

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 19TH DAY OF FEBRUARY 2015/30TH MAGHA, 1936

WP(C).No. 4295 of 2015 (J)

PETITIONER(S):

- 1. MUHAMMAD NIZAR AGED, 33 YEARS
S/O.MUHAMMED MOIDEEN, ALANKARATHIL HOUSE
KULASHEKARAPATHY, PATHANAMTHITTA DISTRICT.**
- 2. MUHAMMAD NISHAD AGED 35 YEARS
S/O.MUHAMMAD MOIDEEN, ALANKARATHIL HOUSE
KULASEKHARAPATHY, PATHANAMTHITTA DISTRICT.**

**BY ADVS.SRI.V.PHILIP MATHEW
SRI.GIBI.C.GEORGE**

RESPONDENT(S):

- 1. PATHANAMTHITTA MUNICIPALITY
PATHANAMTHITTA - 689 645. REPRESENTED BY ITS SECRETARY.**
- 2. MUNICIPAL SECRETARY
PATHANAMTHITTA MUNICIPALITY
PATHANAMTHITTA - 689 645.**

BY SRI.V.K.SUNIL

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
19-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WP(C).No. 4295 of 2015 (J)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXT.P-1: COPY OF THE RE-AUCTION ADVERTISEMENT PUBLISHED BY THE FIRST
RESPONDENT MUNICIPALITY IN MALAYALA MANORAMA DAILY DATED 12.3.2014.**

EXT.P-2: COPY OF AUCTION/QUOTATION NOTICE DATED 28.1.2015

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A. TO JUDGE

STK

DAMA SESHADRI NAIDU, J.

W.P.(c) No.4295 of 2015

Dated this the 19th day of February, 2015

JUDGMENT

Heard the learned counsel for the petitioners and the learned Standing Counsel for the respondent Municipality, 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. The petitioners, who are said to be conducting mutton and beef stalls respectively in the shop rooms leased out to them by the respondent Municipality filed W.P. (C) Nos. 7364/2014 and 7383/2014, aggrieved by the action of the Municipality in going for re-auctioning of the shops.

3. Later, when the respondent Municipality issued Exhibit P2 auction notification for the years 2015-2016, it incorporated a particular clause to the effect that the persons who are engaged in litigation with the Municipality

shall not be eligible to participate in the auction process. Assailing the said condition, the petitioners have filed the present writ petition.

4. This Court, through an interim order dated 10.02.2015, directed the respondent Municipality to permit the petitioners to participate in the bidding process.

5. Now it is reported by both the learned counsel that the petitioners have been declared successful bidders for one shop room. According to the learned Standing Counsel for the respondent Municipality, now the writ has become infructuous, since the petitioners have already been declared successful regarding one shop room.

6. At any rate, it is to be observed that the petitioners participation is based only on the interim direction and unless it is held positively that Clause 3 of Exhibit P2 auction notification is unsustainable, their participation may not become legitimate.

7. In the facts and circumstances, I am of the opinion that Condition No. 3 in Exhibit P2 auction notification is totally unsustainable and unconscionable, because there cannot be any interdiction of right of a person on the mere

premise that he has chosen to approach a Court of law ventilating his grievance. It is trite to observe that neither constitutional nor statutory right can be nullified on a mere premise that somebody has approached a Court of law, which in itself is a basic tenet of the democratic polity governed by rule of law.

8. In the facts and circumstances, having regard to the respective submissions of the learned counsel for the petitioners and the learned Standing Counsel for the respondent Municipality, this Court emphatically declares that Condition No.3 to the extent of imposing restriction that persons having litigation against Municipality cannot participate is illegal and arbitrary and accordingly sets it aside. It is further observed that petitioners claim to be the tenants of the shop room based on their bidding shall be processed and completed in accordance with law.

With the above observation, this writ petition is disposed of.

**DAMA SESHADRI NAIDU
JUDGE**

DMR/-