate forum."

Being aggrieved, instant writ appeals are filed.

5. Mr. Joseph Markos, learned Senior Counsel for the Prestige Estates Projects Limited, Kochi/respondent No.1 in both the appeals submitted that construction, as per the permit granted, has already been completed and occupancy certificate issued. Said submission is placed on record.

6. Considering the grounds raised, we are inclined to adjudicate the same.

W.A.Nos.1911 & 1912 of 2022

-:6:-

Though Mr.Manu Ramachandran, learned counsel for the appellant has sought for a stay of the operation of the common judgment in W.P.(C)Nos.26781 of 2021 and 6706 of 2022 dated 22.11.2022, we are not inclined to grant the same.

Sd/-

**S. Manikumar
Chief Justice**

Sd/-

**Shaji P. Chaly
Judge**

vpv



23/12/22
23/12/22

- 104.

EXHIBIT-R 6(i)/8

EXT.P5:TRUE COPY OF THE ORDER DATED 23.11.2021
ISSUED BY THE 3RD RESPONDENT IN I.A.NO.03/2021
IN O.P.NO.465/2021.

EXT.P6:TRUE COPY OF THE STOP MEMO DATED 25.11.2021
ISSUED BY THE 1ST RESPONDENT.

EXT.P12:TRUE COPY OF THE COMPLAINT DATED 15.11.2021
OF THE 2ND RESPONDENT WITHOUT ANNEXURES.

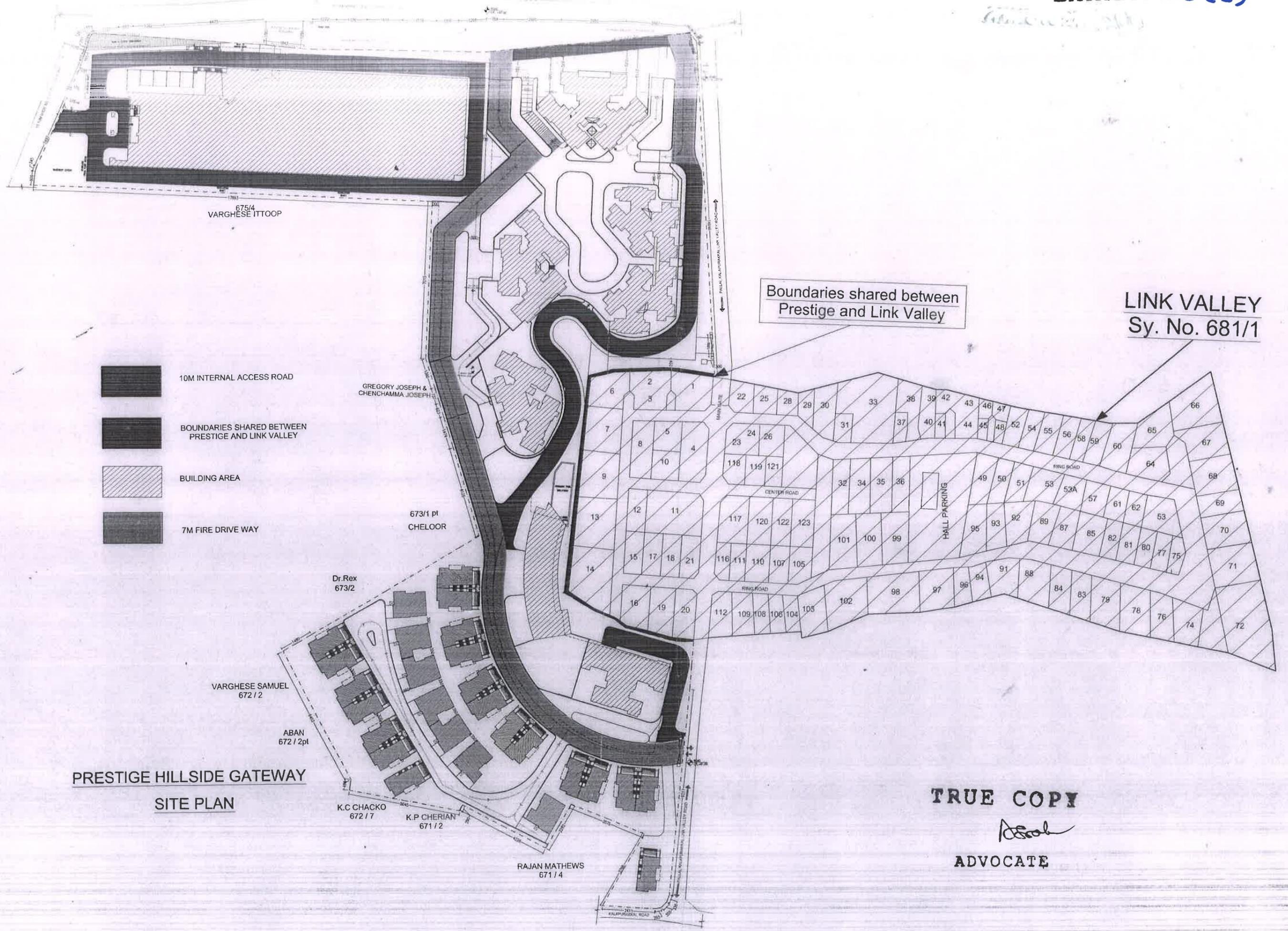
EXT.P15:TRUE COPY OF THE ORDER DATED 19.01.2021.
RECEIVED ON 07.02.2022, PASSED BY THE 3RD RESPONDENT.

