

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

WP(C).No. 2961 of 2015 (U)

PETITIONER(S):

**USHA JACOB, AGED 52 YEARS,
D/O.V.G. LEELAMMA,
HOUSE NO 79/KP XVIII/1160, MAMATHA NAGAR, MARKET ROAD,
KAZHAKOOTTAM P.O., THIRUVANANTHAPURAM.**

**BY ADVS.SRI.R.S.KALKURA
SRI.M.S.KALESH
SRI.HARISH GOPINATH
SMT.R.BINDU
SRI.GENS GEORGE ELAVINAMANNIL**

RESPONDENT(S):

- 1. THE CORPORATION OF THIRUVANANTHAPURAM,
REPRESENTED BY ITS SECRETARY, MUSEUM JUNCTION,
THIRUVANANTHAPURAM - 695 034.**
- 2. THE HEALTH OFFICER,
CORPORATION OF THIRUVANANTHAPURAM,
ZONAL OFFICE KAZHAKOOTTAM, THIRUVANANTHAPURAM - 695 582.**
- 3. THE DISTRICT MEDICAL OFFICER (HEALTH)
GENERAL HOSPITAL JUNCTION,
THIRUVANANTHAPURAM - 695 037.**
- 4. THE DY. SUPERINTENDENT OF POLICE ATTINGAL,
THIRUVANANTHAPURAM - 695 101.**
- 5. THE CIRCLE INSPECTOR OF POLICE,
KAZHAKOOTTAM CIRCLE,
KAZHAKOOTTAM - 695 582.**
- 6. THE SUB INSPECTOR OF POLICE,
KAZHAKOOTTAM STATION OFFICE,
KAZHAKOOTTAM - 695 582.**

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7. THE KERALA STATE POLLUTION CONTROL BOARD,
HEAD OFFICE, PLAMOOD JUNCTION, PATTOM,
PALACE P.O., THIRUVANANTHAPURAM - 695 004.

8. NAZEER,
S/O MOHAMMED ELIAS SULOOSE MANZIL,
VADAKKUMBHAGAM, KAZHAKOOTTAM P.O.,
THIRUVANANTHAPURAM - 695 582.

R1 & R2 BY SRI.NANDAKUMARA MENON, SR. SC
R3 TO R6 BY SENIOR GOVERNMENT PLEADER SRI.G.GOPAKUMAR
R7 BY SRI. M.AJAY, SC
R8 BY ADV. SRI.D.AJITHKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
02-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE PLAINT IN OS NO. 1041 OF 2010 ON THE FILE OF THE MUNSIFFS COURT TRIVANDRUM.

EXHIBIT P2: TRUE COPY OF THE JUDGMENT IN OS NO. 1041 OF 2010 DATED 29.3.2012 OF THE 2ND ADDITIONAL MUNSIFFS COURT THIRUVANANTHAPURAM.

EXHIBIT P3: TRUE COPY OF THE PLAINT IN OS 1755 OF 2010 ON THE FILE OF THE 1ST ADDITIONAL MUNSIFFS COURT, THIRUVANANTHAPURAM WITH TRANSLATION.

EXHIBIT P4: TRUE COPY OF THE JUDGMENT DATED 30.9.2013 IN OS NO. 1755 OF 2010 ON THE FILE OF THE 1ST ADDITIONAL MUNSIFFS COURT, THIRUVANANTHAPURAM.

EXHIBIT P5: TRUE COPY OF THE ORDER DATED 15.6.2012 IN RCP 36 OF 2010 ON THE FILE OF THE RENT CONTROL COURT, THIRUVANANTHAPURAM.

EXHIBIT P6: THE PHOTOGRAPHS INDICATING THE FUNCTIONING OF THE MARKET.

EXHIBIT P7: THE PHOTOGRAPHS OF THE PLACE WHERE PREVIOUSLY THE MARKET WAS FUNCTIONING.

EXHIBIT P8: TRUE COPY OF THE REPRESENTATION DATED 19.1.2015 SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPONDENT ALONG WITH POSTAL RECEIPT.

EXHIBIT P8(A): TRUE ENGLISH TRANSLATION OF EXHIBIT P8.

EXHIBIT P9: TRUE COPY OF THE REPRESENTATION DATED 19.1.2015 SUBMITTED BY THE PETITIONER BEFORE THE SECOND RESPONDENT ALONG WITH POSTAL RECEIPT.

