

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 14TH DAY OF DECEMBER 2015/23RD AGRAHAYANA, 1937

WA. No.2211 of 2015 () IN WP(C).No.14231/2015

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AGAINST THE ORDER/JUDGMENT IN WP(C) NO.14231/2015 OF HIGH COURT
OF KERALA DATED 22-07-2015.**

APPELLANT(S)/RESPONDENTS 1 AND 2:

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- 1. ERUVESY GRAMA PANCHAYATH,
CHEMPERI P.O., KANNUR DISTRICT-670632.
REPRESENTED BY ITS SECRETARY.**
 - 2. THE SECRETARY,
ERUVESY GRAMA PANCHAYATH, CHEMPERI P.O.,
KANNUR DISTRICT-670632.**

BY ADV. SRI.P.B.AJOY

RESPONDENT(S)/PETITIONER:

**SUPER STONE BUILDERS & GRANITES,
CHERIYA AREEKKAMALA, P.O.KUNIYAMPUZHA,
KANNUR DISTRICT-670632,
REPRESENTED BY ITS MANAGING PARTNER C.K.ABDUL RAHMAN.**

BY ADV. SRI.P.M.PAREETH

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 14-12-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

KRJ

**ASHOK BHUSHAN, C.J
&**

A.M.SHAFFIQUE, J.

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W.A No.2211 of 2015

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Dated this the 14th day of December, 2015

JUDGMENT

Shaffique, J

This appeal has been filed by respondents 1 and 2 in W.P(C) No.14231 of 2015 challenging the judgment dated 22.7.2015 by which the learned Single Judge, while allowing the writ petition filed by the respondent herein, declared that the writ petitioner is entitled for licence from the first respondent Panchayat for running a Stone Crusher Unit in R.S No.4/Pt of Eruvessy Village in Building No.808 in Ward No.III of the Panchayat by erecting 600 HP machinery.

2. The short facts involved in the writ petition would disclose that the petitioner was operating a Stone Crusher Unit in the property aforesaid. He required to enhance the capacity of the machinery for which an application has been submitted. The Panchayat Committee by Ext.P9 dated 20.3.2015 rejected the application for running the said unit. The petitioner filed the writ petition seeking the following directions:

- 1) "A writ of certiorari or other appropriate writ, direction or order calling for the records leading to Ext.P9 and quash the same.
- 2) A declaration to the effect that in view of the compliance of all statutory requirements by the petitioner for issue of license to operate, the petitioner is entitled to get license from the 1st respondent panchayat and the action of the 1st respondent in having rejecting the application on the ground of objection from the people is illegal and arbitrary.
- 3) Writ of mandamus or other appropriate writ direction or order commanding the 1st respondent to issue licence to the petitioner to operate the stone crusher situated in R.S No.4/Pt of Eruvessy Village in building No.808 in Ward No.III of 1st respondent Panchayat by erecting 600 H.P machinery by the petitioner forthwith."

3. According to the petitioner, he had already obtained necessary permission and licence from competent agencies. Even the Pollution Control Board had given consent to operate the unit as per Ext.P7 which is valid from 19.2.2015 to 31.1.2018. It is contended that the reason stated by the Panchayat for denying the licence under Sections 233 and 232 of Kerala Panchayat Raj Act is absolutely baseless. The learned Single Judge, after considering the

respective contentions of the parties allowed the writ petition. It was observed that the reason for denying the licence for establishing the unit as well as for functioning the unit is absolutely baseless.

4. Learned counsel for the appellant would, however, submit that the learned Single Judge should not have directed the appellants to grant the licence in favour of the petitioner. It is contended that the right to grant licence absolutely vests with the Panchayat and merely for the reason, that the reason stated in Ext.P9 was not correct, the Panchayat should have been directed to reconsider the matter afresh and in the light of the well settled principles of law as emanated in decision of the Supreme Court in **Khatki Ahmed Mushabhai v. Limdi Municipality** [(1979) 1 Supreme Court Cases 248].

5. The aforesaid judgment was with reference to the question whether a licence can be granted to a person for running a meat shop in Limdi Municipality. It was stated that the lease of municipal land was not granted in his favour which according to the claimant was absolutely baseless. The contention raised on behalf of the claimant was that the Municipality ought to have granted lease as well as licence to run the meat shop. The Supreme Court observed

that it is the local authority to grant licence keeping in view the local conditions. However, in the said judgment itself, it was indicated that the municipal authorities has to be alert and alive to the fundamental rights of the citizens and not refuse licenses merely scared by mob sentiment or panicked by religious reaction. In the present case, from Ext.P9 it is clear that the rejection of licence and permission was based on the fact that there was some local objection in the matter. Learned counsel for the appellant submits that the reason for the local people objecting to the setting up of Stone Crusher Unit is on the allegation of pollution.

6. It is apparent from the materials placed on record that the Pollution Control Board had already given consent to operate. That apart, if during the functioning of the unit there is any pollution caused to the locality, Panchayat is well within its powers to take appropriate action to abate the nuisance as provided under Section 233A of the Kerala Panchayat Raj Act, 1994. It is also open for the Panchayat to intimate the matter to the Pollution Control Board to ensure that the unit functions without any pollution.

7. Having regard to all these powers available to the Panchayat, merely for the reason that the learned Single Judge has

exercised the discretion to direct grant of licence, we do not think that the exercise of such power can be agitated in this appeal.

Accordingly, we do not find any reason to interfere with the judgment of the learned Single Judge and the appeal is dismissed.

Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE

Sd/-
A.M.SHAFFIQUE
JUDGE

krj.14/12/15