

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

TUESDAY, THE 22ND DAY OF SEPTEMBER 2015/31ST BHADRA, 1937

WP(C).No. 16205 of 2011 (A)

PETITIONER :

**BENNY P.J.
AGED 42 YEARS, S/O.P.C.JOSEPH, PALLIPARAMBIL HOUSE
NEAR SYRIAN CHURCH, ERNAKULAM DISTRICT.**

**BY ADVS.SRI.SHAIJAN C.GEORGE
SMT.S.REKHA KUMARI
SMT.SAJITHA GEORGE**

RESPONDENT(S) :

- 1. STATE OF KERALA
REPRESENTED BY COMMISSIONER,
EXCISE DEPARTMENT, TRIVANDRUM-695002**
- 2. DEPUTY COMMISSIONER OF EXCISE,
EXCISE DIVISIONAL OFFICE, ERNAKULAM-682031.**
- 3. ZONAL MANAGER,
KERALA STATE BEVERAGES CORPORATION LTD.,
CENTRAL ZONE OFFICE, THRIPIUNITHURA-682 038.**

**R1 & R2 BY GOVT. PLEADER SMT. LILLY LESLI
R3 BY ADVS. SRI.ELVIN PETER P.J., SC
SRI.C.S.AJITH PRAKASH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Mn

...2/-

WP(C).No. 16205 of 2011 (A)

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF THE MASS PETITION DATED 26.5.2011.

EXT.P2 COPY OF THE REGISTERED POSTAL RECEIPT.

EXT.P3 COPY OF THE ACKNOWLEDGEMENT CARD.

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

ANU SIVARAMAN, J.

=====

W.P. (C) No. 16205 of 2011

Dated this the 22nd day of September, 2015

J U D G M E N T

The writ petition is filed by seeking directions to the respondents to close FL1 Shop No. 7010 situated at the High Court junction, Ernakulam. The contention of the petitioner is that the said FL1 shop is located within the prohibited distance from the St. Mary's Basilica Church, Ernakulam. He contends that though representation has been preferred before the Ministry of Excise the same is not being disposed of.

2. The 3rd respondent corporation has filed a counter affidavit stating that the distance between the gate of the FL1 shop and the main gate of the church is more than 200 meters. Even if the gate on the northern side of the church is being used, it is contended, the distance would be more than 200 meters. The 2nd respondent has also filed a counter affidavit stating that on enquiry through the Circle Inspector of Excise, Ernakulam it was found that the main gate of the church is the western gate and the northern gate is not a regular entrance. It is stated that from the main gate of the church the building in question is situated at a distance of 266 meters whereas from the northern

gate also the distance is 201 meters. It is also submitted by the learned counsel for the respondents that no objection to the shifting of the shop had been raised by the petitioner or any other persons before the competent authority who is the Commissioner of Excise.

3. Heard Sri. Shiju C. George, learned counsel appearing for the petitioner, Sri. Ajith Prakash, learned standing counsel appearing for the 3rd respondent and Smt. Lilly Leslie, learned Government Pleader appearing for respondents 1 and 2.

4. It is submitted by the learned counsel appearing for the petitioner that the building in which the FL1 shop licensed has been shifted to a distance less than 200 meters from the church. The northern side of the gate is being used by the habitual worshipers, it is submitted. In the above circumstances, the action of the Commissioner of Excise in having permitted shifting to a place which is very close to a place of worship is illegal and unsustainable, it is argued. However, learned standing counsel appearing for the 3rd respondent stated that it was after verifying the distance from the church in question that shifting was allowed and no challenge had been made by the petitioner to the order of shifting. It is further submitted that there is no representation or complaint of any nature pending before the competent authority

under the Act. In the above circumstances, it is submitted that the writ petition is devoid of merits and the same is liable to be dismissed.

5. The writ petitioner appears to have a contention that the measurement made by the Excise Inspector is incorrect. However, he has neither challenged the order of shifting nor has he made any representation with supporting materials before the competent authority, who has sanctioned the shifting. The FL1 shop is in existence from 2011. However, in view of the contention raised by the petitioner that it is functioning within the prohibited distance, I am of the opinion that the writ petition is to be disposed of reserving the right of the petitioner to move the proper authorities under the rules with his complaints supported by available materials. If such a representation is preferred by the petitioner, the same shall be considered and disposed of by the competent authority.

With the above observations, this writ petition is closed.

Sd/-
ANU SIVARAMAN,
JUDGE

DST

//True copy//

P.A. To Judge