EXHIBIT P9(A): TRUE ENGLISH TRANSLATION OF EXHIBIT P9.

EXHIBIT P10: TRUE COPY OF THE REPRESENTATION DATED 19.1.2015 SUBMITTED BY THE PETITIONER BEFORE THE THIRD RESPONDENT ALONG WITH POSTAL RECEIPT.

EXHIBIT P10(A): TRUE ENGLISH TRANSLATION OF EXHIBIT P10.

EXHIBIT P11: TRUE COPY OF THE REPRESENTATION DATED 17.1.2015 SUBMITTED BY THE PETITIONER BEFORE THE FOURTH RESPONDENT ALONG WITH POSTAL RECEIPT.

EXHIBIT P11(A): TRUE ENGLISH TRANSLATION OF EXHIBIT P11.

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EXHIBIT P12: TRUE COPY OF THE REPRESENTATION DATED 18.1.2015 SUBMITTED BY THE PETITIONER BEFORE THE FIFTH RESPONDENT ALONG WITH POSTAL RECEIPT.

EXHIBITP12(A): TRUE ENGLISH TRANSLATION OF EXHIBIT P12.

EXHIBITP13: TRUE COPY OF THE REPRESENTATION DATED 17.1.2015 SUBMITTED BY THE PETITIONER BEFORE THE SIXTH RESPONDENT ALONG WITH POSTAL RECEIPT EXHIBIT P13(A): TRUE ENGLISH TRANSLATION OF EXHIBIT P13.

EXHIBIT P14: TRUE COPY OF THE ACKNOWLEDGMENT DATED 19.1.2015 ISSUED BY THE SEVENTH RESPONDENT.

EXHIBIT P14(A): TRUE ENGLISH TRANSLATION OF EXHIBIT P14.

EXHIBIT P15: TRUE COPY OF THE LETTER DATED 6.2.2015, ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

EXHIBIT P15(A): TRUE ENGLISH TRANSLATION OF EXT. P15.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

C.R.

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 2961 of 2015

Dated this the 02nd day of March, 2015

JUDGMENT

Briefly stated, the petitioner is a tenant of the eighth respondent, a part of whose property, situated in Menamkulam Village, Thiruvananthapuram Taluk, was let out way back in 2005. In course of time, the eighth respondent is said to have instituted a suit for eviction, which, in fact, was decreed on 30.09.2013. Thereafter, though the petitioner filed R.C.A. No. 32/2012 before the Rent Control Appellate Authority (the District Court), Thiruvananthapuram, she could not succeed, as the appellate court rendered a concurrent finding through its judgment, dated 19.09.2014. Nevertheless, the petitioner contends that so far the copy of the judgment in appeal has not been made available to her to lay further challenge against the decree in appeal.

2. It is the specific contention of the petitioner that before the petitioner could be evicted through due process, the eighth respondent had taken recourse to a devious stratagem to oust the petitioner from the demised property. As a stratagem, the eighth respondent is said to have let out the balance portion of the property just in front of the petitioner's demised house to certain outsiders, who established a daily market without any valid licence from the respondent Corporation.

3. The grievance of the petitioner is that by letting others to illegally conduct the market in the adjacent property, the eighth respondent has actually barred access to her house. Thus ventilating her grievance that the market is being conducted in violation of the Municipal Regulations, the petitioner has submitted Exhibit P8 complaint. The first respondent Corporation, in turn, issued Exhibit P15 informing the petitioner to complain to the police authorities on the ground of trespass. Aggrieved thereby, the petitioner has filed the present writ petition.

4. The learned counsel for the eighth respondent, the owner of the property, has submitted that the eighth

respondent has never let out the property to any third party. If there are any trespassers, he has, in fact, nothing to do with them.

5. The learned Senior Counsel for the first respondent Corporation has submitted that initially a market was established by the respondent Corporation at Kazhakoottam market. Its being under renovation, the Corporation has temporarily shifted the market to a site adjacent to Bye-pass road. If any persons without licence and authority have trespassed upon the property under the occupation of the petitioner and established any market, she is at liberty to lodge a police complaint, upon which the respondents 4 to 6 may act. The learned Senior Counsel has also submitted that, in terms of the statutory provisions in that regard, if this Court gives any direction to the first respondent Corporation to restrain the trespassers from holding any market, it may be impossible for the respondent Corporation to implement such a directive. According to the learned Senior Counsel, the respondent Corporation does not have any information about who those trespassers are.

