

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 22ND DAY OF JUNE 2015/1ST ASHADHA, 1937

WP(C).No. 15343 of 2015 (P)

PETITIONER:

**M/S.SUHARA ENTERPRISES,
DOOR NO. 13419C, M.K.SREENIVASAN ROAD,
CHULLICKAL - 682005 (PROPRIETOR-NAVAS USAPH,
S/O. USAPH, AGED 42, H.NO. 13/419,
CHULLICKAL, KOCHI-5).**

**BY ADVS.SRI.K.S.MADHUSOODANAN
SRI.M.M.VINOD KUMAR
SRI.THUSHAR NIRMAL SARATHY
SMT.K.M.RAMYA
SRI.P.K.RAKESH KUMAR
SRI.K.S.MIZVER**

RESPONDENT(S):

- 1. CHAIRMAN, COCHIN PORT TRUST,
WELLINGDON ISLAND, COCHIN-3.**
- 2. CHIEF ENGINEER, COCHIN PORT TRUST,
WELLINGDON ISLAND, COCHIN-3.**
- 3. ASSISTANT COMMISSIONER OF POLICE,
MATTANCHERY, COCHIN-2.**
- 4. ASHRAF P.M., HOUSE NO. 4/1931, PULLUPALAM,
CHERALAI KADAVU, FORT KOCHI, COCHIN-1.**

**R1 & R2 BY ADVS. SRI.ABRAHAM JOSEPH MARKOS
SRI.V.ABRAHAM MARKOS
SRI.BINU MATHEW
SRI.TOM THOMAS (KAKKUZHIYIL)
SRI.ISAAC THOMAS**

**R3 BY GOVERNMENT PLEADER SMT.C.K.SHERIN
BY SMT.LATHA KRISHNAN**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 22-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

mbr/

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXHIBIT P1- PHOTOCOPY OF THE TENDER FROM BEARING NO. T7/T-1714/2015-C.
- EXHIBIT P2- PHOTOCOPY OF THE NOTICE PUBLISHED IN MALAYALA MANORAMA DAILY DATED 19-4-15.
- EXT. P2(A)- PHOTOCOPY OF THE NOTICE -DO-
- EXT. P2(B)- PHOTOCOPY OF THE NOTICE -DO-
- EXT.P2(C)- PHOTOCOPY OF THE NOTICE -DO-
- EXHIBIT P3- PHOTOCOPY OF LETTER OF ACCEPTANCE BEARING NO. T7/T-1714/2015-C DATED 5-5-15.
- EXHIBIT P4- PHOTOCOPY OF CHALAN RECEIPT DATED 6-5-15.
- EXHIBIT P5- PHOTOCOPY OF THE COMPLAINT DATED 22-5-15 GIVEN TO THE RESPONDENTS 1 AND 2.

RESPONDENTS' EXHIBITS & ANNEXURES:

- ANNEXURE R1(A) : TRUE COPY OF THE PETITIONER'S TENDER FORM.
- ANNEXURE R1(B) : TRUE COPY OF THE RELEVANT PAGES OF THE GENERAL CONDITIONS OF CONTRACT FOR CIVIL WORKS IN COCHIN PORT.
- ANNEXURE R1(C) : TRUE COPY OF THE FORECLOSURE NOTICE ISSUED TO THE PETITIONER.

//TRUE COPY//

P.S. TO JUDGE

mbr/

K. VINOD CHANDRAN, J.

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W.P.(C) No.15343 of 2015 - P

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Dated this the 22nd day of June, 2015

J U D G M E N T

The petitioner is aggrieved with the non-issuance of the work orders pursuant to Ext.P3 award of a tender notified as per Ext.P1. The respondent Port Trust has taken over the premises, granted on lease, in pursuance of a project, which is said to be in collaboration with a public sector undertaking. The lessees in the said properties had erected buildings in which their businesses were carried on for long. The eviction of the lessees were made under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and having taken over the buildings, a tender was notified in which admittedly the petitioner was the successful tenderer, who was awarded the contract for demolition of five buildings as per Ext.P2 notice. The work orders however were to be issued separately.

2. The petitioner had obtained a work order for the

second building referred to in Ext.P3 and the same has been completed. The petitioner is aggrieved with the fact that the demolition of the 4th building was allegedly entrusted to the additional 4th respondent and the work orders of the other buildings also, not coming forth.

3. The respondent Port Trust has filed a statement indicating that the lease hold rights of the persons, who were in occupation of the land of the Port Trust specifically required the land owners to hand over vacant possession of the premises after demolishing the buildings when the lease is determined. In the case of the lessees whose buildings are noticed in Ext.P3, after the eviction, two of the lessees specifically that of the 4th building mentioned therein and the 1st building mentioned therein approached the Port Trust seeking enforcement of their right to demolish the buildings by themselves as is provided in the lease agreement.

4. Under the Act also any improvements made on the

property, from which eviction is sought would definitely go to the person who was in possession. It was in such circumstance that the 1st and 4th buildings referred to in Ext.P3 had to be handed over to the lessees, who were in possession and it was they, who demolished the said buildings is the contention. As to the 5th building in Ext.P3, the same is still under a stay order issued in a writ petition by this Court.

5. The learned Counsel for the petitioner submits that the manner in which the award of tender was foreclosed is suspicious insofar as the same being done after the writ petition was filed. However, in the context of the specific averments made by the Port Trust in the statement, this Court would not look into that aspect. The rights exercised by the lessees for demolition of the buildings, they had erected in the premises, cannot at all be interfered with on the basis of a successful bid made by a tenderer which would be subject to the rights of the lessees, which right is also affirmed by the statute.

6. However, with respect to the 3rd building mentioned in Ext.P3, though the tender stands foreclosed, it is made clear that if the lessee of that building does not seek permission to demolish, within a reasonable time, then necessarily the said work has to go to the petitioner itself. So would be the case of the 5th building as and when the writ petition is disposed of and depending upon the result of the said writ petition. It is made clear that the Port Trust shall issue notice to the lessee of the 3rd building and within a reasonable time decide on how the demolition has to be carried on and in the event of the said lessee not responding, the same has to be awarded to the writ petitioner herein.

The writ petition is disposed of with the above directions.

Sd/-
K. VINOD CHANDRAN,
JUDGE

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P.A to Judge.