

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

WP(C).No. 839 of 2009 (Y)

PETITIONER(S):

**GILBERT DUROM,
S/O.ANDREW DUROM, CHULLIKKAT HOUSE,
THOPPUMPADY
KOCHI-5.**

**BY ADVS.SRI.K.V.SOHAN
SMT.SREEJA SOHAN.K.**

RESPONDENT(S):

**COCHIN CORPORATION,
ERNAKULAM, KOCHI-11, REP. BY ITS SECRETARY.**

BY SRI.S.RAMESH BABU, SC.COCHIN CORPN.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
25-06-2015, ALONG WITH W.P.C.NO.3747 OF 2015, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:**

VS

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXT.P1 TRUE COPY OF THE JUDGMENT IN O.P.9121/1996 DATED 29.7.2002
- EXT.P2 TRUE COPY OF THE SKETCH PLAN LOCATION SHOWING THE POSITION OF THE STALL OF THE PETITIONER.
- EXT.P3 TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT DATED 28.2.2006
- EXT.P4 TRUE COPY OF THE ACKNOWLEDGMENT FOR RECEIPT OF EXT.P3 REPRESENTATION DATED 1.3.2006
- EXT.P5 TRUE COPY OF THE DISABILITY CERTIFICATE ISSUED BY THE MEDICAL BOARD WITH RESPECT TO THE PETITIONER DATED 8.3.2000.
- EXT.P6 TRUE COPY OF THE DISABILITY CERTIFICATE ISSUED BY THE MEDICAL BOARD WITH RESPECT TO THE PETITIONER'S WIFE DATED 4.9.2002
- EXT.P7 TRUE COPY OF THE JUDGMENT IN W.P.6374/2006, DATED 19.9.2008
- EXT.P8 TRUE COPY OF THE NOTICE SENT BY THE RESPONDENT DATED 13.11.2008
- EXT.P9 TRUE COPY OF THE STATEMENT SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT DATED 21.11.2008
- EXT.P10 TRUE COPY OF THE CHELAN RECEIPT EVIDENCING REMITTANCE OF THE LICENCE FEE DATED 1.3.1996
- EXT.P11 TRUE COPY OF THE CHELAN RECEIPT EVIDENCING REMITTANCE OF THE LICENCE FEE DATED 13.1.1999.
- EXT.P12 TRUE COPY OF THE CHELAN RECEIPT EVIDENCING REMITTANCE OF THE LICENCE FEE DATED 20.1.1999.
- EXT.P13 TRUE COPY OF THE ORDER DATED 19.12.2008 SERVED ON 27.12.2008.

RESPONDENT(S)' EXHIBITS :

NIL

/TRUE COPY/

PA TO JUDGE

VS

A.M.SHAFIQUE, J

**W.P.(C).No.839 of 2009
& W.P.(C).No.3747 of 2015**

Dated this the 25th day of June, 2015

JUDGMENT

Since common issues arise for consideration in these two writ petitions, they are decided together.

2. In W.P.(C).No.839 of 2009 has been filed by the petitioner seeking for a direction to quash Ext.P13 and direct the respondent not to remove the meat stall in building No.C.C.18/2673, which is being conducted at Kochupally road within Cochin Corporation, without providing an alternative accommodation. Ext.P13 is an order issued by the Secretary, Corporation of Cochin, calling upon the petitioner to remove the meat stall which is being conducted on top of a drainage canal, within a period of 15 days. Petitioner relied upon the judgment of this Court dated 19.09.2008 in W.P.(c).No.6374 of 2006. That was a writ petition filed by the very same petitioner against the Corporation, when there was a threat of the petitioner being evicted from the said premises. This Court directed the Corporation of Cochin to take

appropriate action on the petitioner's representation as expeditiously as possible. Further, it was directed that the interim order passed in this case will continue till "needful is done". Based on that it is contended that the Corporation has not provided an alternative space for conducting meat stall to the petitioner. Hence this writ petition is filed.

3. In Ext.P13 dated 19.12.2008, it is stated that the meat stall is being conducted across a culvert after making certain unauthorised structures and a shed. It is also indicated that the sale of meat is not permissible in the area and the stall is illegally put up. Further it is stated that the petitioner has no right over the area in which the stall has been put up.

4. W.P.(C).No.3747 of 2015 has been filed by a permanent resident of the Corporation of Cochin, aggrieved by the aforesaid meat stall being permitted to function. He has sought for a direction to the Corporation of Cochin to pass orders on Ext.P5 which is passed pursuant to judgment dated 19.09.2008 in W.P.(C).No.6374/2006 and take immediate action to

remove the unauthorised structure erected by the petitioner in W.P.(c).No.839 of 2009, who is the third respondent in this writ petition. The additional 4th respondent has been impleaded in the case on the allegation that her husband was also conducting the business on behalf of the fourth respondent and on his death, she has now joined with the third respondent to carry on the business.

5. The third respondent has filed a counter affidavit, inter alia stating that he is a physically challenged person and he has been carrying on the business for the last so many years. Further he states that he has no objection in the first respondent removing the present meat stall after providing him three weeks time.

6. Heard the learned counsel on either sides.

7. It is now clear from the facts and circumstances involved in the matter that the stall is conducted without any licence/permission from the competent authority. That apart, it is being conducted in an unauthorised structure across the public canal. Such an

activity cannot be permitted to be conducted as it violates all statutory provisions as well as the standards of hygiene to be taken care of.

8. Under such circumstances, it will be in the interest of justice that appropriate directions are issued to remove this unauthorised meat stall.

9. The learned counsel appearing for the Corporation of Cochin would submit that they were unable to relocate the third respondent as directed in the judgment dated 19.09.2008 in W.P.(C).No.6374 of 2006. In fact, in the said judgment, there was a direction to consider Ext.P3 representation submitted by the third respondent. Other than that, there is no direction to provide an alternate space. It is very curious to note that the Corporation had maintained silence for the last 7 years without taking any positive steps in this regard. The learned counsel for the fourth respondent would submit that she is conducting the business along with the third respondent which is disputed by the learned counsel appearing for the third respondent.

10. Under such circumstances, I do not think

that the fourth respondent has any valid legal right based on the judgment of this Court in W.P.(C).No.6374 of 2006. Hence Corporation of Cochin can be directed to remove the unauthorised stall within a period of one month from the date of receipt of a copy of this judgment.

In the result,

(i) W.P.(C).3747 of 2015 is allowed, directing the Corporation of Cochin to demolish the unauthorised construction within a period of one month from the date of receipt of a copy of this judgment.

(ii) W.P.(C).No.839 of 2009 is disposed of permitting the petitioner to give appropriate representation to the Corporation of Cochin for an alternate space. It shall be considered by them in accordance with law, if such space is available.

Sd/-
A.M.SHAFIQUE
JUDGE

VS