

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

WP(C).No. 10481 of 2014 (I)

PETITIONER(S):

1. **BABU.B**
HOUSE NO.253 B, WARD NO.8, BUNGLOWIL
MOOLAVATTAM, KOONAYIL, PARAVOOR P;O.
KOLLAM-691 302.
2. **PRATHEEP M.**
HOUSE NO.253 A, WARD NO.8, REVATHY
MOOLAVATTAM, KOONAYIL, PARAVOOR P;O.
KOLLAM-691 302.
3. **SUNESH S.**
HOUSE NO.261 A, WARD NO.8, LEKSHMI
MOOLAVATTAM, KOONAYIL, PARAVOOR P;O.
KOLLAM-691 302.
4. **SATHYAMMA T.**
HOUSE NO.263, WARD NO.8, BUNGLOWIL
MOOLAVATTAM, KOONAYIL, PARAVOOR P;O.
KOLLAM-691 302.
5. **GEETHA B.**
HOUSE NO.254, WARD NO.8, BUNGLOWIL PADINJATTATHU
MOOLAVATTAM, KOONAYIL, PARAVOOR P;O.
KOLLAM-691 302.

BY ADVS.SRI.P.K.IBRAHIM
SMT.K.PAMBIKA
SMT.A.A.SHIBI
SRI.G.KIRAN

RESPONDENT(S):

1. **PARAVOOR MUNICIPALITY**
PARAVOOR P.O., KOLLAM DISTRICT, PIN-691 301
REPRESENTED BY ITS SECRETARY.

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**2. THE DISTRICT COLLECTOR
KOLLAM-691 001.**

**3. THE DISTRICT MEDICAL OFFICER
KOLLAM-691 001.**

**R1 BY ADV. SRI.AYYAPPAN SANKAR
R2 & 3 BY GOVERNMENT PLEADER SRI.NOUSHAD THOTTATHIL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1. TRUE COPY OF THE REPRESENTATION TO THE 1ST RESPONDENT SUBMITTED ON 22/3/2011.
- EXT.P2. TRUE COPY OF THE COMMUNICATION NO.P27/2004 DATED 25/10/2005.
- EXT.P3. TRUE COPY OF THE LETTERS NO.P/27/04 DATED 5/1/2011 AND 25/8/2011 SEEKING PERMISSION TO ESTABLISH CREMATORIUM.
- EXT.P4. TRUE COPY OF THE COMMUNICATION NO.P/27/04 BY THE 1ST RESPONDENT TO THE CI OF POLICE, PARVOOR DATED 23/3/201.
- EXT.P5. TRUE COPY OF THE COMPLAINT DATED 17/10/2012 MADE BY THE KERALA STATE HUMAN RIGHT PROTECTION COUNCIL TO THE 1ST RESPONDENT
- EXT.P6. TRUE COPY OF THE COMMUNICATION DATED 4/12/2012 BY THE 2ND RESPONDENT ASKING FOR A REPORT
- EXT.P7. TRUE COPY OF THE PROCEEDINGS OF THE 3RD RESPONDENT DATED 20/2/2013 DIRECTING TO STOP ALL CONSTRUCTION
- EXT.P8. TRUE COPY OF THE COMMUNICATION NO.C2-22854/12/DMO DATED 20/2/2013 OF THE DMO, KOLLAM TO THE 2ND RESPONDENT
- EXT.P9. TRUE COPY OF THE LETTER NO.M5-66203/12 DATED 25/10/2013 BY THE 2ND RESPONDENT TO THE 1ST RESPONDENT
- EXT.P10. TRUE COPY OF THE COMMUNICATION NO.M2-3646/09 DATED 14/8/2009 OF THE 2ND RESPONDENT TO THE 1ST RESPONDENT
- EXT.P11. TRUE COPY OF THE REPRESENTATION MADE THE PETITIONERS TO THE 1ST RESPONDENT DATED 24/3/2014.

