

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 8TH DAY OF DECEMBER 2015/17TH AGRAHAYANA, 1937

WA.No. 2654 of 2015

JUDGMENT DATED 04-11-2015 IN WP(C) 9821/2014
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APPELLANT(S)/8TH RESPONDENT IN THE WRIT PETITION:

**H.M.S. DRIVERS UNION,
KATTANAM, REPRESENTED BY ITS SECRETARY, K.C.MATHEW.**

**BY ADVS.SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SRI.MANU SEBASTIAN
SRI.P.J.JOE PAUL**

RESPONDENT(S)/WRIT PETITIONER & RESPONDENTS 1 TO 7 IN THE WRIT PETITION:

- 1. SAMUEL CHACKO,
KATTOOR KALEECKAL VEEDU, VETTIKODE, PALLICKAL P.O.,
MAVELIKARA, REPRESENTED BY POWER OF ATTORNEY HOLDER,
AJI THANKACHAN, CHIRACKAL HOUSE, VETTICODE MURI,
KATTANAM VILLAGE, ALAPPUZHA DISTRICT.**
- 2. SUB INSPECTOR OF POLICE,
KURATHIKKADU POLICE STATION, KURTHIKKADU,
MAVELIKKARA - 690 504.**
- 3. CIRCLE INSPECTOR OF POLICE,
MAVELIKKARA - 690 101.**
- 4. DISTRICT POLICE CHIEF,
ALAPPUZHA - 688 001.**
- 5. THE EXECUTIVE ENGINEER,
(ROADS AND BRIDGES), PUBLIC WORKS DEPARTMENT,
ALAPPUZHA - 688 001.**

msv/

WA.No. 2654 of 2015

**6. BHARANICKAVU GRAMA PANCHAYATH,
REP. BY ITS SECRETARY, BHARANICKAVU, PALLICKAL P.O.,
MAVELIKKARA TALUK - 690 503.**

**7. DISTRICT COLLECTOR,
ALAPPUZHA (CHAIRMAN REGIONAL TRANSPORT AUTHORITY,
ALAPPUZHA DISTRICT), PIN: 688 001.**

**8. JOINT REGIONAL TRANSPORT OFFICER,
MAVELIKKARA 690 101.**

**R1 BY ADV. SRI.K.SASIKUMAR
R2-R5, R7 & R8 BY SPECIAL GOVERNMENT PLEADER SMT.GIRIJA GOPAL
R6 BY ADV. SRI.N.UNNIKRISHNAN**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 08-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

ASHOK BHUSHAN, C.J.

&

A.M. SHAFFIQUE, J.

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W.A. No. 2654 of 2015

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Dated this, the 8th day of December, 2015

J U D G M E N T

Shaffique, J.

This appeal has been filed by the 8th respondent in WP(C) No.9821/14 challenging judgment dated 4/11/2015 by which the learned Single Judge allowed the writ petition filed by the 1st respondent herein. The writ petition was filed seeking for a direction to respondents 1 to 7 in the writ petition to ensure that no commercial vehicles like taxi cars or other public carriers park on the road side in front of the petitioner's building/shops blocking the frontage and ingress and egress to it and for consequential reliefs.

2. The averments in the writ petition disclose that the petitioner claimed to be the owner in possession and enjoyment of an extent of 4.08 ares of property in Sy.Nos.238/1-2 and 238/2-2 of Kattanam Village in Mavelikkara Taluk. He had obtained building permit for constructing residential and commercial

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building and he had constructed the same having ground floor, first floor and second floor. The ground and first floor are shop rooms and the second floor is the residential house of the petitioner. He has also a parking area in front of his premises. It is alleged that 8th respondent and their men were parking their taxi cars and other commercial vehicles in front of the petitioner's property by which access to the petitioner's property was being affected. Petitioner had taken up the matter before the competent authorities seeking for interference and to ensure that no parking space is provided in front of his property. Since no action had been taken in the matter, this writ petition has been filed.

3. Respondents had filed counter affidavit *inter alia* stating that the parking area had been provided in front of the petitioner's property and the parking in the said area does not cause any obstruction to the access to the petitioner's building. Reference is also made to the decision of the Panchayat and the Committee which have been taken to ensure that no obstruction is being caused in the matter.

4. Learned Single Judge after a detailed evaluation of the facts and circumstances involved in the case opined that the

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access of the public to the petitioner's building and to the shop rooms within the same can be only through its frontage opening to the public road. In terms of Section 227 of the Kerala Panchayat Raj Act, previous sanction of the Regional Transport Authority is to be obtained before any stand or halting place for motor vehicles is opened. Similar provisions are also made under Rule 344 of the Kerala Motor Vehicles Rules. It is observed that no consultation has been made with the Regional Transport Authority while treating the said area as a parking facility for taxis including four wheelers and three wheelers. Thereafter, the learned Single Judge having referred to the judgment in **Chandran v. District Collector** (2013 (3) KLT 449) and **Joseph v. District Magistrate** (1996 (2) KLT 490) allowed the writ petition. It is observed that a person holding land adjoining a highway has a right of access to the highway at any point. Hence directions were issued to respondents 1 to 7 to ensure that no commercial vehicles like taxi cars or other public carriers are parked on the road side in front of the petitioner's building blocking the frontage and ingress and egress to their shop. It is further observed that respondents shall provide particular parking

space for taxi cars and other vehicles at some other place.

5. Heard the learned counsel for the appellant, learned counsel for the writ petitioner and the learned counsel appearing for the Grama Panchayat.

6. It is pointed out by the learned counsel for the appellant that a decision to park the vehicles had been taken in terms of Ext.R8(a) resolution passed by the Panchayat and Ext.R8 (b). That apart, there is no obstruction being caused to the ingress and egress to the petitioner's premises. It is stated that the members of the appellant has been parking their vehicles since the last several years and they have a right to park vehicles near the highway and parking of the vehicles cannot be obstructed.

7. Learned counsel for the Panchayat also supported the stand taken by the 8th respondent. According to them, Panchayat has taken a resolution to permit parking of the vehicles in that area. Learned counsel for the petitioner however would submit that this area was not a parking area as specified under Section 227 of the Kerala Panchayat Raj Act and no decision has been taken by the Panchayat in consultation with the Regional Transport Authority. That apart, it is submitted that after the

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judgment had been passed, the Panchayat has already located another area for parking the vehicles and therefore, there is no reason why this appeal should be entertained by this Court at the instance of the appellant.

8. The short question to be considered is whether the learned Single Judge was justified in directing respondents 1 to 7 to ensure that the vehicles of the 8th respondent and their men should not be parked in the frontage of the petitioner's premises.

9. It is apparent from the pleadings in the case that the frontage of the petitioner for the shop rooms/residential premises is only 18 metres. If any vehicles are parked in front of the said shop rooms, it will definitely obstruct access to the petitioner's premises especially the same having shop rooms as well as commercial space and residential premises. Petitioner as well as his tenants may have to park their vehicles in the parking area specified for the said commercial complex and in between if any vehicles are parked in front of the said premises, taking into consideration the fact that it is an authorised taxi stand, it may affect the ingress and egress to the petitioner's premises. Hence we do not think that the learned Single Judge has committed any

W.A. No.2654/15

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error in issuing the directions in the above writ petition. No grounds are made out to interfere with the aforesaid judgment.

Accordingly, the writ appeal is dismissed.

Sd/-
ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE, JUDGE

Rp8/12/2015

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PS to Judge