

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

MONDAY, THE 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

WP(C).No. 11404 of 2009 (U)

PETITIONER(S):

**S.K. LANE KAVUNGAL PARAMBA RESIDENTS ASSOCIATION,
S.K. LANE, CALICUT ROAD, PERINTHALMANNA-22,
MALAPPURAM DISTRICT, REPRESENTED BY ITS
SECRETARY, LIAQAT ALI KHAN.**

**BY ADVS.SRI.SANTHEEP ANKARATH,
SRI.V.C.MADHAVANKUTTY.**

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF LOCAL ADMINISTRATION,
SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. DISTRICT COLLECTOR, MALAPPURAM.**
- 3. REVENUE DIVISIONAL OFFICER,
PERINTHALMANNA, MALAPPURAM DISTRICT.**
- 4. PERINTHALMANNA MUNICIPALITY,
REP. BY ITS SECRETARY,
OFFICE OF THE PERINTHALMANNA MUNICIPALITY,
MALAPPURAM DISTRICT.**
- 5. THE CHAIRMAN,
PERINTHALMANNA MUNICIPALITY,
MUNICIPAL OFFICE, PERINTHALMANNA.**
- 6. KERALA STATE POLLUTION CONTROL BOARD,
REP. BY ITS ENVIRONMENTAL ENGINEER,
MALAPPURAM.**

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*** ADDL. R7 IMPLEADED**

**7. ICICI KINFRA LTD.,
REP. BY ITS MANAGING DIRECTOR & CEO,
ICICI KINFRA LTD., (I-KIN), 3B, THIRD FLOOR,
UNITY TOWER, KESAVADASAPURAM,
PATTOM P.O., THIRUVANANTHAPURAM-695 004.**

*** IS IMPEAD VIDE ORDER DATED 30/03/2010 IN I.A. NO.4689/2010.**

**R1 TO R3 BY SPL. GOVT. PLEADER SRI.P. JAYASANKAR.
R4 & R5 BY SRI.M.K.DAMODARAN, SENIOR SC,
ADVS. SRI.P.K.VIJAYAMOHANAN.
R6 BY ADV. SRI. M.AJAY, SC.
ADDL. R7 BY ADV. SRI.M.P.ASHOK KUMAR.**

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/09/2015, THE COURT ON 02/11/2015 DELIVERED THE FOLLOWING:

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 COPY OF THE AGENDA NO.E1-4121/2003 DATED 04/02/2004 OF THE 4TH RESPONDENT RELATING TO THE CONSTRUCTION OF FISH MARKET.
- EXT.P2 COPY OF THE BIT NOTICE DATED 10/04/2004 ISSUED BY ACTION COMMITTEE.
- EXT.P3 COPY OF THE LETTER DATED 23/06/2004 FROM THE 2ND RESPONDENT TO THE CO-ORDINATOR OF RESIDENTS ASSOCIATION.
- EXT.P4 COPY OF THE PETITION DATED 11/05/2004 SUBMITTED BY THE MEMBERS OF THE PETITIONER ASSOCIATION BEFORE THE 6TH RESPONDENT.
- EXT.P5 COPY OF THE REPORT APPEARED IN MALAYALA MANORAMA DATED 24/11/2005.
- EXT.P6 COPY OF THE FORWARDING LETTER DATED 28/11/2005 FROM THE 2ND RESPONDENT TO THE 4TH RESPONDENT.
- EXT.P7 COPY OF THE REPRESENTATION DATED 24/11/2005 SUBMITTED BY THE MEMBERS OF PETITIONER ASSOCIATION BEFORE THE 5TH RESPONDENT.
- EXT.P8 COPY OF THE COMMUNICATION FROM THE 2ND RESPONDENT DATED 28/11/2005.
- EXT.P9 COPY OF THE PETITION DATED 03/03/2007 SUBMITTED BY THE MEMBERS OF PETITIONER ASSOCIATION BEFORE THE 2ND RESPONDENT.
- EXT.P10 COPY OF THE LETTER DATED 29/06/2007 ISSUED BY THE 2ND RESPONDENT.
- EXT.P11 COPY OF THE PETITION DATED 09/05/2008 SUBMITTED BY PETITIONER ASSOCIATION UNDER RIGHT TO INFORMATION ACT.
- EXT.P12 COPY OF THE REPLY DATED 28/07/2008 ISSUED BY THE 4TH RESPONDENT.
- EXT.P13 COPY OF THE RESOLUTION OF THE 4TH RESPONDENT MUNICIPALITY DATED 10/09/2008.