EXT.P16:TRUE COPY OF THE INSPECTION NOTICE
DATED 23.02.2022 ISSUED BY THE 4TH RESPONDENT.

TRUE COPY



ADVOCATE



Boundaries shared between Prestige and Link Valley

LINK VALLEY Sy. No. 681/1

-  10M INTERNAL ACCESS ROAD
-  BOUNDARIES SHARED BETWEEN PRESTIGE AND LINK VALLEY
-  BUILDING AREA
-  7M FIRE DRIVE WAY

PRESTIGE HILLSIDE GATEWAY
SITE PLAN

TRUE COPY
[Signature]
ADVOCATE

106.

EXHIBIT-R 6(K)

09 August 2020

From:

Varghese V
63, Link Valley
Kakkanad 682030
E-mail: kalokcaljoy@gmail.com

To:

1. The Chief Secretary
Thiruvananthapuram
2. The District Collector
Ernakulam
3. The General Secretary
Link Valley Residents Association

Respected Sir,

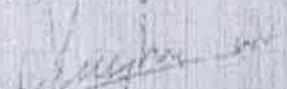
Sub: Flooding during Rainy Season for last 22 years

My letter dated 02 May 2020 addressed to The District Collector, Ernakulam and The Secretary, Thrikkakkara Municipality with copy to Mr. Varghese P Ittop, Palal Kalapurakkal, Kakkanad with all its enclosures.

2. Today 09 August 22020, photo of the flood water in front of my House IX/1912 is enclosed. Our letter dated 28 April 2020 with copy to the General Secretary of our Association should have permitted Mr. Varghese P Ittop to fill our affected area, this situation would not have occurred. You may kindly use your good office to do the needful.

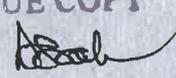
Thanking you, Sir,

Yours faithfully,


(Varghese V)

cc: The Station House Officer
Infopark Police Station

Encl: Photo of present flood


TRUE COPY

ADVOCATE

107. EXHIBIT-R6(1)

L
C V A

LINK VALLEY COMMUNITY ASSOCIATION

Regn. No. EKM/TC/68/2022

House No. 42, Link Valley, Kusumagiri(P.O.), Kakkanad, Ernakulam, Kerala 682030

President :
PAUL GEORGE
M: 7356036070

General Secretary :
THANKACHAN GEORGE
Mob: 9633941872

Dear LINK Valley friends,

As you all know, our outside and inside road works are partially completed by M/s.Prestige group. Our aim is to complete the entire road works, canal works etc before they leave the site. We had approached the higher authorities of the Prestige group and they have informed us that the LIVRA committee have made a false case against them and Mr. Ittoop Varghese.

The Prestige group had denied to transfer funds to any personal bank accounts and that seems to be the reason for the court case. As an esteemed establishment, it is not possible to transfer funds to any personal accounts and hope that is understandable by everyone.

I suggest and humbly request all members of Link Valley to support us to withdraw the case against Prestige group and Mr.Ittoop Varghese. This will thereby help us better our community by completing our pending works and get lots more done to make Link Valley even better. Your valuable suggestions and opinions also appreciated.

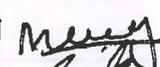
Sincerely

George Thankachan,


General Secretary

Link valley community association.



- 1 - Paul George HNO: 54 
- 2 - George Thankachan HNO: 42 
- 3 - Jose P.Y., 41, Link Valley. 
- 4 - Sasidharan Kesavan HNO=9.  It is my pleasure to support this endeavour
- 5 - Dr. K. N. Poindexter  HNO: 3
- 6 - Dr. O. Raveendran HNO: 41A 
- 7 - Naveen. P. Sabu HNO: 17 
- 8 - Mercy Thankachan HNO: 19 
- 9 - EG. Manoj HNO: 23 

Vice President:
MANOJ E.G.

Joint Secretary:
JOSE YOHANNAN

Treasurer:
DR. O. RAVINDRAN

- 10. S. SOMAN PILLAI. ¹⁰⁸ H. NO. 117 S Pillai
- 11. Sreedevi H. No. 120 Sreedevi
- 12. George C Mathu H. No: 82 G. C. Mathu
- 13. Robin Raju Koderam H. No. 75 R. Raju
- 14. JAMMAD GOSSEPH. H. No: 80 Jammad
- 15. P. N. UNNI RAJAN F. No: 67
- 16. JOSE F. No: 50
- 17. K. ~~Sub~~ K. Kulemama. H. No. 33 K. Kulemama
- 18. Sanjama Salley H. No: 76
- 19. MELVIN GEORGE H. No 42 B Melvin
- 20. James Zecaria LINRA-14 - James

TRUE COPY

Abdul
ADVOCATE