RESPONDENT(S)' EXHIBITS

- EXT.R1(A): COPY OF THE BUILDING PLAN AND LOCATION SKETCH OF THE CREMATORTIA AND OFFICE ROOM
- EXT.R1(B): COPY OF THE OBJECTION CERTIFICATE DATED 14/8/2009 ISSUED BY THE R2
- EXT.R1(C): COPY OF THE INTEGRATED CONSENT TO ESTABLISH CREMATORIA AT THE DISPUTED SITE ISSUED BY POLLUTION CONTROL BOARD ON 9/4/13

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- EXT.R1(D): COPY OF THE SANCTION ORDER DATED 18/3/2008 ISSUED BY CHIEF ENGINEER OF THIRUVANANTHAPURAM DEVELOPMENT AUTHORITY**
- EXT.R1(E): COPY OF THE G.O.(P)NO.248/2010/LSGD DTD.2/11/10**
- EXT.R1(F): COPY OF THE RELEVANT PAGES OF APPROVED MASTER PLAN FOR PARAVOOR MUNICIPALITY**
- EXT.R1(G): COPY OF THE COMMUNICATION DATED 7/2/13 ADDRESSED TO THE CIRCLE INSPECTOR OF POLICE, PARAVOOR**
- EXT.R1(H): COPY OF THE REPLY COMMUNICATION ADDRESSED TO URBAN AFFAIRS DIRECTOR THIRUVANANTHAPURAM DATED 8/7/13**
- EXT.R1(I): COPY OF THE COMMUNICATION DATED 20/7/13 ISSUED TO R3**
- EXT.R1(J): COPY OF the COMMUNICATION DATED 30/10/13 ISSUED TO R2**
- EXT.R1(K): COPY OF THE COMMUNICATION AND INVOICE DATED 22/1/14 ISSUED BY THE CONTRACTOR AGENCY WHICH CONSTRUCTED THE CREMATORIA.**

/ TRUE COPY /

P.S. TO JUDGE

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A.V.RAMAKRISHNA PILLAI, J

WPC No.10481 of 2014

Dated this the 20th day of March, 2015

JUDGMENT

The action of the first respondent to set up a gas crematorium near the residence of the petitioners is under challenge in this writ petition on the ground that the action of the respondent Municipality is in violation of the mandate under Section 485A of the Kerala Municipalities Act.

2. The petitioners are the residents of Ward No.8 of the first respondent Municipality. The land adjacent to the petitioners' property having an extent of nearly 60 cents comprised in Sy.No.342/6, 7 and 10 of Paravoor village, Kollam District is vested in the first respondent Municipality. This property of the Municipality which lies just opposite to the property of the petitioners is separated by a 4 meter wide Municipal road. The distance between the boundary of the petitioners' property and the Municipal land is between 4 mts. and 4.5 mts. The said

land is proposed for the use of crematorium.

3. Section 485A of the Kerala Municipality Act prohibits grant of license for using any place as crematorium within a distance of 50 mts. from the residential buildings. In the case of concrete vault, the distance has been fixed as 25 mts. The petitioners allege that the crematorium proposed to set by the 1st respondent is, within the prohibited distance. The Municipality, therefore, cannot establish a crematorium right at the door steps of the petitioners' residential buildings in view of the statutory injunction. Based on a report of the Tahsildar, Kollam and the District Police Superintendent that the local residents have no objection against the crematorium, the 2nd respondent did not object to the proposal and granted permission. The petitioners allege that Ext.P10 is void being one issued in violation of the principles of natural justice and provisions of the Municipalities Act. The reports of the Tahsildar and the District Police Chief were factually incorrect and the said reports were made without any enquiry among the

residents living around the site in question. However, as soon as they came to know about the proposal to use the premises for crematorium, a mass petition was moved before the 1st respondent which has been acknowledged by the Municipality on 22.3.2011. On the objection of the local residents, the 2nd respondent sought report from the Tahsildar, Kollam and in the report so filed by the Tahsildar *inter-alia* stated that the local residents are very much against the crematorium and that it is likely to create pollution rendering difficulty to live; it is alleged. According to the petitioners, the construction of crematorium at the petitioner's door steps is nothing, but a clear breach of our fundamental right guaranteed under Article 21 of the Constitution of India. The residents, therefore, requested the Municipality again by another representation dated 24.3.2014 to ensure a decent living and desist from establishing the crematorium in Sy.No.342/6, 7 and 10 of Paravoor Village. The petitioner alleges that the first respondent though kept the matter pending, the respondents would soon proceeded with the

