

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937

WP(C).No. 8824 of 2015 (C)

PETITIONERS:

1. PARAMESWARAN, S/O AYYAPPANKUTTY,
KOTTETH HOUSE, KOTTETH ROAD,
CZES P.O., THUTHIYOOR, COCHIN 682 037.

2. STELLA AMRIK, PUTHEN PURACKAL HOUSE,
KOTTETH ROAD, CZES P.O., THUTHIYOOR,
COCHIN 682 037.

BY ADVS.SRI.BABU CHERUKARA
SMT.S.JASMINE
SRI.SEVI VARGHESE
SMT.ROSAMMA MATHEW
SRI.T.S.SASIKUMAR
SRI.ANZAR BASHEER

RESPONDENTS:

1. TRIKKAKARA MUNICIPALITY, THRIKKAKKARA,
ERNAKULAM DISTRICT, PIN 682 021,
REP.BY ITS SECRETARY.

2. THE SECRETARY, THRIKKAKKARA MUNICIPALITY,
THRIKKAKKARA, ERNAKULAM DISTRICT 682 021.

3. MR.MEJO JOSEPH, CHAKKIYATH,
KOTTETH ROAD, CZES P.O., THUTHIYOOR,
COCHIN 682 037.

Addl. R4. THE KERALA STATE POLLUTION CONTROL BOARD,
PATTOM, P.O., THIRUVANANTHAPURAM 695 004.

(Addl.4. IS SUO MOTU IMPEADED AS PER ORDER DATED
17.06.2015.)

R3 BY ADV. SRI.GOKUL DAS V.V.H.
R BY M.AJAY (SC) FOR ADDL.R4
R BY SRI.S.SHANAVAS KHAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
20-08-2015, ALONG WITH WPC. 13867/2015 AND WPC No.13957/2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1 TRUE COPY OF THE PETITION FILED BY THE FIRST PETITIONER BEFORE THE 2ND RESPONDENT DTD.17.1.2015.
- EXT.P1 (A) TRUE ENGLISH TRANSLATION OF EXT.P1.
- EXT.P2 TRUE COPY OF THE PETITION FILED BY THE FIRST PETITIONER BEFORE THE SECOND RESPONDENT DTD.23.2.2015.
- EXT.P2 (a) TRUE ENGLISH TRANSLATION OF EXT.P2.
- EXT.P3 TRUE COPY OF ORDER NO.TPI/916/15 DATED 25.2.2015 ISSUED by the 2ND RESPONDENT AGAINST THE THIRD RESPDT.
- EXT.P3 (a) TRUE ENGLISH TRANSLATION OF EXT.P3.
- EXT.P4 TRUE COPY OF NOTICE DATAED 25.2.2015 GIVEN TO THE THIRD RESPONDENT AS PROVIDED UNDER S.406(2) OF KERALA MUNICIPALITIES ACT.
- EXT.P4 (a) TRUE ENGLISH TRANSLATION OF EXT.P4.
- EXT.P5 TRUE COPY OF THE LETTER GIVEN BY THE 2ND PETITIONER TO THE PUBLIC INFORMATION OFFICER OF THE FIRST MUNICIPALITY DATED 24.4.2013.
- EXT.P5 (a) TRUE ENGLISH TRANSLATION OF EXT.P5.
- EXT.P6 TRUE COPY OF THE RECEIPT GIVEN TO THE 2ND PETITIONER.
- EXT.P7 TRUE COPY OF THE PETITION GIVEN BY THE 2ND PETITIONER DTD.28.1.2015 TO THE CHAIRMAN OF THRIKKAKKARA MUNICIPALITY.
- EXT.P7 (a) TRUE ENGLISH TRANSLATION OF EXT.P7.
- EXT.P8 TRUE COPY OF THE PETITION GIVEN BY THE 2ND PETITIONER DATED 23.2.2015 TO THE SECRETARY OF THRIKKAKKARA MUNICIPALITY.
- EXT.P8 (a) TRUE ENGLISH TRANSLATION OF EXT.P8.
- EXT.P9 TRUE COPY OF THE COMPLAINT TO THE 2ND RESPONDENT FILED BY THE RESIDENTS IN THE LOCALITY (THUDHIYUR NAGAR) IS DATED 15.4.2013.
- EXT.P9 (a) TRUE ENGLISH TRANSLATION OF EXT.P9.

TRUE COPY

p.s.to judge

CSS/

A.V.RAMAKRISHNA PILLAI, J

WPC Nos.8824, 13867 &
13957 of 2015

Dated this the 20th day of August, 2015

JUDGMENT

These petitions relate to the functioning of an ice factory within the local limits of Thrikkakkara Municipality.

WPC No.8824/2015

The petitioners allege that they are the residents in Kotteth road in Thrikkakkara Municipality who are very much adversely affected on account of the illegal construction done by the third respondent in violation of Rule 24(2) of the Kerala Municipality Building Rules and also in violation of the set back area and without keeping 3 mtrs. distance from the Municipal road and also on account of the functioning of an ice factory in that construction causing heavy nuisance, especially, sound pollution and causing safety health hazards to the petitioners and also to the other residents in the locality. The petitioners point out that the first and second respondents ought to have taken immediate steps to

abate the nuisance and also to remove the illegal constructions. The petitioners allege that the third respondent is manipulating things to the number of the building assigning the old number of the pump house/shed which was in existence at the time of purchase of the property about 10 years back and was later demolished for the construction of the first building by the third respondent about 9 years back. According to the petitioners, the order passed by the second respondent as per Ext.P2 dated 25.2.2015 has become final. Therefore, according to them, there is no reason to delay the implementation of Ext.P2 order. Though the petitioners have approached the second respondent requesting to implement Ext.P2 order, no effective steps were taken either by the second or the first respondent; it is alleged. Under such a situation, directions are to be required against the first and second respondents for the implementation of Ext.P2 and taking suitable actions on the petitions filed before the second respondent and the first respondent. The petitioners also allege that neither

they nor any other residents in the area have consented for the illegal construction of the building or running of ice factory in that premises by the third respondent.

