

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

WP(C).No. 13882 of 2015 (I)

PETITIONER(S) :

1. XAVIER C.J., S/O.C.P.JOSE,
CHIRAYATH HOUSE, TIRUR, PUTHENMADAMKUNNU,
MULANKUNNATHKAVU P.O., THRISSUR- 680 581.
2. P.C.UNNI, S/O.CHELLI,
PAIPLINMARIN HOUSE, VADUKKARA P.O.,
THRISSUR- 680 007.
3. K.P.VARGHESE, S/O.POULOSE,
KIZHAKKE KUDIYIN HOUSE, PATTIKKAD P.O.,
THRISSUR.
4. P.R.GOPI, S/O.RAMAN,
PULLIPARAMBIL HOUSE, P.O.ELTHURUTH,
THRISSUR DISTRICT, PIN- 680 611.
5. BABU T.A, S/O.ANTONY,
OLLUR, THRISSUR.
6. BIJU JOSE.K., S/O.JOSE,
KOOLA HOUSE, P.O.PUTHOOR, THRISSUR- 680 014.
7. P.S.LATHEEF, S/O.SULTHAN,
PALAYAMKODE HOUSE, SUBASH NAGAR,
P.O.CHIYYARAM, THRISSUR- 680 026.
8. A.P.JOSE, S/O.PORINCHU,
ALAPPADAN HOUSE, P.O.KUTTOOR.
9. P.M.MOHANAN,
PARAKUNNIL HOUSE, P.O VANIYAMPARA, THRISSUR- 680 652.
10. K.K.ANTO, S/O.KOCHAPPAN,
KADAVI HOUSE, MANNAMANGALAM P.O., PIN- 680 004.
11. A.D.OUSEPH, S/O.DEVASSY,
ALLOOR HOUSE, P.O MULANKUNNATHUKAVU P.O.,
THRISSUR, PIN- 680 581.

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12. PAUL A.J, S/O.JOHNY,
CHIRAYATH ANTHIKADAN HOUSE, P.O NETTISSEY, PIN-680 657.
13. BINEESH M.G., S/O.GEORGE,
MANATHAN HOUSE, PERKULANGARA P.O., KUNNAMKULAM.
14. T.F.VARGHESE,
THATTIL VEEDU, SNEHATHEERAM, KRISHNAPURAM,
KALATHODU.
15. M.M.MATHEW,
MAMKUNNEL HOUSE, P.O.PEECHI.
16. K.M.FRANCIS, S/O.MATHEW,
KANNAMPUZHA HOUSE, KURIACHIRA P.O., PIN- 680 006.
17. P.O.JOY, S/O.OUSEPH,
POZHALLA PARAMBAN HOUSE, P.O.KURIACHIRA, PIN- 680 006.
18. C.J.BABU, S/O.JOHN,
CHIVELICKAN HOUSE, P.O.KURIACHIRA, CHIYYARAM.
19. BABU THOMAS,
NILLAYATTINKAL HOUSE, P.O THAIKKATTUSSERY.
20. E.T.ANTHONY, S/O.THARU,
ELLUVATHINKAL HOUSE, P.O KURIACHIRA.
21. THOMAS P.A., S/O.ANTONY,
PUTHUKKADAN HOUSE, P.O OLLUR.
22. A.K.JOHNSON, S/O.KOCHAPPAN,
APPADAN HOUSE, P.O MUNDOOR, PIN- 680 549.
23. SHAJI MATHEW, S/O.MATHAI,
THAKIDIPURATH HOUSE, ASARIKADU P.O., ASARIKADU.
24. SAIMON C.C., S/O.C.I.CHACKO,
CHENNIKKARA HOUSE, P.B ROAD, P.O.ELTHURUTH.
25. BINOY V.K., S/O.KOCHAPPAN,
VITHAYATHIL HOUSE, OLLUKKARA P.O.
26. V.A.KOCHAPPAN,
VITHAYATHIL HOUSE, P.O.OLLUKKARA.
27. SANTIN JOSE, S/O.JOSE,
VALLACHIRAKKARAN HOUSE, KURIACHIRA P.O.

