

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 15TH DAY OF JULY 2015/24TH ASHADHA, 1937

WP(C).No. 8407 of 2012 (A)

PETITIONER(S):

**INDIRABHAI.S. AGED 61 YEARS
'ASWATHY' NEAR MINI INDUSTRIAL ESTATE, PLACODE
KAREEPRA VILLAGE, EDAKKIDOM P.O., KOTTARAKKARA TALUK
KOLLAM**

**BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH MENON
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI**

RESPONDENT(S):

- 1. STATE OF KERALA
REP.BY SECRETARY TO THE GOVERNMENT
INDUSTRIES DEPARTMENT, THIRUVANANTHAPURAM-695001**
- 2. THE GENERAL MANAGER,
DISTRICT INDUSTRIES CENTRE, ASRAMAM, KOLLAM-691002**
- 3. THE QUILON DISTRICT MINI INDUSTRIAL ESTATE CO-OPERATIVE
SOCIETY NO S.IND(Q)327, ASRAMAM, KOLLAM-691002
REP.BY ITS MANAGING DIRECTOR**
- 4. THE REVENUE DIVISIONAL OFFICER,
CIVIL STATION, KOLLAM-691001**
- 5. THE TALUK INDUSTRIAL OFFICER,
KOTTARAKKARA, KOLLAM-691506**
- 6. THE DISTRICT MEDICAL OFFICER (HEALTH)
CIVIL STATION, KOLLAM-691001**
- 7. THE KERALA STATE POLLUTION CONTROL BOARD, DISTRICT OFFICE,
USHUS BUILDING, BIG BAZAR,
KOLLAM- 691 001 REP.BY THE ENVIRONMENTAL ENGINEER.**

8. THE KAREEPRA GRAMA PANCHAYATH,
KUZHIMATHIKKADU P.O., KOLLAM-691509
REPRESENTED BY ITS SECRETARY.
 9. POIKAYIL WOOD INDUSTRIES REPRESENTED BY ITS PROPRIETOR
SRI. PRABHAKARAN, STALL NO. 2, MINI INDUSTRIAL ESTATE,
PLACODE, EDAKKIDOM P.O., KAREEPRA VILLAGE,
KOTTARAKKARA, KOLLAM-691509.
 10. GRACE INDUSTRIES REPRESENTED BY ITS PROPRIETOR
SRI. MARIAN ALEXANDER JOHN, STALL NO. 10,
MINI INDUSTRIAL ESTATE, PLACODE, EDAKKIDOM P.O.,
KAREEPRA VILLAGE, KOTTARAKKARA, KOLLAM - 691509.
 11. THE STANDING COMMITTEE, REPRESENTED BY THE PRESIDENT,
KAREEPRA GRAMA PANCHAYATH, KUZHIMATHIKKADU P.O.,
KOLLAM - 691509.
 12. THE DIRECTOR, DIRECTORATE OF INDUSTRIES & COMMERCE,
VIKAS BHAVAN P.O., THIRUVANANTHAPURAM 695033.
 13. THE MEDICAL OFFICER-IN-CHARGE, SOCIAL HEALTH CENTRE,
NEDUMANKAVU, KOLLAM - 691509.
 14. THE FOREST DEPARTMENT, REPRESENTED BY
THE CONSERVATOR OF FORESTS, FOREST HEAD QUARTERS,
VAZHUTHACAUD, THIRUVANANTHAPURAM - 695014.
- R7 BY ADV. SRI.M.R.ARUNKUMAR, SC, POLLUTION CONTROL BOARD
R9 & R10 BY ADV. SRI.K.R.AVINASH (KUNNATH)
R8 BY ADV. SRI.K.V.ANIL KUMAR
R2, R4 TO R6, R12 TO R14 BY SPL. GOVERNMENT PLEADER FOR FOREST
M.A.THOMASKUTTY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) EXHIBITS:

- EXT.P1:- TRUE COPY OF A ROUGH SKETCH SHOWING THE LIE AND LOCATION OF THE PETITIONER'S PROPERTY.
- EXT.P2:- TRUE COPIES OF PHOTOGRAPHS OF THE 9TH RESPONDENT UNIT VIS-A-VIS THE PETITIONER'S HOUSE
- EXT.P3:- TRUE COPIES OF PHOTOGRAPHS OF THE 10TH RESPONDENT UNIT VIS-A-VIS THE PETITIONER'S PROPERTY,
- EXT.P4:- TRUE COPY OF THE LETTER DTD 8/5/2009 ISSUED BY THE 2ND RESPONDENT TO THE 5TH RESPONDENT.
- EXT.P5:- TRUE COPY OF THE SUB DIVISIONAL MAGISTRATE'S ORDER ,DTD 12/1/2011.
- EXT.P6:- TRUE COPY OF THE PETITIONER'S REPRESENTATION DTD 19/10/2011 BEFORE THE HON'BLE CHIEF MINISTER'S PEOPLE'S CONTACT PROGRAMME.
- EXT.P7:- TRUE COPY OF THE 3RD RESPONDENT'S LETTER TO THE 4TH RESPONDENT DTD 16/11/2011 ENCLOSING A COPY OF HON'BLE COURT'S JUDGMENT DTD 10/11/2011 IN WRIT PETITION NO 30001 OF 2011 AS WELL AS A COPY OF THE PETITION FOR EXTENSION OF TIME.
- EXT.P8:- TRUE COPY OF THE LETTER DTD 26/11/2011 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.
- EXT.P9:- TRUE COPY OF THE LETTER DTD 15/2/2012 ISSUED BY THE 6TH RESPONDENT TO THE 13TH RESPONDENT.
- EXT.P10:- TRUE COPY OF THE LETTER DTD 24/2/2012 ISSUED TO THE 3RD RESPONDENT BY THE 7TH RESPONDENT.
- EXT.P11:- TRUE COPY OF THE 4TH RESPONDENT'S ORDER DTD 01/03/2012
- EXT.P12:- TRUE COPY OF THE 8TH RESPONDENT'S REPLY TO THE PETITIONER'S SON DTD 07/03/2012
- EXT.P12(a):- TRUE COPY OF THE CIRCULAR NO TC. T2-37529/91 DTD 27/5/1993.

