

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

WP(C).No. 1237 of 2015 (D)

PETITIONER:

C.RAVEENDRAN, PROPRIETOR,
SATHYA MOVIE HOUSE, 12/1201,
VK ROAD, PALAKKAD.

BY ADVS.SRI.J.JULIAN XAVIER
SRI.FIROZ K.ROBIN

RESPONDENTS:

1. PALAKKAD MUNICIPALITY, PALAKKAD
REP. BY ITS SECRETARY PIN-678 001.
2. THE SECRETARY, PALAKKAD MUNICIPALITY,
PALAKKAD PIN-678 001.

BY ADVS. SRI.T.C.SURESH MENON
SRI.P.S.APPU

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
11-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 1237 of 2015 (D)

PETITIONER'S EXHIBITS:

EXT.P1 A TRUE COPY OF THE LICENSE DATED 31.03.2014 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER

EXT.P2: A TRUE COPY OF THE NOTICE DATED 16.01.2014 ISSUED BY THE 2ND RESPONDENT AND TRANSLATION

EXT.P3: A TRUE COPY OF THE REPLY FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT AND TRANSLATION

EXT.P4: A TRUE COPY OF THE NOTICE DATED 08.06.2014 ISSUED BY THE 2ND RESPONDENT AND TRANSLATION

EXT.P5: A TRUE COPY OF THE DECISION NO.1595 DATED 21.12.2013 OF THE FINANCE COMMITTEE OF THE 1ST RESPONDENT MUNICIPALITY AND TRANSLATION

EXT.P6: TRUE COPY OF THE REPORT OF THE REVENUE INSPECTOR DATED 06.01.2014 UNDER THE 1ST RESPONDENT AND TRANSLATION

EXT.P7: A TRUE COPY OF THE APPLICATION DATED 24.11.2014 BEFORE THE 2ND RESPONDENT

EXT.P8: A TRUE COPY OF THE REPLY DATED 16.12.2014 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER AND TRANSLATION

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.1237 of 2015 D

Dated this the 11th day of February, 2015

JUDGMENT

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents, apart from perusing the record. Since the issue lies in a narrow compass, this Court proposes to dispose of the writ petition at the admission stage itself.

2. Briefly stated, the petitioner, the Proprietor of a Movie Theatre, has been in the practice of collecting parking fee for the two wheelers parked in the premises of the theatre by the cinema goers with a view to restricting unlawful parking and also to giving better service. In course of time, the second respondent issued Exhibit P2 notice asking whether the petitioner has been collecting any parking fee. On receipt of the reply in Exhibit P3 submitted

by the petitioner, the second respondent issued Exhibit P4 notice directing the petitioner not to collect any parking fee for the two wheelers because it amounts to violation of licence conditions.

3. Having received Exhibit P4 directive from the second respondent, the petitioner sought information regarding the licence conditions which are said to have been violated by him. In reply thereto, the second respondent seems to have forwarded a copy of Sections 473 to 475 of the Kerala Municipality Act. Under those circumstances assailing Exhibit P4, the petitioner has approached this Court.

4. The learned counsel for the petitioner has submitted that the petitioner's principal business is that of running the cinema theatre and providing parking is only an incidental service to the customers. According to the learned counsel, it cannot even be called parking fee having

any pecuniary element, thereby affecting any licence conditions; much less, does it amount to a principal business of maintaining a parking stand. At best, it is an add-on service and the nominal amount collected thereof is only for the up keep and providing better services.

5. The learned counsel has further referred to Section 475 of the Act and has contended that what has been prohibited under the said section is maintaining any parking stand for any vehicle of whatever nature, amounting to primary business, which alone requires prior permission of the respondent Municipality. Making a particular reference to the explanation that the specification of different parking stands with reference to the vehicles sought to be parked, the learned counsel contends that parking of any other vehicle is to be read in terms of the principle of *eiusdem generis*. Mere parking of the vehicle in a theatre by those who have come to the

cinema does not, according to the learned counsel, amount to maintaining a parking stand by the proprietor of the theatre. Accordingly, he has urged this Court to set aside Exhibit P4 as being illegal and arbitrary.

6. The learned Standing Counsel for the respondent Municipality has strenuously opposed the claims and contentions of the petitioner. He has submitted that the explanation added to Section 475 of the Act takes into its fold any sort of fee or remuneration collected involving a vehicle in any premises. It is prohibited unless the person obtains necessary licence from the Municipality. In this regard, the learned Standing Counsel has placed reliance on an unreported decision dated 10.11.2014 in W.P.(C)No. 15647/2014.

7. Indeed, the issue lies in a narrow compass without having any factual dispute. The question is whether the petitioner is entitled to collect any remuneration or parking

fee for the two wheelers of those who come to the cinema, even with a view to providing better services to the customers.

8. Since the issue is no longer *res integra*, it does not require any cogitation on my part. A learned single Judge of this Court, having discussed the issue in detail, has eventually held, under identical circumstances, that the proprietor of the cinema is required to obtain necessary licence. In fact, this Court has given a further direction to the petitioner therein to approach the Municipality with necessary application in that regard. Having been bound by the precedent, I do not see any other ground to differ therefrom. Accordingly, the writ petition stands disposed of with the following direction:

In the facts and circumstances, liberty is reserved to the petitioner to file a proper application before the Municipality seeking necessary licence under Section 47(5)

of the Act and on receipt of such application as is to be made by the petitioner, the respondent Municipality shall process the same in accordance with law and take appropriate decision thereon as expeditiously as possible, at any rate, within a period of one month from the date of receipt of a copy of this judgment.

Dama Seshadri Naidu, Judge

tkv