- EXT.P14 COPY OF THE PETITION DATED 25/11/2008 PREFERRED BY MEMBERS OF THE PETITIONER BEFORE THE 4TH AND 5TH RESPONDENTS.**
- EXT.P15 COPY OF THE MINUTES OF MEETING OF THE MUNICIPALITY DATED 29/11/2008.**
- EXT.P16 COPY OF THE PAPER REPORT IN MATHRUBHUMI DAILY DATED 30/11/2008.**
- EXT.P17 COPY OF THE REPRESENTATION DATED 17/12/2008 SUBMITTED BY THE MEMBERS OF THE PETITIONER BEFORE THE 2ND RESPONDENT.**
- EXT.P18 COPY OF THE SKETCH SHOWING THE DETAILS OF THE SITE PROPOSED BY THE MEMBERS OF THE PETITIONER ASSOCIATION.**
- EXT.P19A PHOTOGRAPH SHOWING THE SITE OF THE FISH MARKET AND NEARBY HOUSES.**
- EXT.P19B PHOTOGRAPH SHOWING THE SITE OF THE FISH MARKET AND NEARBY HOUSES.**
- EXT.P19C PHOTOGRAPH SHOWING THE SITE OF THE FISH MARKET AND NEARBY HOUSES.**
- EXT.P19D PHOTOGRAPH SHOWING THE SITE OF THE FISH MARKET AND NEARBY HOUSES.**
- EXT.P19E PHOTOGRAPH SHOWING THE SITE OF THE FISH MARKET AND NEARBY HOUSES.**
- EXT.P19F PHOTOGRAPH SHOWING THE SITE OF THE FISH MARKET AND NEARBY HOUSES.**
- EXT.P19G PHOTOGRAPH SHOWING THE SITE OF THE FISH MARKET AND NEARBY HOUSES.**
- EXT.P19H PHOTOGRAPH SHOWING THE SITE OF THE FISH MARKET AND NEARBY HOUSES.**
- EXT.P19I PHOTOGRAPH SHOWING THE SITE OF THE FISH MARKET AND NEARBY HOUSES.**
- EXT.P19J PHOTOGRAPH SHOWING THE SITE OF THE FISH MARKET AND NEARBY HOUSES.**

- EXT.P19K PHOTOGRAPH SHOWING THE SITE OF THE FISH MARKET AND NEARBY HOUSES.
- EXT.P19L PHOTOGRAPH SHOWING THE SITE OF THE FISH MARKET AND NEARBY HOUSES.
- EXT.P19M PHOTOGRAPH SHOWING THE SITE OF THE FISH MARKET AND NEARBY HOUSES.
- EXT.P19N PHOTOGRAPH SHOWING THE SITE OF THE FISH MARKET AND NEARBY HOUSES.
- EXT.P19O PHOTOGRAPH SHOWING THE SITE OF THE FISH MARKET AND NEARBY HOUSES.
- EXT.P20 COPY OF THE LETTER DATED 04/04/2009 FROM THE DISTRICT MEDICAL OFFICER, MANJERI WITH ENCLOSURES.
- EXT.P21 COPY OF THE ROUGH SKETCH OF THE ALTERNATE SITES SUGGESTED BY THE PETITIONER.
- EXT.P22 COPY OF THE APPLICATION MADE UNDER THE RIGHT TO INFORMATION ACT CONCERNING THE DETAILS OF PROPERTIES AND DATED 12/02/2011 WITH ITS TRANSLATION.
- EXT.P23 COPY OF THE REPLY DATED 23/02/2011 ISSUED BY MUNICIPALITY TO EXT.P22 WITH ITS TRANSLATION.

RESPONDENT'S EXHIBITS:-

- EXT.R4A COPY OF THE LETTER NO.81342/DB2/2008/LSGD DATED 02/05/2009.
- EXT.R4B COPY OF THE SITE PLAN OF THE MARKET AREA.
- EXT.R4C COPY OF THE ORDER NO.C4/193/08 DATED 30/04/2008 OF THE CHIEF TOWN PLANNER.
- EXT.R4D COPY OF THE ORDER NO.PCB/HO/KLPM/MSW/104/2008 DATED 21/01/2010 OF THE KERALA STATE POLLUTION CONTROL BOARD.
- EXT.R4E COPY OF THE RESOLUTION NO.5 DATED 10/11/2009 OF THE MUNICIPALITY WITH SITE PLAN SEEKING PERMISSION TO ACQUIRE ADDITIONAL LAND FOR THE MARKET.

