

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

W.A.No. 715 of 2009 IN WP(C).38062/2008

AGAINST THE JUDGMENT IN WP(C) 38062/2008 of HIGH COURT OF KERALA DATED 09-02-2009

APPELLANT/PETITIONER:

PP.JOSE, AGED 50, S/O. PULIKKAN
PORINCHU, OLARIKARA DESOM, ARANATTUKARA VILLAGE
THRISSUR TALUK.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS/RESPONDENTS:

1. THE STATE OF KERALA, REP. BY
THE SECRETARY TO THE GOVT. LOCAL SELF GOVERNMENT
DEPARTMENT, THIRUVANANTHAPURAM.
2. THE THRISSUR MUNICIPAL CORPORATION,
REP. BY ITS SECRETARY, M.G.ROAD, THRISSUR.
3. THE HEALTH OFFICER,
THRISSUR MUNICIPAL CORPORATION, ZONAL OFFICE
AYYANTHOLE, THRISSUR.
4. ABDUL AZEEZ S/O. PUTHIYAVEETIL
PAREEDMASTER, CHIYYARAM VILLAGE DESOM, THRISSUR TALUK.
5. NAZEEM AZEEZ W/O. ABDUL AZEEZ,
CHIYYARAM VILLAGE DESOM, THRISSUR TALUK.
6. ALAVI S/O. THAIKULAM MUHAMMED,
KARIKAD VILLAGE DESOM, TALAPPILLY TALUK.
7. THE ASSISTANT DRUGS CONTROLLER, THRISSUR.

R,R2,3 BY ADV. SRI.K.P.VIJAYAN
R,R2,3 BY ADV. SRI.V.M.SYAM KUMAR
R,R2,3 BY ADV. SMT.KRIPA ELIZABETH MATHEWS
R,R2,3 BY ADV. SRI.V.N.HARIDAS
R BY SRI.K.B.MOHANDAS
R SRI.K.P.VIJAYAN, SC FOR CORPORATION
GOVERNMENT PLEADER ADV.ROSE MICHAEL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 20-05-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & SHAJI P CHALY, JJ.

Writ Appeal No.715 of 2009

Dated this the 20th day of May, 2015

JUDGMENT

Antony Dominic, J.

The appellant filed writ petition challenging Ext.P9, a notice issued by the third respondent requiring the appellant to close down his medical shop on the ground that the same is functioning without a licence issued under the D & O Rules. When the writ petition was taken up for hearing, it was conceded before the learned Single Judge that the appellant was not in possession of a current licence issued by the second respondent. Taking note of the above, the writ petition was dismissed. It is this judgment which is under challenge before us.

2. We heard the counsel for the appellant and the Standing Counsel appearing for the respondents 2 and 3.

3. Admittedly, the building where the medical shop in question is located is an unauthorised one. In such a building the appellant could not have obtained licence under the D & O Rules or the P.F.A.Act. It was in such circumstances that Ext.P9 was issued. So long as the law prescribes that the medical shop should have licence issued under the D & O Rules and the Prevention of Food Adulteration Act (presently 'the Food Safety and

Standards Act, 2006') and as the appellant is not in possession of either of these, the third respondent cannot be faulted for having issued Ext.P9. The fact that the appellant possesses a licence issued under the Drugs Act, does not alter the situation to his advantage in any manner. In such circumstances, we do not find any reason to interfere either with the judgment under appeal or Ext.P9.

4. Be that as it may, fact remains that the medical shop has been functioning in the building in question for several years. Taking note of this fact and also the request of the appellant for a reasonable time to shift his business establishment to another premises, we direct that stay of Ext.P9 ordered by this Court in the order dated 2.4.2009 will remain in force for a further period of six months from today.

Subject to the above, appeal is dismissed.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

jes

//True Copy//

P.A. to Judge