

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

WP(C) .No. 2929 of 2015 (M)

PETITIONER(S) :

G.BALACHANDRA PRABHU,
AGED 64 YEARS,
M/S. SOUPARNIKA ICE AND COLD STORAGE, 11/27B,
NEAR GOSHREE BRIDGE, AZHEEKKAL P.O, KOCHI 682 508.

BY ADVS.SRI.DENIZEN KOMATH
SRI.P.J.YESUDAS.

RESPONDENT(S) :

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1. THE COCHIN PORT TRUST,
WELLINGDON ISLAND, KOCHI-682 009,
REP. BY ITS SECRETARY.
 2. DEPUTY CONSERVATOR,
COCHIN PORT TRUST,
WELLINGDON ISLAND, KOCHI - 682 009.
 3. THE CHEIF ENGINEER,
COCHIN PORT TRUST,
WELLINGDON ISLAND, KOCHI - 682 009.
 4. SENIOR ASSISTANT MANAGER,
COCHIN PORT TRUST,
WELLINGDON ISLAND, KOCHI - 682 009.

BY ADV. SRI.K.ANAND (SR.) ,
BY ADV. SMT.LATHA KRISHNAN &
BY ADV. SRI.V.ABRAHAM MARKOS.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 05-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXHIBIT P1. COPY OF THE DEATH CERTIFICATE OF PETITIONERS FATHER
IN LAW N.D.NARAYANA SHENOY.
- EXHIBIT P2. COPY OF THE INTIMATION ISSUED FROM THE OFFICE OF
2ND RESPONDENT VIDE REFERENCE NO.D/299/2000 DATED
28.7.2000.
- EXHIBIT P3. COPY OF THE LICENSE ISSUED BY 2ND RESPONDENT FOR
JETTY NO.300 (A) .
- EXHIBIT P4. COPY OF THE APPLICATION PREFERRED BY THE PETITIONER
BEFORE 2ND RESPONDENT FOR DREDGING SANCTION, DATED
1.3.05.
- EXHIBIT P5. COPY OF THE SANCTION FOR DREDGING IN FRONT OF JETTY
NO.300 (A) . GIVEN BY 2ND RESPONDENT DATED 14.3.05.
- EXHIBIT P6. COPY OF THE LICENSE RENEWAL FEE AND RECEIPT DATED
9.4.13.
- EXHIBIT P7. COPY OF THE NOTICE ISSUED FROM THE OFFICE OF 4TH
RESPONDENT DATED 5.11.14.
- EXHIBIT P8. COPY OF THE REPLY GIVEN BY THE PETITIONER BEFORE
THE 4TH RESPONDENT DATED 11.11.14.
- EXHIBIT P9. COPY OF THE NOTICE DATED 21.1.15 ISSUED FROM THE
OFFICE OF THE 3RD RESPONDENT.
- EXHIBIT P10. COPY OF THENEWS ITEM PUBLISHED IN THE MALAYALA
MANORAMA DAILY DATED 01/02/2015.
- EXHIBIT P11. COPY OF THE REPRESENTATION PREFERRED BY THE
PETITIONER BEFORE THE RESPONDENTS HEREIN DATED
23/02/2015.
- EXHIBIT P11 (A) . COPY OF THE POSTAL RECEIPTS.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

P.R. RAMACHANDRA MENON, J.

W.P(C). No. 2929 of 2015

Dated this the 5th day of March, 2015

J U D G M E N T

Grievance of the petitioner is mainly with regard to Ext.P9 proceedings issued by the 3rd respondent, whereby the petitioner has been required to remove the extended portion of the Jetty within one week, lest coercive proceedings should be taken against him. It is stated that, there is much discrepancy in contents, with reference to the earlier notice issued to the petitioner as borne by Ext.P7 dated 05.11.2014 and further that there is no rhyme or reason for having pursued such a course, as the petitioner is in operation of the Jetty for quite long and that no encroachment or additional construction has been effected by the petitioner at any point of time.