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**EXT.R4F COPY OF THE LAND VALUE CERTIFICATE DATED 11/07/2001
ISSUED BY THE SUB COLLECTOR, PERINTHALMANNA.**

**EXT.R4G COPY OF THE NOTICE NO.E1-510/2001 DATED 14/08/2003 OF
THE MUNICIPALITY.**

//TRUE COPY//

P.S. TO JUDGE

rs.

ASHOK BHUSHAN, CJ

&

A.M.SHAFFIQUE, J.

W.P.C.No.11404 of 2009

Dated this the 2nd day of November 2015

J U D G M E N T

Shaffique, J

This public interest litigation has been filed by a registered organisation challenging the action of Perinthalmanna Municipality in locating a fish wholesale market at Kavungal Paramba in Perinthalmanna Municipality.

2. The petitioner contends that when an attempt was made by the Municipality to construct a fish market in the aforesaid area which is in the midst of a residential area, objections were raised by the people in the locality. The matter was taken up before the District Collector, who assured that no pollution will be caused from the fish market. The petitioner also approached the Pollution Control Board (for short 'PCB') seeking for interference in the matter. It is contended that a promise was given that the fish market would be having sufficient provisions for preventing air and water pollution.

3. A building has been constructed in an extent of 92.25 cents to set up the fish market. At the relevant time, the petitioner approached the District Collector with a representation with copy to the Municipality and the PCB to interfere in the matter and to ensure that the fish market should not be located in the said premises. Though no action was taken in the said representation, the petitioner submits that a temporary shed was constructed using asbestos sheet as roof and without obtaining clearance from any statutory authorities, the Municipality permitted wholesale traders in fish to commence their operations. It is stated that the waste water and other effluents are causing severe pollution in the neighbourhood and the authorities were turning a blind eye despite complaints being preferred before the competent authorities. It is stated that no permission has been obtained from the competent authorities to carry on wholesale business in fish. Thereafter, newspaper reports appeared, by which it was known that Municipality was inviting applications from interested persons to run the market on Build, Operate and Transfer (BOT) basis. The aforesaid action was challenged before this Court and the matter was stayed. However, later it was found

that the stay was granted at the instance of one of the bidders and subsequently the matter had been settled between the parties.

4. Petitioner submitted various representations and petitions before the Municipality as well as before the District Collector and sought for information. However, the petitioner did not get any of the informations sought for. It is alleged that about 150 and odd families would be affected, who are residents within a distance of 50 to 100 metres from the proposed fish market. The local authority which is bound to take necessary action to protect the interest of its residents is going ahead with the opening of the fish market on BOT basis. It is also contended that no consent was obtained from the PCB. It is in the said circumstances that this writ petition has been filed. It is also contended that there is no transparency in the matter relating to setting up of the fish market and the Municipality has not taken into consideration any of the problems faced by the residents of the locality. It is also contended that about one acre of padasekharam has been filled up by the Municipality without obtaining permission from the competent authorities. Being a

residential area, the odour and the effluent from the fish market would cause severe nuisance and pollution in the locality and it is in the said circumstances that the petitioner has approached this Court by filing the above writ petition.

5. Counter affidavit is filed by respondents 4 and 5 inter alia stating that the petitioner has no locus standi to challenge the functioning of the market and the Residents' Association came into existence only in 2008, much after the market started functioning there. It is also stated that there are only two residences near to the fish market. It is further stated that the Municipality proposed to reconstruct the market on a BOT basis at a project cost of about Rs.6 Crores. The proposed market is with zero discharge of sewerage. It is also stated that the construction will be carried out on the basis of the consent obtained from the PCB and the market will commence functioning only after getting necessary clearance from the PCB.

6. It is further stated that the market was functioning on the site near the National Highway causing nuisance to the public. There were complaints before the Municipality, the Human Rights Commission and even before this Court. Thereafter, the

Municipality, with the consent of the Government, acquired an extent of 92.5 cents of land in R.S.No.100/2 of Perinthalmanna Village which is 1Km away from the Perinthalmanna town for the purpose of setting up the fish market and commenced functioning there. The land was acquired specifically for the purpose of setting up the fish market. When there were complaints regarding the effluents discharged from the market, the Municipality proposed a scheme for construction of a modern market with all sewerage facilities, comfort station, parking lot, market bay and access roads which conforms to the directions issued by the competent authorities including the PCB. It was resolved to launch the project under the BOT scheme. Government accorded sanction and on that basis, tenders were invited. It is further stated that tenders were finalised by the High Level Committee constituted by the Government. It is also stated that the Municipality has issued a letter of indent to the bidder and the construction activities are expected to commence soon. Municipality also denied that it is a thickly populated area. It is further stated that a decision was taken to close down the market in December 2008. However, it was challenged by the licensee

and a direction was issued by this Court in W.P.C.No.37879/2008 not to close down the market. The said licensee was a partner of the successful bidder who had undertaken the construction of the market on BOT basis and thereafter steps were taken for withdrawing the writ petition.

