

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

TUESDAY, THE 23RD DAY OF JUNE 2015/2ND ASHADHA, 1937

WA.No. 846 of 2015

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AGAINST THE ORDER DATED 31-03-2015 IN WP(C) 10447/2015.**

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APPELLANT/2ND RESPONDENT:

**K.M.STEPHEN, AGED 64, S/O.MATHAI,
RESIDING AT KUNNAMKUZHACKAL HOUSE,
KOLANI KARA, THODUPUZHA VILLAGE,
THODUPUZHA TALUK, IDUKKI DISTRICT-685584.**

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS/PETITIONER AND 1ST RESPONDENT:

- 1. P.A.SEBASTIAN, AGED 64, S/O AUGUSTY,
RESIDING AT PUTHIYEDATH HOUSE,
THODUPUZHA KARA, THODUPUZHA VILLAGE,
IDUKKI DISTRICT-685584.**
- 2. THODUPUZHA MUNICIPALITY,
REPRESENTED BY ITS SECRETARY,
THODUPUZHA, IDUKKI DISTRICT-685584.**

**R1 BY ADV. SRI.PEEYUS A.KOTTAM
R2 BY ADV. SRI.P.K.SOYUZ, SC**

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 23-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

mbr/

**ASHOK BHUSHAN, CJ
& A.M.SHAFFIQUE, J.**

W.A.No.846 of 2015

Dated this the 23rd day of June 2015

J U D G M E N T

Shaffique, J

This writ appeal is filed against an interim order dated 31/03/2015 in W.P.C.No.10447/2015. 2nd respondent in the writ petition is the appellant. Writ petition is filed by the 1st respondent herein inter alia seeking for a direction to the 1st respondent Municipality to renew his licence which expired on 31/03/2015 for the year 2015-2016.

2. The averments in the writ petition discloses that the petitioner was conducting wholesale fish business in a building owned by the appellant herein. Suit was filed by the appellant seeking an injunction restraining the defendants from damaging the tenanted premises and from doing such other acts to reduce the value of the same. Suit was compromised between the parties and a compromise

decree had been passed. Later, the writ petitioner filed an application to recall the said compromise decree alleging that there is force and coercion in execution of the compromise. The said application is pending. In the meantime, the licence of the petitioner expired for which he filed the above writ petition inter alia contending that he continues to be the tenant of the premises in view of the pendency of the application before the trial court and therefore appropriate directions have to be issued. Petitioner also submitted that he had filed O.P.(C) 1203/2015 before this Court in which the compromise decree dated 29/10/2014 in O.S.No.344/2014 was stayed for a period of two weeks by an interim order dated 24/05/2015 which is still in force. Under such circumstances, the petitioner sought for an interim direction in the above writ petition which was allowed by the learned Single Judge as under:

“The learned Standing Counsel takes notice for the first respondent. Issue notice to the second respondent through speed post. Pending

further orders, there shall be an interim direction to the first respondent municipality to renew the petitioner's licence for the year 2015-16, subject to the outcome of the writ petition."

3. It is submitted by the learned counsel for the appellant that the writ petitioner has no right to seek renewal of the licence especially on account of the compromise entered into between the parties. Further, the petitioner may get an unfettered right to remain in possession till the licence period is over even though the application filed by the petitioner is disposed of against him.

4. On the other hand, learned counsel appearing for the writ petitioner submits that the learned Single Judge had correctly exercised his discretion in passing the interim order especially on account of the fact that the compromise decree was stayed by the interim order dated 25/05/2015 in O.P.(C) No.1203/2015 which is still in force.

5. Having regard to the aforesaid submission, we are of the view that in any case ultimately the application

pending before the Civil court to recall the compromise decree has to be finally decided. Until such time, since the compromise decree stands stayed as stated above, we do not think that the learned Single Judge has committed any error in directing the Municipality to renew the licence for the year 2015-2016. However, on account of the apprehension expressed by the learned counsel for the appellant, we make it clear that the renewal of the licence shall only be subject to the result of the outcome of the application filed by the petitioner for recalling the judgment, which is pending before the Civil court.

With the above observation, this writ appeal is dismissed.

(sd/-)

(ASHOK BHUSHAN, CHIEF JUSTICE)

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

jsr

