

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

WP(C) .NO. 7971 OF 2012 (V)

PETITIONER:

MANU RAJAN, AGED 32 YEARS,
S/O.K.K. RAJAPPAN, PARAYARUKUNNEL HOUSE, PALAI KARA,
MEENACHIL VILLAGE, PALAI P.O., MEENACHIL THALUK,
KOTTAYAM DISTRICT.

BY ADVS.SRI.ALEX.M.SCARIA
SRI.SAYED MURTHALA THANGAL
SMT.SARITHA THOMAS
SRI.SHOJAN JACOB
SRI.P.RAMAKRISHNAN
SRI.RAVI KRISHNAN

RESPONDENT(S) :

1. MUNICIPAL COUNCIL PALAI,
REPRESENTED BY ITS SECRETARY, PALAI-1-686 575.
2. THE SECRETARY,
PALAI MUNICIPAL COUNCIL, PALAI- 683 575
3. MR.BINU PULIKKAKANDAM,
PALAI P.O., THE CHAIRMAN,
STANDING COMMITTEE FOR HEALTH,
PALAI MUNICIPAL COUNCIL, PALAI.
4. MR.K.T.THOMAS,
KOOTTIYANIYIL HOUSE, 12TH MILE
PALAI P.O.-686 575 (R4 IS DELETED AND SUBSTITUTED AS
THOMAS KUTTIYANI, S/O.K.T.THOMAS,
AGED 47 YEARS, RESIDING AT KUTTIYANIYIL,
PALA AS PER ORDER DATED 22/05/2012 IN IA 5661/2012.

RR3 BY ADV. SRI.V.G.ARUN
RR3 BY ADV. SRI.T.R.HARIKUMAR
RADDL R5 BY ADV. SRI.BECHU KURIAN THOMAS
R1& R2 BY SRI.V.M.KURIAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
09-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P1 COPY OF THE RESOLUTION DATED 10/8/2006 OF THE COUNCIL MEETING OF THE FIRST RESPONDENT.
- EXT.P2 COPY OF THE APPLICATION DATED 18/2/2011 FILED BY THE FOURTH RESPONDENT FOR LICENSE FOR THE PERIOD OF 2011-12, WITH SECOND RESPONDENT.
- EXT.P3 COPY OF THE REPORT DATED 3/11/2011 OF THE FOOD ANALYST.
- EXT.P4 COPY OF THE FILE NOTES PREPARED IN THE OFFICE OF THE FIRST RESPONDENT IN PURSUANCE OF EXHIBIT P3.
- EXT.P5 COPY OF THE MINUTES OF THE DISCUSSION HELD ON 1/12/2011 BY THE COUNCIL OF THE FIRST RESPONDENT.
- EXT.P6 COPY OF THE REPORT DATED 15/12/2011 OF THE SUB COMMITTEE DEPUTED BY THE COUNCIL FOR THE FIRST RESPONDENT.
- EXT.P7 COPY OF THE FIFTH ITEM OF DECISION DATED 22/12/2011 OF THE COUNCIL FOR THE FIRST RESPONDENT.
- EXT.P8 COPY OF THE COMMUNICATION DATED 6/12/2011 BY THE SECOND RESPONDENT TO THE CIRCLE INSPECTOR OF PALAI.
- EXT.P9 COPY OF THE NOTICE DATED 23/12/2011 BY THE SECOND RESPONDENT TO THE FOURTH RESPONDENT.
- EXT.P10 COPY OF THE RELEVANT PAGE OF MATHTRUBHOOMI DATED 22/03/2012, IN RESPECT OF THE DIRECTIONS OF THE DISTRICT MEDICAL OFFICER, KOTTAYAM.
- EXT.P11 COPY OF THE NOTICE CUM REPRESENTATION DATED 23/02/2012 SENT BY THE PETITIONER TO THE SECOND RESPONDENT.
- EXT.P12 COPY OF THE COMMUNICATION DATED 23/12/2011 BY THE SECOND RESPONDENT TO THE LAWYER OF THE FIRST RESPONDENT.
- EXT.P13 COPY OF THE LEGAL ADVICE DATED 23/12/2011 GIVEN BY THE LAWYER OF THE FIRST RESPONDENT.
- EXT.P14 COPY OF THE APPLICATION DATED 23/12/2011 MADE BY THE FOURTH RESPONDENT TO THE SECOND RESPONDENT.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P.A. TO JUDGE

K. HARILAL, J.

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W.P. (C) No. 7971 of 2012

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Dated this the 9th day of November, 2015

J U D G M E N T

The petitioner is a resident of the 1st respondent, Municipality. The grievance of the petitioner is that the 4th respondent is conducting a shop having the activities of slaughtering and exhibiting of chicken and meat and also selling of fish, under the guise of cold storage licence issued to him. It is the specific case of the petitioner that the 4th respondent has no right to conduct the business of above activities under the licence issued to him.

2. The 1st respondent, Municipality has filed counter affidavit stating that the Municipality has issued a licence for slaughtering, exhibiting and selling of chicken and meat and now the 4th respondent is conducting the shop under the licence issued by the

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Municipality. The 3rd respondent contended that even though, the 1st respondent, Municipality has issued a licence for the same, subsequently, the 3rd respondent challenged the said licence issued to the 4th respondent before the statutory Authority, the Statutory Authority has cancelled the licence and now the 4th respondent is conducting the business, without licence.

3. Going by the reliefs sought for in this Writ Petition, it is seen that the reliefs sought for in this Writ Petition has become infructuous, by the issuance of the licence subsequently. But, the 3rd respondent contended that the said licence also has been cancelled, by the Statutory Authorities and now the shop is being conducted, without licence.

4. I am of the opinion that all the issues raised above are disputed facts, which cannot be decided by this Court invoking Writ jurisdiction under Article 226 of

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the Constitution of India particularly, when statutory remedies are opened to the parties. In the above view, the parties are relegated to the Statutory Forums provided under the Kerala Municipality Act and the Rules framed thereunder to resolve the disputes involved in this Writ Petition. However, if the 4th respondent is conducting the shop without licence, it is for the 1st respondent to take necessary action to see that the shop is not conducted without licence. Needless to say, if the 4th respondent is conducting the shop with licence, the aggrieved parties have the right to challenge the same, before the Statutory Authorities. Any how, this Court is not inclined to issue any positive order in this Writ Petition. Therefore, this Court declines jurisdiction under Article 226 of the Constitution of India. However, it is made clear that the 1st respondent shall take action against the 4th respondent without failure, if

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he is conducting the shop without licence.

This Writ Petition is disposed of accordingly.

Sd/-

**K. HARILAL,
JUDGE**

DST

//True copy//

P.A. To Judge