6. In further elaboration of his submissions, the learned Senior Counsel has submitted that, if one batch of trespassers is to be evicted, the Corporation cannot be sure that some other batch of persons would not repeat the same thing, leading to a perpetual problem, which is very difficult for the Corporation to deal with.

7. Accordingly, justifying Exhibit P15 communication of the respondent Corporation, the learned Senior Counsel has contended that the petitioner is at liberty to approach the police authorities ventilating her grievance.

8. Heard the learned counsel for the petitioner and the learned Senior Counsel for the first respondent Corporation, as well as the learned counsel for the eighth respondent, apart from perusing the record.

9. The facts are not in dispute. The petitioner, a tenant, even after the expiry of the lease period, is still a tenant — a tenant at sufferance though. Notwithstanding the decree for eviction, so far the actual eviction through due process has so far not taken place. Until the petitioner has been evicted through, say, execution of the decree, she cannot be prevented from enjoying the property in a legally permissible

manner, being a tenant of a residential house.

10. Indeed, it is seen from Exhibits P6 and P7 batch of photographs that certain people have been carrying on business in the adjacent portion of the premises leased out to the petitioner by the eighth respondent.

11. It is very pertinent to note that the learned counsel for the eighth respondent, on instructions, has submitted that the eighth respondent has never let out the property or permitted any third parties to hold a market on his property, adjacent to the demised residential house. Indisputably, the illegal market or fare has been causing immense hardship to the petitioner to have proper access to her house and to live quietly.

12. In the above factual background, the issue falls for consideration is whether there is any justification on the part of the first respondent Corporation in proffering advice to the petitioner through Exhibit P15 that her remedy lies in complaining to the police regarding what is said to be the trespass committed by certain unauthorized persons.

13. In this regard we may examine Section 466 of the Kerala Municipality Act, 1994 ('the Act' for brevity), which

reads thus:

“466. Power to close private market : - The Secretary or any officer duly authorised by him in that behalf may close any private market in respect of which no licence has been applied for or the licence for which has been refused, withheld or suspended or which is held or kept open contrary to the provision of this Act.”

14. From the above statutory mandate it is evident that the respondent Corporation has a statutory obligation to ensure that no unauthorized private market is held on any property without any valid licence.

15. It is further evident that, in terms of Section 550 (1) (b) of the Act, only when a request is made by the respondent Corporation, is the police administration bound to provide the necessary assistance to ensure that no activities are carried out without a valid licence.

16. I, therefore, find considerable force in the contention of the learned counsel for the petitioner that in terms of Section 466 it is the duty of the Secretary of the respondent Corporation to ensure that no private market is being held without a valid licence.

17. Veering back to the facts of the present case, I may observe that the eighth respondent, the owner of the property, has gone on record, through his counsel, that he has never let out the property, nor has he authorized any person to hold any market on his property, part of which has already been let out to the petitioner. Indeed, as has already been observed, the eviction proceedings so far have not actually resulted in actual eviction of the petitioner. Until the said eventuality happens, it is axiomatic to observe that the petitioner has every right to enjoy the property under her occupation in the manner she deems it appropriate, within the four corners of law.

18. When the petitioner submitted Exhibit P8 representation bringing to the notice of the respondent Corporation that certain persons have been carrying on with what can be termed as a private market illegally on the property belonging to the eighth respondent in immediate proximity to the demised residential building, the Corporation has advised the petitioner through Exhibit P15 that she approach the police. I am afraid in the light of the statutory mandate under Section 466 of the Act, the course of action adopted by the respondent Corporation is indefensible.

19. In elaboration, I may observe that it is the singular contention of the respondent Corporation that any direction to enforce 467 will result in futility, because the respondent Corporation does not have any definite information about the persons who are said to have been holding the illegal private market. In the alternative, the learned Senior Counsel has also contended that even if the Corporation had to take measures in that regard, it could not be sure that some other persons would not repeat the same.

20. Regrettable is the contention of the respondent Corporation. If the respondent Corporation takes up a specious plea that notwithstanding the statutory mandate it cannot enforce a particular provision, it does not augur well for the administration; on the other hand, it reflects very adversely on its efficacy.

21. This Court, indeed is constrained to take serious exception to the manner in which the respondent Corporation has decided to deal with the matter. If any civic authority or any entity of the State is to take a plea of this nature, I am afraid it would sound the death knell to the Rule of Law, which is the last thing any republic of democratic ethos expects.

