

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 25TH DAY OF SEPTEMBER 2015/3RD ASWINA, 1937

WP(C).No. 6309 of 2015 (K)

PETITIONER:

**SUSEELA B., JOY VILASAM, AGED 60 YEARS,
EDAKAVU, PANNIYODU.P.O., TRIVANDRUM-695 572.**

**BY ADVS.SRI.PAUL K.VARGHESE
SMT.A.A.GEETHA**

RESPONDENT(S):

- 1. STATE OF KERALA, REPRESENTED BY SECRETARY,
(LOCAL SELF GOVERNMENT DEPARTMENT),
GOVERNMENT SECRETRIAT, TRIVANDRUM-695 001.**
- 2. THE DISTRICT COLLECTOR,
CIVIL STATION KODAPANAKUNNU,
TRIVANDRUM, PIN-695 043**
- 3. THE ADDITIONAL DISTRICT MAGISTRATE,
TRIVANDRUM-695 005.**
- 4. THE DISTRICT MEDICAL OFFICER,
TRIVANDRUM-695 005.**
- 5. POLLUTION CONTROL BOARD, TRIVANDRUM-695 005.**
- 6. THE SECRETARY, POOVACHAL GRAMA PANCHAYATH,
POOVACHAL, TRIVANDRUM-695 575.**
- 7. SAJI, S/O.BHASKARAN NADAR,SHALOM BHAVAN,
EDAKAVU, PANNIYODU.P.O.,TRIVANDRUM-695 575.**
- 8. BHASKARAN NADAR, SHALOM BHAVAN, EDAKAVU,
PANNIYODU.P.O., THIRUVANANTHAPURAM-695 575.**

**R7 & R8 BY ADVS. SRI.D.PEETHAMBARAN
SRI.PRASAD GANDHI**

R6 BY ADV. SRI.R.T.PRADEEP

R1 TO R5 BY GOVERNMENT PLEADER SMT.ANITHA RAVINDRAN

R5 BY SRI. M.AJAY, SC

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 07-08-2015 ALONG WITH WPC.15972/2015, THE COURT
ON 25-09-2015 DELIVERED THE FOLLOWING:**

mbr/

APPENDIX

PETITIONER(S)' EXHIBITS:

- P1- A TRUE COPY OF THE ORDER NO.C2/21333/2014/G/ME/AA PASSED BY THE MEDICAL OFFICER DATED 21-08-2014.
- P1(A)- THE ENGLISH TRANSLATION OF EXHIBIT P1.
- P2- A TRUE COPY OF THE ORDER NUMBER S-9-77221/2014 PASSED BY THE ADDITIONAL DISTRICT MAGISTRATE DATED 13-11-2014.
- P2(A)- A TRUE COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P2.
- P3- A TRUE COPY OF THE ORDER NO.S-9.77221/2014 DATED 29-01-2015 PASSED BY THE DISTRICT COLLECTOR.
- P3(A)- THE ENGLISH TRANSLATION OF EXHIBIT P3.

RESPONDENT(S)' EXHIBITS:

- EXT.R7(A) : TRUE COPY OF LICENSE NO.A6/40/14-15 DATED 5/5/2014 ISSUED BY THE SECRETARY, POOVACHAL GRAMA PANCHAYATH (6TH RESPONDENT)
- EXT.R7(B) : TRUE COPY OF CERTIFICATE DATED 16.1.2010 ISSUED BY THE MEDICAL OFFICER IN CHARGE, PRIMARY HEALTH CENTRE, VEERNAKAVU.
- EXT.R7(C) : TRUE COPY OF CONSENT NO.PLB/TVM-DO/ILO(R)/PLF/1383/2014 DATED 16.8.2014 ISSUED BY THE ENVIRONMENTAL ENGINEER, KERALA STATE POLLUTION CONTROL BOARD.

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.V.RAMAKRISHNA PILLAI, J.

=====

W.P(C) Nos.6309 & 15972 of 2015

=====

Dated this the 25th day of September, 2015

JUDGMENT

These writ petitions relate to the functioning of a poultry farm within the local limits of Poovachal Grama Panchayat.

