

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

WP(C).No. 720 of 2015 (L)

PETITIONER(S):

**MANOJ KUMAR P V, AGED 45 YEARS,
S/O KUMARAN, RESIDING AT MANGALYA, CHERUKUNNU,
P.O KANNAPURAM, KANNUR DISTRICT.**

**BY ADVS.SRI.K.R.AVINASH (KUNNATH)
SRI.ABDUL RAOOF PALLIPATH**

RESPONDENT(S):

- 1. THE DISTRICT COLLECTOR, KANNUR-670002.**
- 2. THE ADDITIONAL DISTRICT MAGISTRATE,
KANNUR 670002.**
- 3. THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF HOME AFFAIRS, SECRETARIAT,
THIRUVANANTHAPURAM 695001.**
- 4. KANNAN.K., KUTTIYAN HOUSE,
EDAKKEPURAM SOUTH, P.O, CHERUKUNNU,
KANNUR 670301.**

**R1,R2 &3 BY GOVERNMENT PLEADER SRI.C.R.SYAMKUKAR
R4 BY ADV. SRI.P.U.SHAILAJAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE LICENCE NO 326 IN FORM LE 05**
- EXHIBIT P2 TRUE COPY OF THE APPLICATION FOR RENEWAL OF LICENSE**
- EXHIBIT P3 TRUE COPY OF THE APPLICATION FOR THE TRANSFER THE LICENSE**
- EXHIBIT P4 TRUE COPY OF THE REPORT OF THE TAHSILDAR WITH RELEVANT DOCUMENTS**
- EXHIBIT P5 TRUE COPY OF THE LETTER WITH REPORT OF THE SUB INSPECTOR OF POLICE KANNAPURAM**
- EXHIBIT P6 TRUE COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT REF NO 2014/25756/13 D4**

RESPONDENT(S)' EXHIBITS

- EXHIBIT R4(A); TRUE COPY OF THE SALE DEED 1063/13 OF SRO KALLIASSERY**
- EXHIBIT R4(B): TRUE COPY OF THE APPLICATION PRODUCED IN WPC.28321/14 DATED 15/3/14**
- EXHIBIT R4(C): PHOTOGRAPH OF THIS RESPONDENT'S BUILDING**
- EXHIBIT R4(D): PHOTOGRAPH OF THE PETITIONER'S BUILDING TAKEN ON 18/1/15**
- EXHIBIT R4(E): TRUE COPY OF THE LICENCE ISSUED TO THE R4.**

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.M.SHAFFIQUE, J

W.P.C.No.720 of 2015

Dated this the 27th day of October 2015

J U D G M E N T

Petitioner challenges Ext.P6, an order passed by the Additional District Magistrate, Kannur refusing the grant of explosive licence to the petitioner.

2. The short facts involved in the writ petition would disclose that the petitioner was conducting a fire cracker shop with explosive licence No.326/LE-5 in shop room No.KP-X/492 in Kannapuram Gramapanchayat. According to the petitioner, he was having licence since 2007 which was being renewed from time to time. Licence was valid till 31/03/2014. It is submitted that the application for renewal of licence was submitted for the very same premises. By Ext.P3 dated 26/05/2014, petitioner had submitted an application for shifting the shop room to KP-X/496.

3. According to the petitioner, all the reports by the competent authorities were in his favour. However, the Additional District Magistrate, after considering the application for shifting the shop room as well as for renewal of licence, rejected the same by Ext.P6 order, which is impugned by the petitioner. In Ext.P6

order, the Additional District Magistrate had considered two applications, one submitted by the petitioner and the other submitted by one Kannan. It was observed that the two shops rooms are within a distance of 11 metres, whereas, the required minimum distance between the two shop rooms for explosive licence should be 15 metres. Further, it was mentioned that the shop room of Sri.Kannan was better than that of the petitioner and that the application of Sri.Kannan was received on 13/05/2014 whereas that of the petitioner was received on 26/05/2014. Petitioner contends that Ext.P6 order is passed without any basis as the petitioner was conducting the shop within the very same Panchayat whereas Sri.Kannan was having his shop in another Panchayat and he has shifted to the shop room in which the petitioner was originally conducting business.