installation of incinerator and other equipments to start its operation. The 3rd respondent conducted an enquiry and found that the construction is illegal. Accordingly, the 3rd respondent by communication dated 20.2.2013 directed the Secretary, Paravoor Municipality to stop all construction activities and report within 7 days to the DMO regarding the stoppage of work. The 3rd respondent by communication dated 20.2.2013 reported to the 2nd respondent that orders have been issued to stop the illegal construction forthwith. Ignoring the said direction by the DMO, the Municipality proceeded with the construction which is nothing but a sheer contempt of lawful orders of the competent authority; it is alleged. The 1st respondent is flouting the legal provisions to set up crematorium in the plot adjacent to the petitioners' houses. It is with this background the petitioners have come up before this Court.

4. The first respondent filed a counter affidavit contending as follows:

The writ petition is filed to stall and prohibit the

commencement of operation of a most modern crematorium established spending a huge sum of ₹21 lakhs under plan fund. There is no crematorium in existence within the limits of the Municipality. Residents of the Municipality are facing acute hardship and are compelled to take dead bodies of their dear and near to the crematorium of Kollam Corporation situated several kilometres away, that too, after applying for and obtaining necessary letter in this regard from the Municipality. The situation got further worsened after construction of the flat complexes for rehabilitation of Tsunami victims. The occupants of the flat have no other means available for cremation purposes of dead bodies of their dear and near. This has augmented the necessity to complete construction of crematorium without delay.

The first respondent contended that the crematorium in question is constructed in 24.20 Ares (60 Cents) of property comprised in Block No.33, Re.Sy.No.342/6, 7 and 10 in Paravur Village and is owned by the Municipality. The furnace building and office room for the crematorium

are located at the centre of the entire property and away from the boundaries so as to prevent any room for complaint from any corner and to rule out possibilities for nuisance or inconvenience to anyone. A true copy of the Building Plan and location sketch of the crematorium and office room are produced as Ext.R1(a).

It is contended that the crematorium is constructed in strict compliance with all relevant statutory stipulations and strictly in accordance with law. Even though the crematorium is constructed within the limits of the Municipality and in a property owned by the Municipality, as a measure of abundant caution to avert even remote chance of nuisance or inconvenience to anyone, opinion and consent of respondents 1 and 2 was obtained well before the commencement of construction and establishment of the crematorium and annexed office building. A true copy of No Objection Certificate dated 14.8.2009 issued by the 2nd respondent is produced as Ext.R1(b).

The furnace building and office building of the

crematorium are situated more than 40-50 metres away from the nearby residences and the requisite clearance distance is only 25 metres as per the relevant provisions of law.

The allegation of proximity of the crematorium building to the water tank and the alleged apprehension of possibility of contamination of water is also contrary to facts and sheer imagination arising out of baseless apprehension entertained by the petitioner. The fact that the establishment and operation of the crematorium at the present site will not in any manner affect the water tank is fortified by the fact that the pollution Control Board granted consent to establish after due inspection of the site and the existence of water tank is specifically shown in the plan appended to the consent. A true copy of the integrated consent to establish crematorium at the disputed site issued by the Pollution Control Board on 9.4.2013 is produced as Ext.R1(c), it is contended.

Proceedings for inviting tenders for assigning work of construction of crematorium was undertaken only after

obtaining technical sanction from the Chief Engineer of Thiruvananthapuram Development Authority. True photocopy of the sanction order dated 18.3.2008 issued by the Chief Engineer of Thiruvananthapuram Development Authority is produced as Ext.R1(d).