2. The petitioner in W.P(C) No.6309 of 2015, who is the local resident of the respondent panchayat, alleges as follows:

The petitioner and her husband are senior citizens facing old age ailments. The petitioner's husband is asthmatic and allergic. Very close to their house, respondents 7 and 8 have put up a shed for running a poultry farm and started the functioning of the same. The petitioner alleges that she and her husband cannot live in their house due to the foul smell emanating from the farm. The petitioner alleges that it causes serious health hazards. She filed complaints before various authorities, including the respondent panchayat. The

petitioner further alleges that thereafter all the authorities visited the farm and found that the same is causing health problems. Accordingly, Exts.P1 to P3 orders were passed directing to close down the illegal poultry farm run by respondents 7 and 8 without out licence. The grievance of the petitioner is that Exts.P1 to P3 orders have not so far been implemented and the respondents are conducting the farm in spite of Exts.P1 to P3 orders.

3. W.P(C) No.15972 of 2015 is filed by the 7th respondent in W.P(C) No.6309 of 2015. In that writ petition, he alleges that he is running the poultry farm for the past seven years. In this writ petition he is challenging the legality of the orders passed by the Ombudsman for Local Self Government Institutions (the first respondent herein), the Secretary of the respondent panchayat (the 2nd respondent herein) and the Additional District Magistrate, Thiruvananthapuram (the 3rd respondent herein). These orders were passed on the basis of a

complaint filed by the 5th respondent in the writ petition (the petitioner in W.P(C) No.6309 of 2015). He alleges that by the orders impugned in this writ petition, he was directed to remove the poultry shed adjacent to the property of the 5th respondent and to remove the same to another location on the ground that the same is likely to cause health hazards. According to the petitioner, he had already obtained requisite licence from the District Medical Officer. He alleges that the house in which the 5th respondent was residing is unoccupied and locked. He further alleges that Ext.P2 notice was issued without affording him an opportunity of being heard.

4. Though he has made application before the District Medical officer on 11.8.2014 the said authority intimated the petitioner that since he is already in possession of the requisite licence for the year 2014-2015, fresh application cannot be entertained. He further alleges that an inspection report was prepared by the Technical Assistant of the Health Department

stating that the poultry farm is likely to cause health hazards. He further points out that the on enquiry by the Secretary of the respondent panchayat revealed that the 5th respondent does not reside in the building adjacent to the shed where the poultry farm is functioning and the learned Ombudsman without giving credence to the report of the Secretary and without ascertaining the actual facts directed the respondent panchayat to implement the orders by issuing Ext.P8. It is this order which is under challenge in this writ petition.

5. Counter affidavit has been filed in both the writ petitions by the party respondents reiterating the contentions taken by them in the writ petitions filed by them.

6. Arguments have been heard.

7. For convenience of discussion, the parties and the documents can be referred as they are arrayed in W.P(C) No.6309 of 2015.

8. The definite stand taken by the petitioner is that she is

put to hardship and inconvenience by the illegal functioning of the poultry farm situated near to her house. Exts.P1 to P3 orders are passed on various dates. However, the authorities have not taken any action to implement the same. It is for that reason, the petitioner has approached the learned Ombudsman for Local Self Government Institutions, who passed the order dated 11.3.2015. The copy of which is marked as Ext.P8 in the other writ petition.

9. By the said order, the learned Ombudsman has concluded the proceedings directing the Secretary of the respondent panchayat to implement the orders passed by the Additional District Magistrate. The stand taken by the 8th respondent is that he is having a current licence to run the poultry farm. However, that does not mean that he has the right to cause nuisance to the neighbours.

10. Though it was strenuously argued by the learned counsel for the 8th respondent the property of the petitioner

was purchased after the 8th respondent has purchased his land, the learned counsel for the petitioner would submit that the property originally belonged to the petitioner's father and she inherited the same from her father. The Additional District Magistrate has passed orders on being satisfied that the poultry shed is very close to the residence of the petitioner. The District Collector also passed order dated 29.1.2015 directing the Secretary of the respondent panchayat to implement the order to close down the poultry farm forthwith as it is a nuisance to the petitioner causing health hazards.

11. It is the definite case of the petitioner that the distance between the petitioner's house and the poultry farm is less than 1 metre. According to the petitioner, the closure of their house for some time was because of the hospitalisation of her husband from 13.11.2014 to 13.12.2014.

12. Once the authorities, who had visited the spot, have found that the functioning of the poultry farm is causing

nuisance to the nearby residence, this Court is of the view that there is no reason to interfere with the orders passed by the learned Ombudsman.

In the result, W.P(C) No.15972 of 2015 is dismissed. W.P(C) No.6309 of 2015 is allowed directing respondents 2 to 5 to implement Exts.P1 to P3 orders therein and to close down the illegal functioning of the poultry farm run by respondents 7 and 8, within a period of one month from the date of receipt of a copy of this judgment.

Sd/-
A.V.RAMAKRISHNA PILLAI
JUDGE

krj