7. Counter affidavit has been filed by the additional 7th respondent who is the partner of the firm which had undertaken the construction work of the market on BOT basis. They have denied the allegations raised in the writ petition and had stated that the present fish market is being closed down for the purpose of carrying out construction under BOT contract and parallelly, the fish market is being shifted to an adjacent panchayat i.e. Angadippuram Panchayat. On completion of the work on BOT basis and after setting up a modern fish market in the said area on obtaining sanction from the appropriate authorities including the PCB, the fish market will be re-commenced at the present site.

8. Counter affidavit has been filed by the 6th respondent inter alia stating that the PCB had conducted an inspection on 02/01/2009 and it was found that no steps were provided for pollution control measures and there was no consent of PCB as

well. Hence direction was given to the Municipality to take appropriate action in the matter. However, on a subsequent inspection on 04/05/2009, it was found that no steps were taken by the Municipality. Subsequent enquiries revealed that the fish market remained closed from the middle of June 2009 onwards in connection with the modernization of the market.

9. Additional counter affidavit has been filed by the 7th respondent further indicating that the BOT work is being undertaken as per the detailed project report prepared by the KINFRA. The Concession Agreement also makes various provisions which include the obligation of the respondent and all parameters including the design particulars have been stated in detail. The report also indicates the manner in which the market is to function without causing any pollution to any person concerned.

10. Reply affidavit has been filed by the petitioner.

11. Having regard to the aforesaid factual situation, the short question to be considered is whether any directions, as sought for, in the writ petition is required to be issued.

12. It is apparent that at present the fish market is not functioning in the locality, as the 7th respondent is already entrusted with the right to construct a modern fish market on BOT basis. It is also contended by the Municipality as well as the 7th respondent that the market will commence functioning only after complying with all pollution control norms and after ensuring that no nuisance is caused to the nearby locality.

13. It is apparent that the land was purchased by the Municipality for construction of the wholesale fish market. Though initially, the fish market was functioning without complying with any pollution control norms, it is reported by the PCB that since June, 2009, the fish market is not functioning.

14. Now the question is whether the proposed fish market would cause any pollution to the neighbouring locality. In so far as the decision of the Municipality to construct a fish market in the said locality is concerned, the same cannot be opposed by the petitioner organisation. The land itself was purchased for the specific purpose of re-locating the existing fish market. Now, if the intention is to construct a modern fish market, definitely it will have to comply with all the pollution control norms and it is for

the Municipality to ensure that no pollution or nuisance is caused to the nearby residents.

15. Though there is dispute between the parties relating to the number of residences in the locality, still it is the duty of the Municipality to ensure that the fish market functions without causing any pollution or nuisance to the neighbourhood.

16. The 7th respondent has produced materials to indicate that the fish market is being constructed as per the project report prepared by KINFRA, which apparently takes care of all the apprehensions expressed by the petitioner.

17. These being the facts, we do not think that this Court should interfere with the construction of the fish market on BOT basis.

18. What remains is regarding the apprehended pollution to the neighbouring locality. It cannot be disputed that there are proper provisions under the Kerala Municipalities Act, 1994 and the Rules framed thereunder which enables the Secretary of the Municipality to interfere in the matter, if there is pollution or nuisance being caused on account of the trade in the locality. That apart, it is admitted by the respondents that the fish market

will be functioning only after getting consent from the PCB.

19. Under such circumstances, we do not think that the petitioner is entitled for any directions, as sought for. We only observe that the fish market shall be commenced in strict compliance with the pollution control norms and the Municipality shall also ensure that no pollution or nuisance is being caused on account of the functioning of the fish market in the said locality.

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

(sd/-)
(ASHOK BHUSHAN, CHIEF JUSTICE)
(sd/-)
(A.M.SHAFFIQUE, JUDGE)

True Copy

PA to Judge

jsr

