

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

WP(C).No. 5710 of 2015 (K)

PETITIONER(S):

**SARITHA P, AGED 35 YEARS,
W/O.SATHISH KUMAR, RESIDING AT NO.32/1817-A,
MILLENNIUM NAGAR, EDAPPALLY P.O., COCHIN.**

**BY SRI.K.JAJU BABU (SENIOR ADVOCATE)
ADVS.SMT.M.U.VIJAYALAKSHMI
SRI.BRIJESH MOHAN**

RESPONDENT(S):

- 1. CORPORATION OF KOCHI,
BOAT JETTY, ERNAKULAM-682011,
REPRESENTED BY ITS SECRETARY.**
- 2. THE HEALTH OFFICER,
CORPORATION OF KOCHI, BOAT JETTY,
ERNAKULAM-682011.**
- 3. THE FOOD SAFETY OFFICER,
THRIKKAKARA CIRCLE, EROOR P.O.,
ERNAKULAM DISTRICT-682306.**
- 4. THE COMMISSIONER FOR FOOD SAFETY,
KERALA, THYCAUD, THIRUVANANTHAPURAM-695014.**
- 5. MILLENNIUM NAGAR RESIDENTS ASSOCIATION,
EDAPPALLY P.O., ERNAKULAM, KOCHI-682024,
REPRESENTED BY ITS SECRETARY, SRI.K.A.IYPE, 'KAVATTU',
MILLENNIUM NAGAR, EDAPPALLY, COCHIN-682024.**

***ADDL. R6 TO R10 IMPEADED**

- 6. T.B.MOHANAN, S/O.LATE T.K.BHASKARAN, AGED 66 YEARS,
32/1818A, MILLENNIUM NAGAR, PADIVATTOM,
EDAPPALLY P.O., KOCHI - 682 024.**
- 7. T.N.VENKITESWARA PAI, S/O.LATE NARAYANA PAI,
AGED 88 YEARS, 32/1818 THOTTU MADOM,
MILLENNIUM NAGAR, EDAPPALLY P.O., KOCHI 682 024.**

8. SATHEESH T.V, S/O.T.N.VENKITESWARA PAI,
AGED 53 YEARS, 32/1818 C, MILLENNIUM NAGAR,
EDAPPALLY P.O., KOCHI - 682 024.
9. M.M.PRAKASAN, S/O.K.MADHAVAN PILLAI,
AGED 53 YEARS, 32/1815 A, MILLENNIUM NAGAR,
EDAPPALLY P.O., KOCHI - 682 024.
10. M.M.UNNIKRISHNAN, S/O.K.MADHAVAN PILLAI,
AGED 57 YEARS, 31/1816, MILLENNIUM NAGAR,
EDAPPALLY P.O., KOCHI - 682 024.

ADDL.R6 TO R10 ARE IMPEADED AS PER ORDER
DATED 06.03.2015 IN IA 3470/15.

R1 & R2 BY ADV. SRI.E.D.GEORGE, SC
SRI.P.K.SOYUZ,SC,

ADDL.R6 TO R10 BY SRI.V.V.SIDHARTHAN (SENIOR ADVOCATE)
ADV. SRI.D.G.VIPIN
SRI.KAROL MATHEWS SEBASTIAN ALENCHERRY
R3 & R4 BY GOVERNMENT PLEADER SMT.ANITHA RAVINDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 16-07-2015 , THE COURT ON 22-07-2015 DELIVERED THE
FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS:

- EXT.P1 : COPY OF THE RECEIPT NO.031437 DATED 21-10-2014 ISSUED BY THE COCHIN CORPORATION TO THE PETITIONER ALONG WITH ENGLISH TRANSLATION.
- EXT.P2 : COPY OF THE NOTICE NO.MOH/13/31437/14 DATED 30-12-14 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER ALONG WITH ENGLISH TRANSLATION.
- EXT.P3 : COPY OF THE REPLY DATED 6-1-2015 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT ALONG WITH ENGLISH TRANSLATION.
- EXT.P4 : COPY OF THE ORDER NO.MOH/13/31437/14 DATED 30-12-14 ISSUED BY THE 2ND RESPONDENT ALONG WITH ENGLISH TRANSLATION.
- EXT.P5 : COPY OF THE REPLY DATED 5-2-15 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT ALONG WITH ENGLISH TRANSLATION.
- EXT.P6 : TRUE COPY OF THE NOTICE NO.MOH/13/31437/14 DATED 13-2-2015 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER ALONG WITH ENGLISH TRANSLATION.
- EXT.P7 : COPY OF THE NOTICE DATED 31-12-14 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER ALONG WITH ENGLISH TRANSLATION.
- EXT.P8 : COPY OF THE REGISTRATION CERTIFICATE DATED 31-1-2015 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.
- EXT.P9 : COPY OF THE CIRCULAR NO.A-814/12/CFS DATED 22-5-2012 ISSUED BY THE 4TH RESPONDENT.
- EXT.P10 : COPY OF THE INTERIM ORDER DATED 19-11-14 OF THIS HON'BLE COURT IN WPC.NO. 8047/14.