22. In the first place, a cause may afford the affected person multiple remedies: some are in the alternative; some, cumulative; and some, mutually exclusive. It is essentially a matter of election. If the remedies are not mutually exclusive, unless the court weighs the options on the scales of efficacy, it is the affected person, the *dominus litus*, who could elect his or her option.

23. Indeed, in a judicial review, a Constitutional Court may have the inherent power to decline to interfere on the principle of efficacious alternative remedy. But a statutory authority is ordained to act under a statutory mandate once an affected person approaches it; it cannot turn around and advise the person to have recourse to an alternative course on the ground of a perceived inconvenience. So long as the statute mandates, it is ineluctable for the authorities to abide by the provision in letter and in spirit.

24. The respondent Corporation has not denied that there is an illegal market being held by certain persons without any valid licence. Licence is, indisputably, required to establish a market or a fair even on a private land. A person has complained that within the territorial limits of the respondent

Corporation there is an illegal act being perpetrated. It is, in my considered view, sufficient to set the respondent official juggernaut rolling to establish rule of law in its jurisdiction.

25. Viewed from another angle, in the present instance, could the petitioner have gone before the police complaining of criminal trespass? I am afraid, even on *prima facie* observation, the petitioner could not have taken recourse to it. Firstly, every trespass is not amenable to criminal prosecution, for trespass can be either civil or criminal. In terms of section 441 of IPC., criminal trespass is made, *inter alia*, when someone enters upon the property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property.

26. In ***Mathri v. State of Punjab***, (1964) 5 SCR 916, the Hon'ble Supreme Court has held thus:

18. [T]he correct position in law may, in our opinion, be stated thus: In order to establish that the entry on the property was with the intent to annoy, intimidate or insult, it is necessary for the Court to be satisfied that causing such annoyance, intimidation or insult was the aim of the entry; *that it is not sufficient for that purpose to show merely that the natural consequence of the entry was likely to be annoyance, intimidation or insult,*

and that this likely consequence was known to the persons entering; that in deciding whether the aim of the entry was the causing of such annoyance, intimidation or insult, the Court has to consider all the relevant circumstances including the presence of knowledge that its natural consequences would be such annoyance, intimidation or insult and including also the probability of something else than the causing of such intimidation, insult or annoyance, being the dominant intention which prompted the entry.

(emphasis added)

27. In the first place, the petitioner ought to have been in actual, rather than constructive, possession of the property; secondly, the primary intention of the trespassers is to annoy, intimidate or insult the petitioner, the possessor. Here, the petitioner is in actual possession of only the demised residential building, the rest of the property in the precincts belonging to the eighth respondent. No doubt, an obstruction in the vacant property may adversely be affecting the rights of the petitioner, but that alone is not sufficient to prosecute the so-called trespassers under section 447 of IPC.

28. Even otherwise, even when the petitioner could drive home the guilt of the trespassers, the police cannot

themselves enforce any eviction thereon; at best, they can register a crime, investigate and submit a final report to the Court of Law. If the contention of the respondent Corporation is to be accepted, it amounts to empowering the police to be not only the investigating agency, but also the adjudicators and executioners, which power has not been ascribed to the police under any statute.

29. It is, therefore, made clear that, acting on the petitioner's complaint in Exhibit P8, the respondent Corporation is obligated to exercise its power under Section 466 of the Act. If necessary, it can, and it ought to, seek the assistance of the Police in terms of Section 550(1)(b) of the Act.

30. I am sure that the respondent Corporation will abide by the law; a fortiori, by the directive of this Court, and ensure closure of market in the property in question, if it has been conducted by any person or persons without valid licence, as expeditiously as possible, at any rate within a period of thirty days from the date of receipt of a copy of this judgment.

31. If the Corporation is still of the opinion that, notwithstanding the statutory mandate, it cannot remedy what

it terms as an impracticable solution, this Court, willy-nilly, does not hesitate to take appropriate steps in that regard.

32. It is further made clear that, if any requisition is received from the respondent Corporation, the respondents 4 to 6 shall render all assistance to the Corporation to enforce the statutory obligation, which ultimately should result in ensuring that no illegal activity is carried on by any person within the jurisdiction of the respondent Corporation.

With the above observations, this writ petition is allowed.
No order as to costs.

DAMA SESHADRI NAIDU
JUDGE

DMR/-