The Master Plan for Development of Paravoor Municipality is sanctioned by Government of Kerala as per Government order G.O.(P) No.248/2010/LSGD dated 2.11.2010. In the approved Master Plan, the present site where crematorium is constructed is specifically earmarked for establishment of crematorium. A true photocopy of G.O.(P) No.248/2010/LSGD dated 2.11.2010 is produced Ext.R1(e). True copy of the relevant pages of approved Master Plan for Paravoor Municipality is produced as Ext.R1(f).

It is further stated that there are no crematoria in existence in the entire limits of Paravoor Municipality and the nearby localities. There is widespread demand for construction of a public crematorium by a vast majority of general public. It is in the wake of such a situation that

the present site is specifically set apart for establishment of crematorium and included as such in the approved Master Plan.

The construction work, thus commenced, strictly observing all statutory formalities, was obstructed by a few persons including the petitioners, with oblique motives and by ulterior political gain.

This necessitates requisition of police protection for the smooth and speedy completion of the project. A true copy of the communication dated 7.2.2013 addressed to the Circle Inspector of Police, Paravoor is produced as Ext.R1(g).

There are time constraints and pressure to complete the construction work so as to see that the Plan Funds allocated do not get lapsed. A true copy of the reply communication addressed to Urban Affairs, Director, Thiruvananthapuram dated 8.7.2013 is produced as Ext.R1(h).

Exts.P7, P8 and P9, as it is evident from their very face, are issued on total misconception of facts and

contrary to Ext.P10 earlier proceedings. Hence, the first respondent issued proper reply to the same explaining the actual facts. True copy of the communication dated 20.7.2013 issued to the third respondent is produced as Ext.R1(i). True copy of the communication dated 30.10.2013 issued to the 2nd respondent is produced as Ext.R1(j).

The Furnace Machinery worth ₹14,00,000/- for the crematorium is already purchased and installed and the crematorium is ready to be operationalised. A true copy of the communication and invoice dated 22.1.2014 issued by the contractor agency which constructed the crematorium is produced as Ext.R1(k).

The property where the crematorium is established is specifically earmarked for the purpose as per the approved Master Plan. The property chosen is a large extent having an extent of more than 60 cents and the concrete vault and furnace building of crematorium are constructed at the centre of the entire property. The residences of the petitioners are situated far away from

the crematorium furnace building and situated much more than the requisite clearance distance of 25 metres. All other allegations to the contrary in paras 1 to 4 are false and hence, denied.

Exts.P2 and P3 are unnecessary and irrelevant in the light of the provisions of law and losses significance in the light of the provisions of approved Master Plan. Allegations to the contrary in this respect raised in paragraphs 5 and 6 are not sustainable in law and on facts and hence, denied.

Ext.P5 does not project the grievance of proximity of crematorium to the residences of petitioners. Exts.P6 and P7 are seen issued mechanically without proper ascertainment of facts and on total misconception of facts. Exts.P8 and P9 suffers from the same defect as are issued placing blind reliance on Exts.P6 and P7. Moreover, Ext.P9 refers to pollution caused by construction work and not what is alleged in the writ petition. Hence, Exts.P6 to P9 are issued illegally without authority. 2nd respondent has got no authority to issue an order of the nature of

Ext.P9 in respect of an issue touching discharge of statutory duty by the Municipality under the relevant provisions of law. Moreover, Exts.P6 to P9 are unsustainable in the light of Ext.P10 earlier order and having been issued without any reference to Ext.P10. Allegations to the contrary raised in this regard in Paragraphs 8 to 10 and 12 are untenable in law and on facts and hence denied; so submitted the first respondent.

5. The second respondent also filed a counter affidavit contending as follows:

The Secretary, Paravoor Municipality has filed an application before the District Medical Officer for No Objection Certificate, as per Sections 484 and 485 of the Kerala Municipalities Act, 1994. The DMO has issued NOC as per letter No.C2-19620/08 dated 30.10.2008. On the basis of the NOC, the District Collector, Kollam has issued sanction letter as per Order No.M2/3646/09 dated 14.8.2009.