RESPONDENTS' EXHIBITS:

- EXT. R6(A) : A TRUE COPY OF THE ROUGH PLAN SHOWING THE RESPECTIVE RESIDENCES OF RESPONDENTS 6 TO 10.
- EXT. R6(B) : A TRUE COPY OF THE OFFICE NOTES AND A REPORT OF THE HEALTH INSPECTOR ALONG WITH ENGLISH TRANS.

//TRUE COPY//

P.S. TO JUDGE

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A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.5710 of 2015

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Dated this the 22nd day of July, 2015

JUDGMENT

The petitioner is aggrieved by the direction of the respondent corporation to close down the unit attached to her house for supplying homely foods to those who place orders.

2. The petitioner is running a small scale business of cooking and supplying of food items. Though the application for licence was submitted before the first respondent as evident from Ext.P1, the second respondent issued Ext.P2 pointing out certain defects. The petitioner submitted Ext.P3 reply after curing the defects. The second respondent again issued Ext.P4 directing the petitioner to cure the defects within three days.

3. To Ext.P4, the petitioner submitted Ext.P5 reply wherein she requested to issue licence for conducting homely food service. On receipt of Ext.P5, the second respondent issued Ext.P6 directing the petitioner to close down the unit within 24 hours. The petitioner alleges that she has been issued with registration by the third respondent under the Food Safety and Standards Act, 2006 as evident from Ext.P8. In view of Ext.P8 registration and Ext.P9

circular issued by the Commissioner of Food Safety, Kerala, the petitioner is not liable to take any licence from respondents 1 and 2; it is alleged. The petitioner alleges that on identical circumstances, this Court while considering the effect of the Food Safety and Standards Act, 2006 issued Ext.P10 order. It is with this background, the petitioner has come up before this Court.

4. The first respondent has filed a counter affidavit contending as follows:

It is stated that the petitioner is conducting a catering unit in the building No.32/1817-A without any licence. They contended that the building is creating sound pollution during night and early morning. Therefore, the residential association submitted a complaint against the said catering unit before the first respondent. Accordingly, the first respondent initiated action against the catering unit. In the meanwhile, the petitioner submitted an application on 17.10.2014 for licence to conduct the catering unit in building No.32/11817 of the Cochin Corporation. Accordingly, the first respondent verified the revenue records in respect of the above said building and it was seen that the same was having a plinth area of 24.50 M2 and recorded that it was constructed for commercial purpose. However, in the application

submitted by the petitioner, the plinth area of the building is shown as 800 sq. feet, including the area of the temporary shed.

It was further contended that on verification, the building and the temporary shed were regularised by the respondent corporation under the provisions of the KMBR. Accordingly, the corporation conducted an inspection in the shed for considering the application of licence. It was found that there was no basic requirement in the temporary shed or the building for conducting the catering unit. There was no proper facility for preparing food and disposal of waste. It was also seen that lot of families were residing near the unit. The residential association in the area has complained about the functioning of the catering unit that due to the functioning of the unit, they were not able to lead a peaceful life. Therefore, the respondent corporation issued a notice to the petitioner directing to provide necessary devices to avoid nuisance to the local people. Direction was also given to take necessary steps to dispose the waste within 7 days.

It was further stated that the petitioner has submitted a reply to the said notice on 6.1.2015 stating that the unit is functioning with necessary waste water disposal to avoid disturbance to the public. Accordingly, the respondent inspected the

place and found that the statement in the reply was not correct. Though they have constructed two pits for collecting the waste water, it was seen released to the canal. Accordingly, a notice was issued to the petitioner stating that the flowing of waste water to the canal is not a proper method of disposal of waste water. She was also directed to avoid disturbance in the night and early morning. She was also asked to do these within three days. Thereafter another notice was issued to the petitioner on 31.1.2015 and the petition has submitted a reply. However, the reply was not satisfactory. It was stated in the reply that the waste water collected in the pit was taken out from the pit and the same was disposed outside the unit. It was also stated that the unit is functioning as per the time stipulated by the residential association. However, they contacted the association to know about the truth and the association informed that there was no such discussion or fixing of the time schedule. It was also complained that the nuisance was continuing.

5. In the counter affidavit filed by respondents 6 to 10 it was contended as follows;

The respondents 6 to 10 are neighbours and they are residing very close to the catering unit owned by the petitioner.

They are residing in building numbers 32/1818 A, 32/1818, 32/1818 C, 32/1815A and 32/1816 respectively. Copy of the rough plan showing the respective residence of these respondents which are located very close to the petitioner's unit is marked as Ext.R6(a). The area where the petitioner's unit is functioning is a densely populated area which is not fit to run a catering service; it was contended.

