

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 10TH DAY OF JULY 2015/19TH ASHADHA, 1937

WP(C).No. 10230 of 2015 (C)

PETITIONER(S) :

VIKRAM N.BANDA, AGED 35 YEARS,
BUSINESS, SON OF T.NARENDRA KUMAR, C.C.66/894-B-B1,
KRISHNASWAMY ROAD (EAST END), ERNAKULAM, KOCHI-682 035,
PRESENTLY RESIDING AT T-1, KAUSHIKAM APARTMENTS,
VEEKSHANAM ROAD, KOCHI-682 018.

BY ADVS.SRI.M.P.RAMNATH
SRI.P.RAJESH (KOTTAKKAL)
SEI.M.VARGHESE VARGHESE
SMT.UMA R.KAMATH
SMT.S.SANDHYA
SRI.BEPIN PAUL
SRI.SHALU VARGHESE

RESPONDENT(S) :

1. THE CORPORATION OF KOCHI,
CORPORATION OFFICE, PARK AVENUE, KOCHI-682 011,
REPRESENTED BY ITS SECRETARY.
2. THE HEALTH INSPECTOR, CORPORATION OF KOCHI,
CIRCLE NO.19 (IN CHARGE OF KRISHNASWAMY ROAD,
KOCHI-35 AREA), OFFICE OF HEALTH INSPECTOR,
CORPORATION OF KOCHI, NORTH RAILWAY STATION ROAD,
(NEAR NORTH BRIDGE), KOCHI- 682 017.
3. THE DISTRICT MEDICAL OFFICER,
ERNAKULAM DISTRICT, HEALTH DEPARTMENT,
GOVERNMENT OF KERALA, PARK AVENUE, KOCHI-682 011.
4. C.M.BEEMA,
W/O.IBRAHIM KUTTY, CC 66/895, MANAYIL HOUSE,
KRISHNASWAMY ROAD, ERNAKULAM, KOCHI-682 035.
5. IBRAHIM KUTTY,
S/O.MOOSA, CC 66/895, MANAYIL HOUSE,
KRISHNASWAMY ROAD, ERNAKULAM, KOCHI-682 035.

R1 BY ADV. SRI.V.E.ABDUL GAFOOR, S.C
ADV. SRI.P.K.SOYUZ, S.C
R2 & R3 BY GOVERNMENT PLEADER SRI.G.GOPAKUMAR
R4 & R5 BY ADVS. SRI.M.T.BALAN
SRI.B.JAYABAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 03-07-2015 THE COURT ON 10-07-2015 DELIVERED THE FOLLOWING:

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT-P1:** THE TRUE PHOTOSTAT COPY OF THE COMPLAINT DATED 10.06.2014 GIVEN BY THE PETITIONER TO RESPONDENTS 1 TO 3 WITH THE ENDORSEMENT OF RECEIPT THERE UPON BY THE 3RD RESPONDENT AND THE RECEIPTS SEPARATELY ISSUED FOR THE SAME BY THE COCHIN CORPORATION WITH THE TRUE ENGLISH TRANSLATIONS THEREOF.
- EXHIBIT-P2:** THE TRUE PHOTOSTAT COPY OF THE REPLY DATED 20.11.2014, GIVEN UNDER RIGHT TO INFORMATION ACT, 2005, BY THE 2ND RESPONDENT TO THE PETITIONER.
- EXHIBIT-P3:** THE TRUE PHOTOSTAT COPY OF THE DETAILED COMPLAINT DATED 24.11.2014 GIVEN BY THE PETITIONER TO THE RESPONDENTS 1 TO 3 WITH THE ENDORSEMENT OF RECEIPT BY 3RD RESPONDENT THERE UPON AND RECEIPTS ISSUED FOR RECEIVING THE SAME ISSUED BY THE COCHIN CORPORATION WITH THE TRUE ENGLISH TRANSLATIONS THEREOF.
- EXHIBIT-P4:** THE TRUE PHOTOSTAT COPY OF THE INSPECTION REPORT DATED 08.12.2014 OF THE 2ND RESPONDENT AS ISSUED UNDER THE RIGHT TO INFORMATION ACT WITH THE TRUE ENGLISH TRANSLATIONS THEREOF.
- EXHIBIT-P5:** THE TRUE PHOTOSTAT COPY OF THE NOTICE OF CLOSURE DATED 12.01.2015 ISSUED BY THE 2ND RESPONDENT TO THE 4TH RESPONDENT AND BEARING NO.MOH15-017593/14, ISSUED UNDER RTI ACT WITH THE TRUE ENGLISH TRANSLATION.
- EXHIBIT-P6:** THE TRUE PHOTOSTAT COPY OF THE REPRESENTATION DATED 22.01.2015 GIVEN BY THIS PETITIONER TO RESPONDENTS 1 TO 3.

RESPONDENT(S)' EXHIBITS :

- EXT.R4(A):** THE TRUE COPY OF THE APPLICATION DATED 20.01.2015 GIVEN BY THE 4TH RESPONDENT BEFORE THE 1ST RESPONDENT.
- EXT.R4(B):** THE TRUE COPY OF THE RECEIPT BEARING NO.49664 DATED 20.01.2015 GIVEN BY THE 1ST RESPONDENT TO THE 5TH RESPONDENT.