It is stated that the Secretary, Paravoor Municipality began to construct the crematorium on the basis of the

sanction received from the DMO and the District Collector. The Secretary, Paravoor Municipality has reported that the construction work of crematorium was started after obtaining NOC from the Pollution Control Board as directed by the Munsiff's Court, Paravoor in I.A.No.355/13 in O.S.No.62/2013.

It is also stated that one Sri.V.Balachandran has filed a petition before the District Collector on 26.11.2012 alleging that the construction of the crematorium will pollute the drinking water in the water tank which is situated near to the crematorium. An enquiry was conducted through DMO, Kollam and the Tahsildar, Kollam. The Tahsildar, Kollam has reported that the construction work of the crematorium is going on and that it may pollute the drinking water in the water tank. The DMO has reported that they have issued a stop memo to the Secretary, Paravoor Municipality for the stopping of the construction as per Order No.C2-22851/12 dated 20.2.2013. Subsequently, the Paravoor Municipality has sought permission from the Pollution Control Board and

the Pollution Control Board has given permission as per PCB/KO/Cte/63/13 dated 9.4.2013.

It is stated that the District Medical Officer as per Letter No.C2/22854/DMO dated 30.10.2013 has reported that since the Chimney of the gas crematorium is thirty meters above the ground level, it may not make any health hazard to the inhabitants of the locality, since the smoke due to the cremation of dead bodies is released to the atmosphere only at 30 meters height from the ground level and that there is no chance to contaminate the drinking water in the water tank which is situated in the ground level.

It is contended that the Pollution Control Board has issued an integrated consent to the Paravoor Municipal Secretary on 9.4.2013 stating that the location of installation of the chimney shall be at least 25 meters from the nearest residential building and that the chimney should be of 30 metres height from the ground level and that there shall be a provision for venting emission from the crematorium. Accordingly, the Paravoor Municipal

Council has decided to build a Gas Crematorium.

It is stated that the Tahsildar, Kollam as per his letter No.A10/2631/13 dated 18.76.2013 has reported that as per the village records the land in which the Gas Crematorium has to be build comprises in Bl.No.33 of Re.Sy.No.342/7 and Sy.No.343/6 in Paravoor Village which is owned by the Panchayat Executive Officer as per T.P.No.5671 and now, the land is under the possession of Paravoor Municipality. It was also reported that the inhabitants of the locality has objection against the project.

It is stated that DMO has reported that they have issued a stop memo to the Secretary, Paravoor Municipality for the stopping of the construction of crematorium as per letter No.C2-22854/12 dated 20.2.2013. The Secretary, Paravoor Municipality reported that on the basis of the direction given by the Munsiff Court, Paravoor in interim order as I.A.No.355/13 (O..S.No.62/13), the Paravoor Municipality has applied for the NOC from the Kerala State Pollution Control Board.

Accordingly, NOC has been received from the Pollution Control Board as per PCB/KO/CTE/63/13 dated 9.4.2013 with certain conditions.

It is contended that the Paravoor Municipal Secretary has reported that as per Section 484 and 485(1) of the Kerala Municipal Act, 1994, they had filed an application before the District Medical Officer for a No Objection Certificate. The DMO has issued NOC as per letter No.C2/19620/08 dated 30.10.2008. Based on that NOC, the District Collector, Kollam has issued sanction letter vide M2/3646/09 dated 14.8.2009. The Tahsildar, Kollam vide A10/2631/13 dated 18.7.2013 has reported that the local residents have objection against the construction of crematorium because is likely to create pollution.

6. Arguments have been heard.

7. Admittedly, the crematorium in question is constructed in 24.2 ares (60 cents) of property belonging to the respondent Municipality. According to the respondent Municipality, the furnace building and office room for the crematorium are located at the centre of the

entire property and away from the boundaries so as to prevent any room for complaint from any corner. A copy of the building plan and location sketch are produced as Ext.R1(a). The respondent Municipality would contend that the consent of respondents 1 and 2 were obtained well before the commencement of construction. Ext.R1(b) is the copy of NOC issued by the second respondent. Requisite clearance is only 25 metres as per the relevant provisions of law.