2. The sequence of the events is as follows; The 'father in law' of the petitioner by name Sri.N.D.Narayana Shenoy, was given a licence to run the Jetty in the area of the Port Trust way back in the year 2000. By virtue of the 'Will' executed by the 'father in law', the petitioner came to be the beneficiary, as to the rights and liberties over the Jetty. Ext.P1 is the Death Certificate

of the 'father in law' and accordingly, the Jetty came to the possession of the petitioner in the year 2002, who was operating the same. The petitioner points out that, because of accumulation of mud around the Jetty, it became necessary to remove the same, so as to enable the fishing boats to have access to the Jetty. Accordingly Ext.P4 application was filed before the 2nd respondent on 01.03.2005. After considering the merits involved, the same was sanctioned as per Ext.P5 and the petitioner has carried out the operation as well. It is also pointed out that, the licence fee was enhanced by the Port Trust to an unconscionable extent and that the petitioner satisfied the same as well without default. Ext.P6 is the receipt dated 9.4.2013 for satisfaction of the renewal fee. Still, on a fine morning, the petitioner has been served with Ext.P7 notice dated 05.11.2014, referring to same unauthorised construction/extension and seeking to have the said extent removed. On receipt of Ext.P7, the factual position was sought to be explained by submitting Ext.P8 reply. After considering the same, Ext.P9 order came to be passed, still in variance with the measurements and the specifications mentioned in Ext.P7. This made the petitioner to

approach this Court by filing the writ petition.

3. A detailed counter affidavit has been filed by the 2nd respondent pointing out that the licence given to the 'father in law' of the petitioner was only to construct a 'wooden Jetty' having the size of 10 x 3 meters (30 sq.meters) for having access to the boats owned by him. A copy of the said order along with the sketch showing the measurements of the Jetty to be constructed has been produced as Ext.R2(a). Subsequently, the respondent Port Trust obtained complaints from different corners as to the extension of Jetty and unauthorised activity being pursued by the petitioner. Pursuant to this, a spot inspection was conducted, upon which it was revealed that substantial extension has been effected by the petitioner leading to Ext.P7 notice, wherein approximate measurements were given on a visual basis, observing that it was to the tune of 10.5 mtrs. X 3 meters. Subsequently, a physical verification was conducted and actual measurements were taken, which revealed that the present size of the Jetty was 20.5 x 3 meters (61.5 sq.meters), virtually double the size as originally granted as per Ext.R2(a). It was in the said circumstances, that Ext.P9 order was issued taking a lenient view

as put forth by the learned counsel for the Port Trust, who submits that the Port Trust, for the time being, does not intend to cancel the licence or to cause the entire structure to be demolished and gave an opportunity to the petitioner to remove only the extended portion of the Jetty, to be in conformity with Ext.R2(a) licence already given. The respondents also point out that, the wooden Jetty which was already constructed therein was demolished and concrete construction was effected by the petitioner without consent from the Port Trust. It is revealed from paragraph 4 of the counter affidavit that, the petitioner has sublet the premises after encroachment and extension, to various other persons as well and is minting money by virtue of such unauthorised exercise. Reference is made to the various conditions particularly, at clause (c), (d) and (e) of Ext.P3 licence which stand violated and that the unauthorised extension stands substantiated in view of the facts and figures.

4. After hearing both the sides, this Court finds that, the sanction given to the petitioner's 'father-in-law' who was the original licensee was only to have the Jetty constructed having the size specifically prescribed in Ext.R2(a). Since the petitioner

came to be the beneficiary of the 'Will' executed by the original licensee and virtually has stepped into the shoes of the original licensee, the petitioner is having the right to pursue the operation strictly in conformity with the original licence and nothing more.

5. In the said circumstance, there will be a direction to the petitioner to confine the activity to the premises covered by Ext.R2(a) licence, adhering to the conditions incorporated in Ext.P3. The unauthorised extension as mentioned above shall be removed by the petitioner voluntarily within 'two weeks' from the date of receipt of a copy of this judgment, failing which it will be open for the respondent Port Trust to cause demolition of the same, with the assistance of the Police, if so necessitated and realise the cost from the petitioner. On such an event, it will also be open for the Port Trust to consider whether the petitioner should be permitted to continue with the licence and whether it could be cancelled.

The Writ Petition stands disposed of as above.

Sd/-

P.R. RAMACHANDRA MENON, JUDGE.