

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS**

FRIDAY, THE 6TH DAY OF FEBRUARY 2015/17TH MAGHA, 1936

WA.No. 574 of 2011 () IN WP(C).3211/2011

APPELLANT(S)/PETITIONER IN THE WRIT PETITION:

**SMITHA KARTHIKAPALLY, PROPRIETOR,
ANNAM AGRO FOODS, KINFRA SMALL INDUSTRIES PARTK
MAZHUVANNUR, NELLAD P.O.(VIA), MUVATTUPUZHA
REPRESENTED BY HER POWER HOLDER
RAJISH P.THANKAPPAN.**

**BY ADVS.SRI.N.RAGHURAJ
SMT.K.AMMINIKUTTY**

RESPONDENT(S)/RESPONDENTS IN THE WRIT PETITION:

- 1. THE DISTRICT COLLECTOR, ERNAKULAM, 682 030**
- 2. DISTRICT SUPPLY OFFICER,ERNAKULAM, 682 030**
- 3. TALUK SUPPLY OFFICER, KUNNATHUNAD, 683 542**
- 4. CIRCLE INSPECTOR OF POLICE,
KUNNATHUNAD, PATTIMATTOM., 683 562**

R BY GOVERNMENT PLEADER

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 06-02-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

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W.A.No. 574 of 2011

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Dated this the 6th day of February, 2015

J U D G M E N T

ANTONY DOMINIC, J.:

This appeal is filed by the petitioner in W.P.(C).No. 3211/2011. In the said Writ Petition, the challenge was primarily against Ext.P15 order passed by the District Collector in exercise of powers under Clause 7 of the Kerala Roller Flour Mills (Wheat and Wheat Products) Stock Limits Order, 1993, issued by the Government of Kerala in exercise of powers under Sec.3 of the Essential Commodities Act, 1955. By the judgment under appeal, the learned Single Judge disposed of the Writ Petition, relegating the appellant to pursue the alternate statutory remedies under Clause 8 of the 1993 Order mentioned above. It is this judgment which is under before us.

2. We heard the learned counsel for the appellant and the learned Government Pleader appearing for the respondents.

3. From the judgment under appeal, we notice that though the learned Single Judge has ultimately relegated the appellant to pursue the statutory alternative remedies, the learned Single Judge has also dealt with the contention of the appellant that in view of

the Removal of (Licensing Requirements, Stock Limits and Movement Restriction) On Specified Food Stuffs Order, 2002, the 1993 Order mentioned above did not survive to be implemented and has in effect rejected the same. The main grievance urged by the learned counsel for the appellant is that having relegated the appellant to pursue the alternative statutory remedies, the learned Single Judge should have left open the aforementioned contention raised by the appellant.

4. We have considered the submissions made. As we have already stated, the primary contention raised by the appellant in Ext.P8(a), the reply submitted by her to Ext.P8 show cause notice, and before this Court was that in view of the provisions of 2002 Order, wheat is a free commodity and that therefore the 1993 Order mentioned above did not survive to be implemented and that therefore, the entire proceedings are without jurisdiction. In our view, when the learned Single Judge has chosen to and rightly also, to relegate the appellant to pursue the alternative statutory remedies, it was unnecessary for this Court to have finally adjudicated on the aforesaid contention and instead, that contention should also have been left open to be agitated before the

statutory authority and decided by them. Therefore, we dispose of this appeal, clarifying that as directed by the learned Single Judge, it would be open to the appellant to pursue the alternative statutory remedies and the contention raised by the appellant regarding the 1993 Order, is also left open to be agitated in the appeal and decided by the concerned statutory authority. In other words, the findings of the learned Single Judge on the aforesaid issue contained in paragraph 24 of the judgment under appeal will stand vacated.

The appeal is disposed of as above.

Taking note of the fact that the appeal is disposed of only today, we allow the appellant to pursue the statutory remedies by moving the appropriate authority within 30 days from today. In the meanwhile, the interim order dated 13.5.2011 passed by this Court in this Writ Appeal will continue.

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Sd/-
ANTONY DOMINIC, JUDGE
Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge