

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI**

**WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937**

**WP(C).No. 16515 of 2015 (L)**  
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**PETITIONER(S):**  
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**NASEEMA ABDUL GAFOOR,  
AGED 54, W/O.ABDUL GAFOOR, POZHINIKARTHI HOUSE  
K.M.P. ROAD, PALLURUTHY, KOCHI - 682 006.**

**BY ADVS.SRIP.S.SUJETH  
SRI.E.S.SANEEJ**

**RESPONDENT(S):**  
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- 1. SECRETARY, CORPORATION OF COCHIN,  
ERNAKULAM - 682 018.**
- 2. CORPORATION OF COCHIN,  
REP. BY ITS SECRETARY, ERNAKULAM - 682 018.**
- 3. HEALTH INSPECTING OFFICER,  
CORPORATION OF COCHIN, PALLURUTHY OFFICE - 682 042.**
- 4. CHAIRPERSON, WELFARE STANDING COMMITTEE,  
CORPORATION OF COCHIN, ERNAKULAM - 682 018.**

**BY ADVS. SRI.K.ANAND, SC  
SRI.P.K.SOYUZ, SC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
29-07-2015 ALONG WITH WPC.NO.17557/2015 THE COURT ON  
THE SAME DAY DELIVERED THE FOLLOWING:**

**msv/**

**WP(C).No. 16515 of 2015 (L)**  
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**APPENDIX**

**PETITIONER(S)' EXHIBITS**  
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**EXHIBIT-P1: THE TRUE PHOTOCOPY OF THE LETTER DATED 6.6.2011 OF URBAN  
POVERTY ALLEVIATION DEPARTMENT.**

**EXHIBIT-P2: THE TRUE PHOTOCOPY OF THE ORDER DATED 6.9.2013 OF THE  
1ST RESPONDENT.**

**EXHIBIT-P3: THE TRUE PHOTOCOPY OF THE ORDER DATED 7.8.2014 IN APPEAL  
943/2014 OF LOCAL SELF GOVERNMENT INSTITUTIONS, TRIVANDRUM.**

**EXHIBIT-P4: THE TRUE PHOTOCOPY OF THE NOTICE DATED 27.1.2014 OF THE  
3RD RESPONDENT.**

**EXHIBIT-P5: THE TRUE PHOTOCOPY OF THE NOTICE DATED 31.10.2014 OF THE  
1ST RESPONDENT.**

**EXHIBIT-P6: THE TRUE PHOTOCOPY OF THE SKETCH RELIED ON BY THE  
RESPONDENT FOR THE LOCATION PLAN OF KIOSK.**

**EXHIBIT-P7: THE TRUE PHOTOCOPY OF THE PETITION BEFORE THE  
1ST RESPONDENT.**

**RESPONDENT(S)' EXHIBITS:**  
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**NIL**

**//TRUE COPY//**

**P.A.TO JUDGE.**

**Msv/**

**A.V. RAMAKRISHNA PILLAI, J.**

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W.P.(C) Nos.16515 & 17557 of 2015  
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Dated this the 29<sup>th</sup> day of July, 2015.

**JUDGMENT**

The issue raised in these writ petitions is the installation of a kiosk within the local limits of the respondent Corporation.

2. W.P.(C) No.16515 of 2015 is filed by the licensee of the Kiosk. She is challenging Exts. P4 and P5 on the ground that there was no inspection of the site with notice to the petitioner and the sketch relied on by the respondent corporation does not reflect the actual reality. She is seeking a direction to the respondent corporation to prepare a new sketch in tune with Exts. P1 and P3 order.

3. W.P.(C) No.17557 of 2015 is filed by the person who is residing in the property adjacent to the place where the kiosk is installed at present. She is aggrieved by the inaction on the part of the corporation in removing the kiosk from the present location.

4. The petitioner in W.P.(C) No.16515 of 2015 alleged

as follows:

The petitioner has been allotted a bunk shop on the western side of madhura company road. The petitioner alleges that the shop is being run for the last 25 years. The income from the shop is the only means for livelihood of the petitioner. The petitioner comes under BPL category and therefore the District Panchayath and Kudumbasree Mission, Cochin Corporation decided vide resolution No.26 dated 21.2.2010 to start marketing KIOSKS in various locations and thus the petitioner was also permitted to set up the same after the said resolution. The inauguration of the shop so allotted was conducted by the Division Councilor in the presence of community development society authorities. Thereafter, the petitioner applied for electricity connection. The petitioner alleges that it is clearly stated that the location of the proposed kiosk is adjacent to electric post No.PA 40/1. It is also stated that it belongs to the ownership of Kudumbasree and members belong to BPL. It is further alleged that, there was private complaint from a private party upon which there

was direction by the respondent corporation on 4.3.2013 to shift KIOSK to another place. It is stated that the order was issued on 6.9.2013. The petitioner further alleges that Ext.P2 order was challenged in Appeal No.943/2013 before LSGI, Trivandrum and the said order was set aside and Ext.P3 order was passed on 7.8.2014. According to the petitioner, the entire proceedings initiated by the respondent is with prejudice and liable to be interfered with. As per Ext.P3 order, it is necessary to conduct an inspection and to prepare a sketch regarding the location. The petitioner was not given any notice. The first respondent has proceeded as if, there was no order from the Tribunal. The petitioner came to know about this only now. The petitioner alleges that no joint inspection was done by the respondents. Ext.P5 is based on Exts.P4 and P2 and without any notice to the petitioner. The property has not been inspected and no correct sketch or plan was prepared. The sketch relied on by the authorities was prepared, without actual site measurement. The kiosk of the petitioner is just opposite to Valiyavadan lane and adjacent to

electric post No.PA 40/1. The SN lane in the sketch prepared by the respondent is just opposite to Valiyavedan lane. However, there is no S.N.Lane just opposite to Valiyavedan lane. SN lane is near to KMP junction and hence Ext.P6 sketch relied on by respondents is incorrect. Therefore, Ext.P4 and P5 are liable to be set aside; it is alleged. The petitioner alleges that she had again approached the corporation to implement the order of the Local Self Government Institution and prepare a new sketch and plan of the locality for avoiding dispute. If a new sketch is prepared as per the distance from the electric post made mention of above, the dispute could be resolved. Now the officials of the respondents are threatening to remove the kiosk of the petitioner, by using police force, which is illegal, arbitrary and against law. It is with this background, the petitioner has come up before this Court.

5. The case of the petitioner in W.P.(C) No.17557 of 2015 is as under:

The petitioner is aggrieved by the functioning of a kiosk illegally erected in front of her property by the fourth

respondent (the petitioner in W.P.(C) No.16515 of 2015). The petitioner alleges that the kiosk was allotted to the fourth respondent in 2013 by the Kudumbasree CDS, the District Panchayath of Kudumbasree and while allotting the kiosk, a location sketch was approved by the first respondent demarcating that the kiosk shall be constructed by the fourth respondent in a bye-lane by name SN lane, towards 5 metres to its south. However, the fourth respondent constructed the kiosk 75 metres south from SN Lane, exactly in front of the property of the petitioner which is in deviation from the approved sketch. Pursuant to the repeated complaints of the petitioner, the Mayor, Corporation of Kochi by his order dated 16.7.2013 directed the fourth respondent to remove the kiosk forthwith. The said order was challenged by the fourth respondent before the Tribunal for Local Self Government Institutions, by filing Appeal No.943/2013 wherein the Appellate Tribunal passed Ext.P1 order with a direction to the second respondent to conduct a site inspection and prepare a report stating that the place wherein the kiosk situates. It was

made clear by the Tribunal that if the kiosk is found not to be in the approved site, the second respondent has to initiate necessary steps for shifting the kiosk to the approved site. Pursuant to Ext.P1 order, the second respondent issued Ext.P3 notice directing the fourth respondent to shift the kiosk in accordance with the approved plan as it was found in site inspection that it is seen constructed at a place which is 75 metres towards south from the approved place. However, till this date, the fourth respondent has not shifted the kiosk to the allotted place. Even though, this was pointed out to the second respondent, no action was taken to replace the kiosk erected in front of the property of the petitioner blocking her access to her property.

6. The respondent Corporation has filed a statement in W.P.(c) No.17557 of 2015. It was submitted by the learned Standing Counsel for the respondent corporation that the same statement be adopted for the purpose of other writ petition also.

7. The fourth respondent in W.P.(c) No.17557 of 2015,

who is the petitioner in the other writ petition has filed a counter affidavit reiterating her contentions in W.P.(c) No.16515 of 2015.

8. Arguments have been heard.

9. For convenience of the discussion, the petitioner in W.P.(C) No. 16515 of 2015, can be referred to as the *licencee* and the petitioner in W.P.(c) No.17557 of 2015 can be referred to as the *local resident*. Admittedly, the licence to run the kiosk was allotted by the District Panchayath of Kudumbasree unit. A place was also fixed duly approved by the District Panchayath and the Council of the respondent Corporation for constructing the kiosk. This place according to the respondent corporation is the western side of the Madhura Company Road and at a point which 5 metres towards south on the S.N. Lane. It is the definite stand of the local resident as well as the respondent corporation that the licensee has fixed the kiosk on the western side of the Madhura Company at a point which is 75 metres towards south on S.N.Lane. This is in front of the property of the local resident. Therefore the fourth respondent

had issued a notice to the fourth respondent to remove the kiosk from there and fix the same in the approved site.

10. The argument advanced by the learned counsel for the licensee is that the sketch was not prepared in his presence and it is incorrect. However, the learned counsel for the licensee could not point out as to how the licensee would be prejudiced, if the kiosk is installed on the western side of Madhura Company Road, at a point which is 5 metres towards south on S.N. Lane. Evidently the photographs produced at the time of hearing would reveal that the present position is very close to the residence of the local resident and undoubtedly, the same is a nuisance to her.

11. Nobody has a case that the licensee shall not conduct the kiosk within the local limits of the respondent corporation. However, the licensee has to adhere to the direction issued by the local authority which installing the kiosk. The licensee cannot pick and choose her own place for installing the same.

12. Therefore, this Court is of the view that the

respondent Corporation was justified in issuing the direction to the licensee to remove the kiosk to its allotted site.

In the result, W.P.(C) No.16515 of 2015 is dismissed. W.P.(C) No.17557 of 2015 is allowed. Respondents 1 to 3 in W.P.(C) No.17557 of 2015 are directed to remove the kiosk installed by the fourth respondent from the present place and to shift the same to its allotted place, within a period of two weeks from the date of receipt of a copy of this judgment.

**Sd/-**  
**A.V. RAMAKRISHNA PILLAI**  
**JUDGE**

Scl.