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28. K.A.JOY,
KURUTHUKULANGARA HOUSE, P.O.OLLUR.
29. K.K.VARGHESE, S/O.KURIAKOSE,
KAROTTMANGALAM HOUSE, P.O PATTIKKAD.
30. A.K.JAYAN, S/O.KORU,
ADIYOLI HOUSE, KANNARA P.O.
31. LINTO GEORGE, S/O.GEORGE,
KULANGARA HOUSE, P.O OLLUR.
32. P.ARAJESH,
KAMMATH HOUSE, P.O.PULLAZHI, PIN- 680 012.
33. P.P.JOY,
PULLOKKARAN HOUSE, P.O CHETTUPUZHA.
34. N.K.JOSE, S/O.KOCHAPPAN,
NELLISSERY HOUSE, P.O KOORKKANCHERRY.
35. TONY, S/O.DAVIS,
ALAPPAT HOUSE, P.O ELTHURUTH.
36. JOHNSON T.J.,
THEKKINIYATH HOUSE, NEW JAVAHAR ROAD, P.O ANCHERI.
37. P.G.JOSE, S/O.GEORGE,
PARAMBITHARA HOUSE, P.O KURIACHIRA.
38. WILLIAMS PAUL,
ELLUVATHINKAL HOUSE, KURIACHIRA P.O, PIN- 680 006.
39. C.V.JAYAN, S/O.VIJAYAN,
CHAKRATH HOUSE, MATTAMPURAM P.O.,
KURICHIKKARA.

BY ADV. SRI.DINESH MATHEW J.MURICKEN

RESPONDENT(S) :

1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
LOCAL ADMINISTRATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM- 695 001.
2. THRISSUR CORPORATION,
MUNICIPAL OFFICE ROAD, THRISSUR- 683 101,
REPRESENTED BY ITS SECRETARY.

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**3. SECRETARY,
THRISSUR CORPORATION, MUNICIPAL OFFICE ROAD,
THRISSUR- 683 101.**

**4. A.S.NASAR, CONTRACTOR,
ROOM NO.93, SHAKTHAN THAMPURAN MARKET,
THRISSUR- 683 101.**

**R1 BY GOVERNMENT PLEADER SRI.T.R.RAJESH
R2 & R33 BY ADV. SRI.K.P.VIJAYAN
R4 BY ADV. SRI.SANTHOSH P.PODUVAL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 11-06-2015, THE COURT ON 03-07-2015 DELIVERED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXHIBIT P1: TRUE COPY OF THE DEMAND OF FEES MADE BY THE 4TH RESPONDENT TO THE 1ST PETITIONER DATED 25.04.2015.**
- EXHIBIT P2: TRUE COPY OF THE DEMAND OF FEES MADE BY THE 4TH RESPONDENT TO THE 3RD PETITIONER DATED 25.04.2015.**
- EXHIBIT P3: TRUE COPY OF THE DEMAND OF FEES MADE BY THE 4TH RESPONDENT TO THE 4TH PETITIONER DATED 25.04.2015.**
- EXHIBIT P4: TRUE COPY OF THE DEMAND OF FEES MADE BY THE 4TH RESPONDENT TO THE 9TH PETITIONER DATED 25.04.2015.**
- EXHIBIT P5: TRUE COPY OF THE DEMAND OF FEES MADE BY THE 4TH RESPONDENT TO THE 10TH PETITIONER DATED 25.04.2015.**
- EXHIBIT P6: TRUE COPY OF THE DEMAND OF FEES MADE BY THE 4TH RESPONDENT TO THE 15TH PETITIONER DATED 25.04.2015.**
- EXHIBIT P7: TRUE COPY OF THE DEMAND OF FEES MADE BY THE 4TH RESPONDENT TO THE 34TH PETITIONER DATED 25.04.2015.**
- EXHIBIT P8: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONERS BEFORE THE 3RD RESPONDENT DATED 20.04.2015.**

RESPONDENT(S)' EXHIBITS :

- EXHIBIT R4(A): TRUE COPY OF TENDER NOTICE FOR THE YEAR 2012-2013.**
- EXHIBIT R4(B): TRUE COPY OF TENDER NOTICE FOR THE YEAR 2013-2014.**
- EXHIBIT R4(C): TRUE COPY OF TENDER NOTICE FOR THE YEAR 2014-2015.**
- EXHIBIT R4(D): TRUE COPY OF TENDER NOTICE FOR THE YEAR 2015-2016.**
- EXHIBIT R4(E): TRUE COPY OF THE RECEIPT DATED 30.03.2015.**
- EXHIBIT R4(F): TRUE COPY OF THE RECEIPT DATED 11.05.2015.**
- EXHIBIT R4(G): TRUE COPY OF THE REPRESENTATION DATED 28.04.2015 SUBMITTED BY THE 4TH RESPONDENT BEFORE THE 3RD RESPONDENT.**

//TRUE COPY//

P.A.TO JUDGE.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 13882 of 2015

Dated this the 3rd day of July, 2015

J U D G M E N T

The petitioners have approached this Court with this writ petition alleging that the respondent corporation has increased the fee exorbitantly for the use of open space in the market by daily vendors without hearing them.

