

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. 7002 of 2015 (A)

PETITIONER:

PHILIP JOSE, AGED 63 YEARS,
S/O.LATE PACHI PHILIP, PROPRIETOR,
J & P PAINT HOUSE, PALA STAND, KOTTAYAM - 1,
NOW RESIDING AT KAVUNNUKATTIL HOUSE,
KIDANGOOR, KOTTAYAM DISTRICT.

BY ADVS.SRI.MATHEW JOHN (K)
SRI.DOMSON J.VATTAKUZH

RESPONDENT(S):

1. THE KOTTAYAM MUNICIPALITY,
MUNICIPAL OFFICE, KOTTAYAM,
REPRESENTED BY ITS SECRETARY - 686 001.
2. THE SECRETARY,
KOTTAYAM MUNICIPALITY, MUNICIPAL OFFICE,
KOTTAYAM - 686 001.
3. JOSH Y XAVIER, MUKKODIYIL HOUSE,
WILSON STREET, M.C.ROAD, KOTTAYAM,
DOING BUSINESS IN THE NAME AND STYLE
FISHLAND COLD STORAGE, PALA STAND, KOTTAYAM.

*ADDL. R4 IMPEADED

4. SRI.K.S.RADHAKRISHNAN, KUMARAKAM COLD STORAGE,
IX/793, PALA STAND, KOTTAYAM.

ADDL. R4 IS IMPEADED AS PER ORDER
DATED 22.07.2015 IN IA.5283/2015.

R1 & R2 BY ADV. SRI.PHILIP J.VETTICKATTU
R3 BY ADV. SRI.GOKUL DAS V.V.H.

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

mbr/

WP(C).No. 7002 of 2015 (A)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXHIBIT P1. A TRUE COPY OF THE REPRESENTATION DATED 20.12.2010 BY THE PETITIONER.

EXHIBIT P2. A TRUE COPY OF THE JUDGMENT DATED 31.03.2011 IN W.P.(C)NO.5922 OF 2011.

EXHIBIT P3. A TRUE COPY OF THE ORDER DATED 26.08.2014 BY THE 2ND RESPONDENT.

EXT.P3(A). ENGLISH TRANSLATION OF EXT.P3.

RESPONDENT(S)' EXHIBITS:

EXT. R3(A) : TRUE COPY OF THE SHOW CAUSE NOTICE DATED 1.12.2014 BEARING NUMBER H2-1076/11 ISSUED BY THE HEALTH SUPERVISOR, KOTTAYAM MUNICIPALITY.

EXT. R3(B) : TRUE COPIES OF THE RECEIPTS(3 NOS.) OBTAINED ON PAYMENT OF LICENSE FEE FOR 2015-16.

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.V.RAMAKRISHNA PILLAI, J

WPC No.7002 of 2015

Dated this the 22nd day of July, 2015

JUDGMENT

The petitioner has approached this Court for a direction to the second respondent to enforce Ext.P3 order.

2. According to the petitioner, pursuant to the direction of this Court in Ext.P2 judgment, the second respondent, after hearing all concerned, passed Ext.P3 order on 26.8.2014. As per the said order, it was specifically found that the conduct of the cold storage by the third respondent in Room No.IX/791, IXC/792 and IX/812 is *per se* illegal and the same is liable to be stopped. More than 6 months have elapsed after the issue of Ext.P3 order; according to the petitioner. Ext.P3 order holds the field even now in so far as the third respondent has not challenged the same in a manner known to law; it is pointed out. Despite this and despite the fact that the petitioner has been repeatedly

requesting the second respondent to enforce Ext.P3, the second respondent has not chosen to implement the directions in Ext.P3. It is with this background, the petitioner has come up before this Court.

3. In the counter affidavit filed by the third respondent, it is contended that the respondent Municipality has no power to cancel the license of the third respondent. According to the third respondent, the powers vested with the Municipality as per Sections 463, 464 and 465 of the Kerala Municipalities Act cannot be invoked against the petitioner as he is not running any private market. It was also stated that as per the aforesaid provisions, the Municipality has the power to abate any alleged nuisance after giving necessary notice. The third respondent would further contend that he was not a party to WPC No.5922/2011. He also alleges that the petitioner is a close associative of one M.O.Mani who is the third respondent in Ext.P2 judgment, who is none other than the landlord of the third respondent, who was taking recourse to all sorts of mischief to evict the third

respondent from the tenanted premises. After the death of the said Mani, his son Bobby Mani is also adopting the same strategy. It was also pointed out that the respondent Municipality has passed Ext.P3 order in compliance of Ext.P2 judgment directing the Health supervisor to take legal action including issue of show cause notice. Thereafter the Health Supervisor issued a show cause notice on 1.12.2014 [Ext.R3(a)] by which the third respondent was called upon to submit reasons for not cancelling the license. Thereafter the Municipality instructed the third respondent to make some alterations and glass enclosures in front of the rooms to avoid visibility from the road. The third respondent further alleges that previously there was no enclosure on the front portion and the persons who passes the road can see the fishes kept in the room. This was rectified, according to the third respondent. The respondent Municipality after finding that the third respondent was conducting the business in a lawful manner, his licenses were renewed on 19.2.2015 for the year 2015-2016. As the respondents 1

and 2 have regularised everything in tune with law, no further action is required in the matter from respondents 1 and 2. Therefore, the third respondent prayed for a dismissal of the writ petition.

4. Arguments have been heard.

5. The petitioner wants to get the directions in Ext.P2 judgment implemented by the respondent Municipality.

6. A reading of Ext.P2 would reveal that the petitioner has approached this Court alleging that the landlord of the third respondent was conducting the fish vending. His request was for a direction to the respondent Municipality to avoid the nuisance.

7. It is crucial to note that the third respondent in this petition was not a party to Ext.P2 judgment. The third respondent in Ext.P2 judgment was *ex parte*. Therefore, this Court proceeded on the assumption that the third respondent was conducting the fish vending in the premises. Now, the petitioner has approached this Court for getting the judgment implemented against the third respondent in this case.

It appears from the documents produced from the side of the third respondent that he has requisite license from the respondent Municipality to conduct fish vending in the premises during the year 2015-2016. Therefore, this Court is of the view that the petitioner is not entitled to get the relief as prayed for in the writ petition. In the result, this writ petition fails and accordingly, dismissed.

**sd/- A.V.RAMAKRISHNA PILLAI
JUDGE**

css/

true copy

PS.TO JUDGE