WPC No.13867/2015

The petitioner in this writ petition is another resident of the locality who alleges that the 3rd respondent is running an ice factory in the residential area at ward No.24 of Thrikkakkara Municipality in Kotteth Road in the very neighbourhood of the petitioner. He points out that the first respondent Municipality has denied the license for running the ice factory for the year 2015-2016. He alleges that as per Ext.P3 order passed by the 2nd respondent, the third respondent was directed to stop functioning of the ice factory within 7 days from the date of receipt of the notice. The notice was received by the third respondent on 18.4.2015. The factory ought to have been closed at least by 25.4.2015; it is alleged. However, the functioning of the factory is more vigorously continued on account of which nuisance and health hazards are created in the area which adversely affected the petitioner and his

family members who are residing in the neighbouring property. Though the first and second respondents were alerted of the continuing functioning of the factory by the third respondent without a license, they are not vigilant in the matter and therefore, it is only just and proper for this Court to interfere in the matter and direct the first and second respondents to implement Ext.P3 order so as to stop functioning of the ice factory of the third respondent; it is alleged. It is with this background the petitioner has come up before this Court.

WPC No.13957/2015

The petitioner is the person who is running the ice factory at present.

According to him, he is the absolute owner in possession and enjoyment of 2.02 Ares of landed property situated in Re.Sy.No.260/10 in Block No.9 of the Thrikkakkara Municipality. The petitioner had been running an ice cubes manufacturing unit and by virtue of Ext.P3, the license granted to the petitioner was renewed periodically till the year 2014-2015. After purchasing the

above property, the petitioner constructed a residential building therein. The petitioner had later carried out extension of his residential building. Thereafter, in the year 2012, the petitioner wanted to construct another building in the said property and for that purpose, he submitted an application along with a plan for obtaining building permit. However, due to an inadvertent omission, Ext.P5 plan accompanying the application for building permit did not show the existing shed wherein the petitioner was running his ice cubes manufacturing unit. As a matter of fact, Ext.P4 plan pertaining to the extension of the earlier residential building clearly shows the existing shed. Without appreciating the real state of affairs and under a mistaken notion that the petitioner had constructed the shed in violation of the building permit dated 5.10.2012 above mentioned, proceedings against the alleged unauthorised constructions were initiated and Ext.P6 notice under Section 406(1) and a show cause notice under Section 406(2) of the Kerala Municipalities Act, 1994 were issued to the petitioner for

removing the said shed. The petitioner submitted Ext.P7 reply. The petitioner preferred an application dated 12.3.2015 for renewal of his license (for 2015-2016) for the above unit. However, the same was rejected by the Secretary, Thrikkakkara Municipality by virtue of Ext.P8 order stating existence of Ext.P10 interim order of this Court. The petitioner has preferred Ext.P9 appeal against Ext.P8 order. The first respondent ought not have rejected the application of the petitioner for renewal of his license dated 12.3.2015 bearing number H1-4962/2015. It is with this background, the petitioner has come up before this Court.

2. Arguments have been heard.

3. For convenience of discussion, the petitioners in the first two petitions can be referred to as local residents and the petitioner in the third petition can be referred to as the licensee.

While the licensee alleges that there is inaction on the part of the respondent Municipality in renewing the license to run the ice factory, the local residents are

against the functioning of the ice factory in the locality on the ground that it is causing environmental pollution and nuisance to them.

4. As the main objection of the local residents were on account of the alleged pollution, the Kerala State Pollution Control Board was *suo motu* impleaded as additional respondents during the pendency of these writ petitions.

5. The authorised representative of the Pollution Control Board was directed to make an inspection of the licensee's unit to ascertain whether it causes any nuisance.

6. When the matter came up on the final day for hearing, the learned standing counsel for the Pollution Control Board, on instructions, submitted that the licensee's unit is not functioning causing any pollution as alleged. Though it was strenuously argued by the learned counsel for the local residents that ammonia is used in the freezing unit, it was submitted by the learned standing counsel for the Pollution Control Board that ammonia is

used only in the compressor for the purpose of refrigeration and the use of the same in the compressor would not cause any environmental pollution. However, the learned counsel for the local residents would submit that on account of the functioning of the unit day and night, it has become a nuisance in the locality. It was also submitted that good number of vehicles are coming to the unit of the licensee to carry ice blocks and the same is causing traffic congestion in the narrow roads nearby. It is evident from record that the licensee was having consent to operate from the authorities concerned and he was running the unit, this Court is of the view that WPC No.13957/2015 can be disposed of directing the licensee to confine the operation of his unit between 7 a.m. and 8 p.m.

Therefore, WPC No.13957/2015 is disposed of directing the petitioner to confine the operation of his ice factory between 7 a.m. and 8 p.m. It shall be the responsibility of the respondent Municipality to ensure that the unit is not functioning beyond those hours. It

shall also be ensured by the petitioners that the vehicles coming to collect ice blocks to his unit do not make any traffic congestion in the adjacent road causing any inconvenience to the local residents.

WPC No.8824/2015 and 13867/2015 are dismissed.

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

CSS/

TRUE COPY

p.s.to judge