2. The petitioners allege that they are vendors selling vegetables, tapioca, bananas, fruits etc. in the public market near Shakthan Thampuran Market for more than a decade to eke out their livelihood; and it is their only source of livelihood. According to the petitioners, they are allowed to use the open space in the market to expose their goods and to sell the same, for which the 2nd respondent was levying fees; and the 2nd respondent was collecting fees from the petitioners at the rate between ₹20/- to ₹30/- according to the area used by them till March 2015. They further allege that the 4th respondent, who is engaged by the 2nd respondent corporation to

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collect the fees levied by the 2nd respondent corporation for the use of the market, began to demand exorbitant fees ranging from ₹60/- to ₹160/- for the use of the market for selling their goods from April 2015. The petitioners point out that the demanded fee is 600 times more than the present rate. They further allege that the demanded fee does not have any quid pro quo with the service provided by the 2nd respondent; and therefore, the demand for increased fee is exorbitant and arbitrary. According to the petitioners, the exorbitant increase in the fee would adversely affect their livelihood since they would not be able to do vending goods in the market by paying huge fee for the use of market, which would infringe their right under Articles 19 and 21 of the Constitution of India. Hence, this writ petition.

3. In the counter affidavit filed by respondents 2 and 3, it was contended that the petitioners are vendors in the open space of Shakthan Thampuran Market within the local limits of the respondent corporation and they are using the public open space for vending purposes, for

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which they are bound to pay the statutorily fixed fee to the municipal corporation. The corporation gives licence to collect the said fee by inviting open tender in accordance with law; and accordingly, the 4th respondent is the successful bidder for collecting the said fee for the period 2015-16. According to them, the 4th respondent was entrusted to collect the fee from the vendors for the period in accordance with law.

4. Arguments have been heard.

5. The learned counsel for the petitioners would submit that the respondent corporation has increased fee for the use of public market near Shakthan Thampuran Market for vending goods in open space ranging from ₹60/- to ₹160/-, which, according to the petitioners, is illegal. Admittedly, the petitioners are allowed to use the market to exhibit their goods and to sell the same; and the 2nd respondent was levying fees for the same. The petitioners' case is that the 2nd respondent was collecting fees from the petitioners at the rate between ₹20/- to ₹30/- according to the area used by them. According to the

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petitioners, this was the fee till March 2015. Their grievance is that from April 2015, the 4th respondent began to demand exorbitant fees ranging from ₹60/- to ₹160/- for the use of the market for selling their goods. This is 600 times more than the present rate; and therefore, the enhancement is arbitrary; it is alleged.

6. As rightly submitted by the learned Standing Counsel for the respondent corporation, the petitioners being the users of the open space for the vending, they are bound to pay the statutory fees fixed by the municipal corporation. At present, it is the 4th respondent, who is entrusted with the duty of collecting fees. According to the respondent corporation, the council of the respondent corporation has taken a decision fixing the fee at the rate of ₹50/- per square meter and ₹10/- for each and every excess meter spaces. There cannot be any dispute that the vendors are bound to pay the fee in accordance with the rate fixed by the council subject to the area they are using. The rate is prevailing since 2012 and the rate has not been increased for the period 2015-16.

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7. This Court in **Aluva Municipality** v. **Kunju Mohammed** [AIR 1995 KER. 252] has held that the occupants in public markets are liable to pay the fees prescribed. However, the petitioners have a grievance that excess fee is collected by the 4th respondent. Therefore, it is the duty of the respondent corporation to see whether any fee in excess of what has been fixed by the council of the respondent corporation, is collected by the 4th respondent from the petitioners.

Therefore, the writ petition is disposed of directing the respondent corporation to ensure that the 4th respondent collects fee from the street vendors including the petitioners only at the rate specified by the respondent corporation according to the area used by them.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-