It was further contended that first respondent and the petitioner is bound to take licence under Section 447 of the Kerala Municipality Act and under the Kerala Municipality (Issue of Licence to Dangerous and Offensive Trades and other Trades and Factories) Rules, 2011. The respondents point out that the business shown in Schedules I and II of the above rules should be controlled by Section 447 of the Kerala Municipality Act and the connected rules and the trade carried on by the petitioner comes under Serial Nos.44 and 138 of Schedule I of the Kerala Municipality (Issue of Licence to Dangerous and Offensive Trades and other Trades and Factories) Rules, 2011. Therefore, according to the respondents, for running the petitioner's unit, the petitioner has to take a licence under Section 447(1) of the Act. Section 447 of the Kerala Municipality Act and the Kerala Municipality (Issue of Licence to Dangerous and

Offensive Trades and other Traders and Factories) Rules, 2011 are untrammelled by the Food Safety and Standards Act, 2006. According to the respondents, these two Acts are two distinct entities and the purpose are also different.

They further contended that the catering unit shall not be allowed to continue functioning without a licence under Section 447 of the Kerala Municipality Act. According to them, for running a business covered under the Kerala Municipality (Issue of Licence to Dangerous and Offensive Trades and other Trades and Factories) Rules, 2011, which includes other traders also, licenses are required from respondents 1 and 2. The petitioner is admittedly running a trade and, therefore, she is liable to take a licence in view of Section 447(1) of the Kerala Municipality Act; it was contended.

It was further stated that since the petitioner's business falls under Schedule I of the Kerala Municipality (Issue of Licence to Dangerous and Offensive Trades and other Trades and Factories) Rules, 2011 a licence/permit is required from the first respondent notwithstanding the licence granted under the provision of the Food Safety and Standards Act, 2006 and the regulations thereunder. The licence/permit under one Act is not substitute for the licence/permit under the other Act. The Food Safety and Standards

Act, 2006 and the Kerala Municipality Act and Rules are two distinct entities and the purposes are also different; it was contended.

6. I have heard the learned senior counsel for the petitioner, the learned standing counsel for the first respondent and the learned senior counsel for the additional party respondents.

7. After hearing both sides for some time, the Kerala Pollution Control Board was additionally impleaded *suo motu* as I felt that it is necessary to have the said authority on the party array for the proper implementation of the directions in the judgment.

8. From the arguments submitted by both sides, what can be discerned is that the objection of the party respondents as well as respondent corporation is that the functioning of the so-called catering unit in the petitioner's house has become objectionable mainly on two grounds. Firstly it causes sound pollution in the locality. Secondly there is no proper method for disposal of waste accumulated in the premises of the petitioner and same is allowed to be let out to the adjacent drainage which causes environmental pollution. Though arguments have been addressed by the learned senior counsel appearing for both sides regarding the question whether the licence from the respondent corporation is required or not, taking into account the circumstances of this case, this Court is

of the view that it is not necessary to go into those questions of considering the actual lis involved in this case.

9. As inconsistent versions are forth coming regarding the sound pollution as well as environmental pollution on account of the functioning of the petitioner's unit, this Court is of the view that the matter can be set at rest by an inspection of the petitioner's unit by a competent forum to ascertain whether actually any nuisance is caused in the petitioner's unit and whether the same would be remedied by any measures which could be taken by the petitioner. It is with this object in mind, I have suo motu impleaded the Kerala State Pollution Control Board as additional 11th respondent.

10. Taking into account, all the relevant facts and circumstances of the case, this writ petition is disposed of as under:

Either the petitioner or any of the party respondents can produce a copy of this judgment within two weeks from the date of receipt of a copy of this judgment before the additional 11th respondent (Kerala State Pollution Control Board). Within one week from the date of receipt of the same, the additional 11th respondent shall conduct an inspection of the petitioner's premises while the alleged catering unit is functioning. The Pollution Control Board shall ascertain whether the functioning of the unit causes any pollution as

alleged by the local inhabitants. If it causes any pollution, the 11th respondent can suggest remedial measures to the petitioner, who shall implement the directions of the 11th respondent within a period of one month thereafter and the same shall be intimated to the board. Within one week from the date of intimation as above, the authorised representative of the 11th respondent shall inspect the unit once again and ascertain whether the direction has been complied with.

Incorporating the findings during both the inspections, a report shall be prepared and shall be submitted before the first respondent corporation by the respondent board, within a period of two weeks thereafter. If the respondent corporation is satisfied from the report that the functioning of the petitioner's unit is in compliance of the directions of the 11th respondent, the petitioner's unit shall be allowed to perform. Otherwise, the respondent corporation can pass appropriate orders which shall be binding on the petitioner. Till this exercise is completed, the petitioner can run the unit as at present. If the petitioner's unit is allowed to function, the petitioner shall limit the period of operation of the unit from 6 a.m. in the morning till 6 p.m. in the evening.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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