

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 16TH DAY OF JULY 2015/25TH ASHADHA, 1937

WP(C).No. 9728 of 2015 (M)

PETITIONER(S):

**SHAJAHAN. B.A., AGED 31 YEARS,
S/O.ABDUL KARIM, BLAHUMPURAYIDATHU HOUSE,
KATTAPPANA P.O., IDUKKI DISTRICT.**

BY ADV. SRI.G.SREEKUMAR (CHELUR).

RESPONDENTS:

- 1. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT,
LOCAL SELF GOVERNMENT DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 2. THE KATTAPPANA GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY,
P.O. KATTAPPANA, IDUKKI DISTRICT - 685 509.**
- 3. THE ENVIRONMENTAL ENGINEER,
KERALA STATE POLLUTION CONTROL BOARD,
DISTRICT OFFICE, THODUPUZZHA - 685 001.**
- 4. THE HEALTH INSPECTOR,
KATTAPPANA, PUBLIC HEALTH CENTER,
KATTAPPANA P.O., IDUKKI DISTRICT - 685 509.**
- 5. ABDUL GAFOOR, AMBALATH HOUSE,
C/O.GALAXY FRESH, ROOM KP 1/931B,
KATTAPPANA, IDUKKI DISTRICT-685 509.**

R2 BY ADV. SRI.LIJI.J.VADAKEDOM, SC.

R3 BY ADV. SRI. M.AJAY, SC.

R1 & R4 BY GOVT. PLEADER SMT.ANITHA RAVINDRAN.

**R5 BY ADVS. SRI.T.A.UNNIKRISHNAN,
SRI.K.S.PRAVEEN.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 16-07-2015, ALONG WITH WP(C).NO.12713 OF 2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1: A TRUE COPY OF THE LICENSE ISSUED BY THE PANCHAYATH
WITH TRANSLATION DATED 01/07/2014.

EXT.P2: A TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN
WP(C).NO.21189 OF 2014 DATED 10/12/2014.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

PA. TO JUDGE

rs.

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) Nos.9728 & 12713 of 2015

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Dated this the 16th day of July, 2015

JUDGMENT

In these writ petitions filed by two local inhabitants of second respondent panchayat, they are seeking a direction to the respondent panchayat to stop the alleged illegal activities of the 5th respondent in these cases.

2. The petitioners would allege that the 5th respondent is continuing with the illegal activities of conducting fish trade and other food products being manufactured and sold in a private property coming under the 2nd respondent panchayat even though the panchayat itself has decided not to renew the licence.

3. The petitioners further allege that the Municipal Solid Waste (Management and Handling) Rules, 2000 are applicable in the area. However, no provision is made for further steps under the Rules to eradicate the menace. The petitioners point out that the 4th respondent is the authority to take steps in the matter. However, no steps in that regard were taken. The petitioners further point out that as far as Dangerous and Offensive Trade Licence Rules are concerned, appropriate clearance has to be obtained from the

authorities concerned since what is permitted is the manufacture of food products. According to the petitioners, the 5th respondent has not obtained such clearance and it has infringed the rights of the petitioners. It is with this background, the petitioners have come up before this Court.

4. The 5th respondent has filed a detailed counter affidavit in W.P(C) No.12713 of 2015 contending that the petitioners are mis-using the powers of this Court by filing writ petitions one after another with the ulterior motive of closing down the provisional store and fish stall run by the 5th respondent. It was pointed out that in W.P(C) No.21189 of 2014, this Court has considered the entire aspects and found that the 5th respondent is running the business with all the licenses required. He has produced Ext.R5(a) which is the copy of the judgment in W.P(C) No.21180 of 2014.

5. It is further stated that the 5th respondent is running a provisional store with all the licenses required for selling even food articles like fish, vegetables, fruits etc. The copy of the licence issued by the respondent panchayat for running the shop is produced as Ext.R5(b). The copy of the consent to operate dated 21.4.2015 issued by the Kerala State Pollution Control Board in favour of the 5th respondent is produced as Ext.R5(c) and the copy

of the registration certificate issued by the Food Safety Officer under the Food Safety and Standard Act is produced as Ext.R5(d).

6. It is further stated that the petitioner is aware of all these facts, but has dared to file the writ petition suppressing it. Another writ petition was filed by one Shajahan raising the very same contentions herein. The 5th respondent bona fide believes that the petitioner is only a name lender. The 5th respondent contended that all these writ petitions are filed at the instance of persons who are running fish stalls in the shopping complex of the panchayat without obtaining any license.

7. It was further stated that the contention of the petitioner that the functioning of the 5th respondent's shop is causing pollution, foul smell etc., are absolutely false. According to the 5th respondent no waste emanating from his shop is pushed into the public drain. He was running the shop in the property of one Georgekutty. The shop is running in a very hygienic condition. It was verified that, the requirements have been satisfied, the authorities have issued licence to the 5th respondent. It was further stated that the 5th respondent is residing far away from the place of his business. The contentions to the contra are factually wrong and is made with an intention to mislead this Court. Therefore, the 5th respondent prayed

for dismissal of the writ petition.

8. Arguments have been heard.

9. The learned Standing Counsel for the Kerala State Pollution Control Board which is a party to the writ petitions submitted that the authorised representative of the board has conducted an inspection with respect to the premises of the 5th respondent and found that the unit of the 5th respondent is not causing any pollution as alleged in the writ petitions.

10. The learned counsel for the 5th respondent would point out that the 5th respondent has obtained all requisite licence from the authorities concerned and there is absolutely no illegality in the functioning of the unit of the 5th respondent.

11. In one of the writ petitions i.e., W.P(C) No.12713 of 2015, the petitioner has highlighted Ext.P8 which is the decision of the respondent panchayat. Ext.P8 is the copy of the resolution of the respondent panchayat on 13.3.2015, which reveals that the complaint against the 5th respondent was considered by the panchayat committee. It was decided that the functioning of the unit of the 5th respondent need not be interrupted for the time being because of the pendency of these writ petitions. It was also decided that any renewal of licence in the name of the 5th respondent shall

be subject to the clearance from the Pollution Control Board and the Health Department, and also subject to the result of the writ petitions. Ext.P8 itself would reveal that the unit of the 5th respondent is functioning on the basis valid licence issued by the respondent panchayat.

12. On a consideration of the entire materials now placed on record, this Court is of the view that the writ petitions are only experimental with a view to obstruct the functioning of the unit of the 5th respondent by one way or other. As it appears that the 5th respondent is having the strength of valid licence issued by the respondent panchayat, the petitioners are not entitled to the relief prayed for in these writ petitions.

In the result, the writ petitions fail and accordingly, they are dismissed.

Sd/-
A.V.RAMAKRISHNA PILLAI
JUDGE

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