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.10230 of 2015

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Dated this the 10th day of July, 2015

JUDGMENT

The petitioner is seeking positive directions from this Court against respondents 1 to 3 to enforce Ext.P5 closure notice issued by them.

2. The petitioner is a resident on the side of Krishnaswamy road, within the limits of respondent corporation. He alleges that respondents 4 and 5 are illegally conducting chicken farm, chicken sale and butcher shop in the shed adjoining to his house. After repeated complaints, the 4th respondent issued Ext.P5 notice which, according to the petitioner, is only an eye wash directing the party respondents to close the chicken farm activity. However, the party respondents never complied with Ext.P5 notice. Now the petitioner is given to understand that respondents 5 and 6 are attempting to take licence for the chicken farm. It is with this background, the petitioner has come up before this Court.

3. In the counter affidavit filed by respondents 4 and 5, it was contended that they have already issued with a licence for

chicken stall and butchering of chicken on 22.1.2015 and however, no order has been passed by the respondent corporation within the statutory period of 30 days as envisaged under Section 447(6) of the Kerala Municipality Act, 1994. Therefore, according to them, the petitioners have deemed licence to conduct the chicken farm.

4. The petitioner has filed a reply affidavit refuting the allegations in the counter affidavit filed by respondents 4 and 5.

5. The respondent corporation has filed a statement wherein they stated that the petitioner has filed a complaint before the corporation authorities. The corporation, on the basis of the complaint, conducted inspection and found that respondent 4 and 5 are conducting chicken farm and butcher shop without any valid licence.

6. It was further stated that the corporation issued D&O licence to the 4th respondent only for conducting cold storage and that they have not issued any licence to respondents 4 and 5 to conduct the chicken farm or butcher shop. Therefore, they issued notice dated 12.1.2015 directing the respondents to stop the functioning of the farm and the shop in question. They stated that they would take immediate steps to implement Ext.P5 notice.

7. I have heard the learned counsel for the petitioner, the learned standing counsel for the respondent corporation and the learned counsel for respondents 4 and 5.

8. The learned counsel for the petitioner invited my attention to Section 436 of the Kerala Municipality Act which prohibits keeping of animals in ones premises so as to cause nuisance or danger to any person in the neighbourhood, Section 469 of the Act which prohibits carrying on occupation of butcher and poulterer, or use any place for sale of flesh within a municipal area, without licence from the municipality, and Section 447 which mandates for trade licenses and Schedules under the Kerala Municipality (Dangerous and Offensive Trades and Other Trades and Factories Licenses) Rules, 2011. These provisions would indicate that chicken /poultry farms require licence under Entry 134 of Schedule 1; sales of meat after any kind of processing including dressing requires licence under Entry 108 of Schedule 1, slaughter requires licence under Entry 23 and 182 of Schedule 1 also. Sale of chicken requires licence under Entry 50 of Schedule II. It was also pointed out that Section 492 (10) casts a mandatory duty on the secretary of the local authority to inspect the activities done in contravention of

statutory rules and requirements and ensure its abatement.

9. The learned counsel also invited my attention to Section 532(5) of the Municipality Act which empowers the secretary of the corporation or the authorised officer to cause any such illegal activities done without licence stopped. The learned counsel would point out that the farm of the party respondents is run in a thickly populated area and the functioning of the unit has become obnoxious due to various reasons pointed by the learned counsel for the petitioner.

10. The learned standing counsel for the respondent corporation on instructions submitted that they have issued a stop memo as the party respondents are not having the required licence.

11. The learned counsel for respondents 4 and 5, *per contra*, would submit that respondents 4 and 5 are engaged in running only a cold storage and at the requirement of the customers, they used to cut dressed chicken into pieces and no slaughtering or butchering activities are carried out by the respondents as alleged. It was also pointed out that these respondents are residing in the same premises and they are only rearing hen for domestic purpose.

12. It was strenuously argued by the learned counsel for respondents 4 and 5 that an application has been submitted by respondents 4 and 5 as early as in January, 2015 and the same has not been considered by the respondent corporation as envisaged by the Rules. Therefore, the learned counsel would submit that respondents 4 to 5 have the protection of deemed licence.

13. The learned counsel for the petitioner as well as the learned standing counsel for the respondent corporation would submit that though the application was submitted, it was not supported by valid documents. Only when the application is submitted which is complete in all respects and there is failure on the part of the local authority in considering the same within the stipulated time, the applicant would be entitled to the protection of the deemed licence. By throwing an application in the front office of the respondent corporation not supported by any valid documents, the applicant will not get the benefit of deeming provisions. Without obtaining any licence, the petitioner is now conducting their activities illegally.

14. The deeming provisions are not for the persons involved in illegal trade and activities. It would be most unjust and illegal to

permit a person, who continues the illegal activity and makes a formal application as if to start a new trade when his activities are interdicted by authorities, to continue the illegality claiming the benefit of Section 447(6). It is crucial to note that as per Ext.P6 dated 22.1.2015 itself, the petitioner has filed a complaint knowing that such an illegality is perpetuated by applying licence by respondents 4 and 5 and has raised his objections for the same.

15. Therefore, on a consideration of the materials now placed on record, this Court is of the view that the petitioner is entitled to get the relief sought for.

In the result, the writ petition is allowed. Respondent corporation is directed to ensure that the chicken farm and slaughtering process done by the respondents 4 and 5 are stopped forthwith.

SD/-
A.V.RAMAKRISHNA PILLAI
JUDGE

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