8. According to the learned counsel for the respondent Municipality, the crematorium is situated more than 40 to 50 metres away from the nearby residents. Ext.R1(c) is the integrated consent to establish crematorium at the disputed site issued by the Kerala State Pollution Control Board.

9. Ext.R1(c) consent was issued subject to the following conditions:

- i. The integrated consent to establish is granted subject to the power of the Board to review and make variation in all or any of the conditions laid hereunder.
- ii. The integrated consent to establish, unless

withdrawn earlier and subject to condition No.1 shall be valid up to 31.3.2016. At the end of the validity period if the construction is in progress the same shall be got renewed. If the construction is not yet started, the applicant shall submit fresh application for integrated consent to establish.

iii. The applicant shall comply with the instructions that the Board may issue from time to time regarding prevention and control of air and noise pollution.

iv. The applicant shall obtain Integrated consent to operate before commissioning the unit.

v. Location of installation of the chimney shall be at least 25m from the nearest residential building.

vi. Water scrubbing arrangement shall be attached to the system before venting the emission through chimney.

vii. Chimney of 30m. Height from the ground level shall be provided for venting emission from the crematorium.

viii. Arrangement shall be provided for recycling the scrubbed water.

ix. Suitable species of trees shall be planted and maintained within and along the periphery of the unit, to form green belt to improve the environment.

x. Location of the unit shall be as shown in the drawing attached. Any change or alteration shall be made only with the prior permission of

the Board.

ix. A Board showing the name of the unit shall be displayed at the entrance.

10. The Pollution Control Board insisted that a distance of 25 metres from the nearest residential building be maintained and that the height of the chimney be 6.30 metres.

11. As the learned counsel for the petitioner submitted that the construction of the crematorium is within the prohibited limit, a specific query was put to the learned counsel as to whether the petitioner is ready to take out a commissioner to establish that the distance limit prescribed by the rules is not followed in the case of construction. However, the learned counsel for the petitioner submitted that it is the duty of the respondent Municipality to prove that the construction is not within the prohibited distance.

12. Though it was vehemently argued that establishment and operation of the crematorium at the present site would affect the source of drinking water of

the local inhabitants, the Pollution Control Board has found otherwise.

13. It was pointed out by the learned counsel for the respondent Municipality that the master plan for the development of Paravoor Municipality was sanctioned by the Government as per Ext.R1(e) dated 2.11.2010 issued by the Local Self Government Department. It was pointed out by the learned standing counsel for the respondent Municipality that as there was no crematorium existing in the entire limits of the Municipality, there was a wide spread demand for construction of a public crematorium by a vast majority of general public and it is in the wake of such a situation that the present site is earmarked for the project.

14. The learned senior Government Pleader would submit that before the construction of crematorium, the site was used for dumping waste and none of the petitioners had any objection to the same. It was argued by the learned counsel for the petitioners that Exts.P6 to P9 were issued illegally and without authority. The second

respondent (DMO) has no authority to issue an order in the nature of Ext.P9 in respect of an issue touching the discharge of statutory duty by the Municipality under the relevant provisions of law.

15. More over, Exts.P6 to P9 are unsustainable in the light of Ext.P10 order. Establishment of a crematorium by the Municipality within its local limit is covered by section 485 of the Kerala Municipalities Act. Therefore, the consent from the second respondent District Medical Officer is not required as per law. The petitioner proceeds on the assumption that the establishment of a crematorium is covered by Section 484 which relates to opening of place for burial of dead bodies on an application by the third party. Therefore, the argument of the petitioner that the procedural formalities as per Section 484 of the Act had not been complied with looses its very legs to stand upon.

16. As already pointed out that the Kerala State Pollution Control Board has insisted that the construction should not be within a distance of 25 metres from the

nearest residential building. The height of the chimney is also prescribed. The petitioners have not adduced any evidence to show that the construction is in violation of the said direction. Therefore, this Court finds no reason to interfere with the matter.

In the result, this writ petition fails and accordingly dismissed.

sd/- A.V.RAMAKRISHNA PILLAI
JUDGE

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true copy

P.S.TO JUDGE