RESPONDENTS' EXHIBITS :NIL

//TRUE COPY//

P.A. TO JUDGE

K. VINOD CHANDRAN, J.

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W.P.(C) No.8407 of 2012 - A

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Dated this the 15th day of July, 2015

J U D G M E N T

The petitioner resides adjacent to the 3rd respondent's industrial estate and is aggrieved by the pollution caused by virtue of the functioning, specifically of the respondents 9 and 10 in the property. The petitioner had complained about the same, before the Sub Divisional Magistrate, Kollam, the 4th respondent herein under Section 133 Cr.P.C, in which an interim order was passed directing the counter petitioner therein to construct a wall around the industrial estate in mitigation of the complaint of pollution caused. By Ext.P5 the interim order was made absolute.

2. Subsequently, the 3rd respondent was before this Court seeking an extension of the time specified in Ext.P5 order. This Court by Ext.P7 judgment directed consideration of

the extension petition filed before the Revenue Divisional Officer (R.D.O). The time extension petition itself is produced as Ext.P5. The 3rd respondent in the petition also admitted its responsibility to construct a compound wall around the property and only sought for time to complete the same. Again by 26.11.2011, the 2nd respondent under whom, the industrial estate works had also informed the petitioner that the construction of the wall is delayed only for reason of paucity funds. The 2nd respondent also confirmed that necessary directions have been issued to the 3rd respondent to atleast construct a wall at the place where the petitioner complains of pollution from the 9th respondent sawmill ie., between the petitioner's property and the 9th respondent's sawmill.

3. The petitioner was also before the Pollution Control Board, the 7th respondent herein, who had also inspected the property and found that there is pollution and that the R.D.O's order directing construction of a compound wall around the industrial estate would in fact offer some mitigation to the

complaint made by the petitioner. The petitioner submits that despite all the efforts made by her, still the pollution subsists.

4. The 3rd respondent though issued with notice twice, the same has not been returned after service. In such circumstance, the service against the 3rd respondent has been declared. It is also not as if the 3rd respondent is not aware of the orders passed by the R.D.O as also the Pollution Control Board.

5. The specific contention raised by the petitioner, in the writ petition is against the pollution caused by the industries of the respondents 9 and 10. They have not filed any counter affidavit in the matter. The counter affidavit of the 2nd respondent shows that the 3rd respondent's establishment mini industrial estate started functioning since 1996. It is also stated that the 9th respondent started functioning on 10.11.1996 and the 10th respondent in the year 1995. The petitioner is said to have constructed a residence after 20 years of the establishment of the industrial estate. However, that cannot be a reason for continuing a pollution especially since there is no bar in

constructing a residential house near an industrial estate. Especially since, there is no averment as to whether the area has been declared as an industrial area. The 9th respondent is said to be carrying on a sawmill and the 10th respondent a furniture manufacturing unit.

6. In any event the orders of the R.D.O under Section 133 is against the 3rd respondent. Subsequently even as per Ext.P11 order, the R.D.O has reiterated its earlier order to construct the wall, which is said to have been challenged before the Sub Divisional Magistrate, Kollam unsuccessfully and there is Criminal M.C said to be pending before this Court. Admittedly, there is no stay in the Criminal M.C. It is also submitted by the learned Counsel appearing for the petitioner that the respondents 9 and 10 are carrying on their operations without any licence.

7. The Panchayath, who appears before this Court is also unable to satisfy this Court that any licence has been validly issued to the respondents 9 and 10. In the circumstance of the

specific complaint raised against the industrial estate carried on by the respondents 9 and 10, it is directed that the same shall not be operated unless necessary consent is obtained from the Pollution Control Board and the directions made by the R.D.O under Section 133 is complied with. The Pollution Control Board would also have to enquire as to whether the respondents 9 and 10 have obtained a licence under the Kerala Forest (Regulation of Sawmills and Other Wood-based Industrial Units) Rules 2012.

The writ petition is allowed interdicting the respondents 9 and 10 from carrying on any operations unless they obtain a consent from the Pollution Control Board and obtain necessary licence and permits from other statutory authorities. No costs.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

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// true copy //

P.A to Judge.