4. Counter affidavit has been filed by the 4th respondent supporting the stand taken by the Additional District Magistrate. It is stated that, his son Pavithran purchased the shop room from petitioner on 22/04/2013 in which he was conducting the business. Thereafter, possession was also handed over by the petitioner to the 4th respondent and since then the petitioner was

not running business in the said shop room. It is, by suppressing the above factual situation, that the application for shifting the shop room as well as the application for renewal of licence had been submitted. 4th respondent further submitted that he was already having a licence in a different Panchayat and he has requested to shift the licence to the present shop room which was purchased by his son, Pavithran. In the meantime, the petitioner had obtained another premises within a distance of 11 metres and he had requested for shifting the premises as well as for renewal of licence, which, according to the 4th respondent, is not permissible under law.

5. Counter affidavit has been filed by respondents 1 and 2 supporting the stand taken by the Additional District Magistrate in Ext.P6 order. It is stated that, on a perusal of the records and on an inspection of the site, it was noticed that, application was submitted by Sri.Kannan on 13/05/2014 whereas the application of the petitioner was received on 26/05/2014. That apart, it was found that the safety of the shop room of the 4th respondent is much better than that of the petitioner. That apart, since the application of the 4th respondent was prior to the date of the

application of the petitioner, in view of the prohibited distance for which licence could be granted and the safety of the 4th respondent's building in comparison with that of the petitioner, 4th respondent was granted licence and the application submitted by the petitioner was rejected.

6. Learned counsel for the petitioner submits that proper documents have been filed by the petitioner to show that he was conducting the shop room continuously since 2007 and an eventuality had occurred by which he had to sell the shop room to Sri.Pavithran. Since he was having licence since 2007, the Additional District Magistrate should have given him a better option and it was not necessary for having a comparison between the two buildings at all. It is submitted by the learned counsel for the petitioner that the question to be looked into was whether the building offered by the petitioner was sufficient enough to conduct cracker shop and whether explosive licence could be granted to the petitioner in terms with the rules. Comparison of the shop room of the petitioner with that of the 4th respondent was totally unnecessary and the licence granted to the petitioner is in respect of a shop room in another Panchayat should have

been taken as the reason by the Additional District Magistrate to reject his application.

7. Heard Learned counsel for the petitioner, learned counsel appearing for the 4th respondent and the learned senior Government Pleader.

8. The short issue to be considered in this writ petition is regarding validity of Ext.P6. Perusal of Ext.P6 clearly indicates that the applications of the petitioner for shifting the shop room as well as for renewal of licence have been rejected for valid reasons and on the basis of relevant materials. It is clearly indicated that the petitioner, having sold the building in the year 2013, had submitted an application for shifting the shop only on 26/05/2014. It is pertinent to note that, by that time, his licence was expired i.e. on 31/03/2014. Of course, he had submitted an application for renewal of licence as well. Renewal of licence could not have been applied for in the very same premises as the property was sold much earlier and there is no record to show that he was having either lease or licence from the original owner of the property. Whereas, Sri.Pavithran, son of Sri.Kannan had purchased the shop room in which petitioner was earlier carrying

on the said business. Sri.Kannan had also applied for explosive licence as per application dated 13/05/2014 which was prior to the application of the petitioner. That apart, the distance between the two shop rooms was only 11 metres, which is within the prohibited distance. Under such circumstances, the Additional District Magistrate was justified in comparing the safety of both the buildings while granting licence in favour of Sri.Kannan. I do not think that the method adopted by the Additional District Magistrate is, in any way, illegal or irregular.

Under such circumstances, I do not find any reason to interfere with Ext.P6 order and accordingly the writ petition is dismissed.

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

jsr

