

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

TUESDAY, THE 24TH DAY OF FEBRUARY 2015/5TH PHALGUNA, 1936

WP(C).No. 6197 of 2012 (Y)

PETITIONER:

DR.ABDUL RAFEEQ AGED 42 YEARS
S/O.M.AHMED I.A.S, BLOCK AC 22, ANNA NAGAR
CHENNAI-40, ALSO HAVING ADDRESS AT MALIKA VEEDU
MOOSAVARIKUNNU ROAD, PUNALUR, KOLLAM -691 305.

BY ADVS.SRI.PRAVEEN K. JOY
SMT.RENJINI RAJENDRAN
SRI.T.A.JOY

RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY SECRETARY, LOCAL SELF GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM-695 024.
2. PUNALUR MUNICIPALITY,
PUNALUR, KOLLAM DISTRICT-PIN-691 305
REPRESENTED BY ITS SECRETARY.
3. HARIHARAN, AGED 51 YEARS
S/O.SREENIVASAN CHETTIYAR, CHEMPAKASSERY COMPOUND
PUNALUR VILLAGE, PATHANAPURAM, KOLLAM DISTRICT.

R3 BY ADV. SRI.R.KISHORE
R3 BY ADV. SRI.G.HARIPRASAD
R3 BY ADV. SRI.ARUN BABU
R2 BY STANDING COUNSEL
R1 BY GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXHIBITS P1. TRUE PHOTOSTAT COPY OF THE TAX RECEIPT OF PUNALUR VILLAGE.

EXHIBITS P2. TRUE PHOTOSTAT COPY OF THE LETTER DATED 4/2/2011 ISASUED BY
THE PUBLIC INFORMATION OFFICER, PUNALUR, MUNICIPALITY.

EXHIBITS P3. TRUE PHOTOSTAT COPY OF THE APPLICATION DATED 11/1/2012
BEFORE PUBLIC INFORMATION OFFICER, PUNALUR MUNICIPALITY.

EXHIBITS P4. TRUE PHOTOSTAT COPY OF THE SANCTION LETTER DATED 6/8/2007
OF THE ND RESPONDENT.

EXHIBITS P5. TRUE PHOTOSTAT COPY OF THE PETITION DATED 7/2/2012
SUBMITTED BEFORE THE 2ND RESPONDENT.

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P.A.TO JUDGE

BABU MATHEW P.JOSEPH, J.

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W.P.(C) No.6197 of 2012

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Dated this the 24th day of February, 2015

JUDGMENT

This writ petition has been filed for a direction to the 2nd respondent Municipality to stop the bakery business being run by the 3rd respondent in the building owned by the petitioner on the allegation that the 3rd respondent has been running the bakery business in the building without obtaining the required licence from the 2nd respondent Municipality.

2. Heard the learned counsel appearing for the petitioner, learned Government Pleader appearing for the 1st respondent and the learned counsel appearing for the 3rd respondent. No representation for the 2nd respondent despite serving notice on them.

3. The learned counsel for the petitioner submits that the 3rd respondent is occupying the building and running the bakery business causing nuisance and pollution. He does not possess the required licence also for running that business. In such a circumstance, the learned counsel submits, the petitioner has

preferred this writ petition.

4. The 3rd respondent has filed a written statement refuting the contentions raised by the writ petitioner and also producing documents substantiating his case. The learned counsel for the 3rd respondent submits that the building had been taken on rent from the predecessor of the petitioner about fifteen years back. Since then the bakery in question was being run. There was no occasion for raising any complaint on the ground of pollution or nuisance against the 3rd respondent. The petitioner wants to evict the 3rd respondent adopting any means. He had, in fact, filed R.C.P.No.5/2007 before the Rent Controller, Punalur, for evicting the 3rd respondent. In that attempt, the petitioner miserably failed. Now, raising unfounded allegations against the 3rd respondent, this writ petition has been preferred by the petitioner for seeing that the business being run by the 3rd respondent in the building is stopped. The allegation of the petitioner that the 3rd respondent is running the business without obtaining due licence from the 2nd respondent is without any basis. Ext.R3(a) is a copy of the receipt dated 22.02.2012 issued from the Punalur Municipality showing the receipt of licence

fees for running the bakery business. Ext.R3(b) is another receipt dated 7.02.2011 showing the receipt of licence fees for running the business in bakery and sweets. Ext.R3(c) is a receipt dated 08.2.2012 which shows that the 3rd respondent remitted the Profession Tax for the period 2011-2012 (II) with the Punalur Municipality. Therefore, there are no bona fides on the part of the petitioner to file this writ petition, contends the learned counsel for the 3rd respondent.

5. The contention raised by the petitioner that the 3rd respondent has been running the bakery business without obtaining licence from the Punalur Municipality is without any basis as Exts.R3(a) and (b) show that necessary licence has been issued to the 3rd respondent for running the bakery business. The 3rd respondent has denied the allegation that he is causing nuisance by running bakery shop is denied in his counter affidavit. It is also stated in the counter affidavit that no waste materials are removed from the bakery.

6. The fact that the 3rd respondent is a tenant of the petitioner and the attempt made by the petitioner to evict him by filing a Rent Control Petition cannot be ignored in the facts and

circumstances of this case. Having failed in that attempt, the petitioner has preferred this writ petition. The allegations raised against the 3rd respondent are refuted in the counter affidavit filed by the 3rd respondent. Moreover, by producing the relevant documents, the 3rd respondent has proved the fact that he is running the bakery business with proper licence. In these circumstances, this Court is of the view that the petitioner does not deserve any order in his favour under Article 226 of the Constitution of India.

In the result, this writ petition is dismissed.

Babu Mathew P.Joseph, Judge

sj