

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&**

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

WP(C).No. 17135 of 2015 (N)

PETITIONER(S):

**LALU, AGED 44 YEARS,
S/O.VARGHESE, KURISSINKAL HOUSE,
PARAVOOR P.O., PARUDEESA NAGAR DESOM,
PARAVOOR VILLAGE, ERNAKULAM DISTRICT.**

**BY SRI.C.C.THOMAS, SENIOR ADVOCATE.
ADVS. SRI.M.G.KARTHIKEYAN,
SRI.NIREESH MATHEW.**

RESPONDENT(S):

- 1. THE SUB INSPECTOR OF POLICE,
CHENGAMANADU, ERNAKULAM DISTRICT -683 578.**
- 2. THE CIRCLE INSPECTOR OF POLICE,
ANGAMALY, ERNAKULAM DISTRICT -685 561.**
- 3. THE DEPUTY SUPERINTENDENT OF POLICE,
ALUVA, ERNAKULAM DISTRICT - 683 101.**
- 4. THE DISTRICT SUPERINTENDENT OF POLICE (RURAL),
ALUVA, ERNAKULAM DISTRICT - 683 101.**
- 5. THE DIRECTOR GENERAL OF POLICE (LAW & ORDER),
POLICE HEAD QUARTERS, THIRUVANANTHAPURAM -695 001.**
- 6. STATE OF KERALA,
REP. SECRETARY (HOME AFFAIRS), GOVT. SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 7. SHINTO ITTOOP, S/O.ITTOOP, KACHAPPALLY HOUSE,
POOVATHUSSERY P.O., PARAKKADAVU, ALUVA TALUK,
ERNAKULAM DISTRICT-683 579.**
- 8. JOSHI, S/O.THAREETH, KACHAPPALLY HOUSE,
POOVATHUSSERY P.O., PARAKKADAVU, ALUVA TALUK,
ERNAKULAM DISTRICT-683 579.**

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**9. BIJU SEBASTIAN,
S/O.SEBASTIAN, PAINADATHU HOUSE,
POOVATHUSSERY P.O., PARAKKADAVU, ALUVA TALUK,
ERNAKULAM DISTRICT-683 579.**

**10. THE PARAKKADAVU GRAMA PANCHAYATH,
KURAMASSERY P.O., ERNAKULAM DISTRICT - 683 579,
REPRESENTED BY ITS SECRETARY.**

**R1 TO R6 BY SR. GOVT. PLEADER SRI.C.R. SYAMKUMAR.
R7 TO R9 BY ADVS. SRI.J.JULIAN XAVIER,
SRI.FIROZ K.ROBIN.
R10 BY ADVS. SRI.K.B.DAYAL,
SRI.SIBI KARUN,
SRI.S.MOHAMMED FEBIN.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 25-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P-1: PHOTOCOPY OF THE ORDER NO.E4-1600/14 DATED 01.06.2015
ISSUED BY THE DEPUTY COMMISSIONER OF EXCISE,
ERNAKULAM.
- EXT.P-2: PHOTOCOPY OF THE ORDER DATED 05.06.2015 IN
WP(C).NO.16908/2015 PASSED BY THIS HON'BLE COURT.
- EXT.P-3: PHOTOCOPY OF THE PETITION DATED 06.06.2015 SUBMITTED
BEFORE THE 1ST RESPONDENT WITH COPIES TO
RESPONDENTS 2 TO 6.

RESPONDENT'S EXHIBITS:-

- EXT.R7(A) COPY OF THE MASS PETITION SUBMITTED BY THE RESIDENTS
OF THE AREA TO THE 10TH RESPONDENT DATED 03/06/2015.
- EXT.R7(A)1 TRUE TRANSLATION OF EXT.R7(A).
- EXT.R7(B) COPY OF THE COMPLAINT SUBMITTED TO THE DEPUTY
COMMISSIONER, ERNAKULAM DATED 04/06/2015.
- EXT.R7(B)1 TRUE TRANSLATION OF EXT.R7(B).
- EXT.R7(C) COPY OF THE STOP MEMO ISSUED BY THE 10TH RESPONDENT
BY NO.A5-4212/2015 DATED 04/06/2015.
- EXT.R7(C)1 TRUE TRANSLATION OF EXT.R7(C).
- EXT.R10(A) COPY OF THE MASS PETITION SUBMITTED BY THE RESIDENTS
OF THE AREA TO THE 10TH RESPONDENT DATED 03/06/2015.
- EXT.R10(A)1 TRUE TRANSLATION OF EXT.R10(A).
- EXT.R10(B) COPY OF THE STOP MEMO ISSUED BY THE 10TH RESPONDENT
BY NO.A5-4212/2015 DATED 04/06/2015.
- EXT.R10(B)1 TRUE TRANSLATION OF EXT.R10(B)

//TRUE COPY//

PA. TO JUDGE

**ASHOK BHUSHAN, CJ
& A.M.SHAFFIQUE, J.**

W.P.C.No.17135 of 2015

Dated this the 25th day of June 2015

J U D G M E N T

Shaffique, J

Petitioner, being the licensee of a toddy shop T.S.No.25/2015-16 in Group No.VII of Angamaly Range, range was permitted to shift the toddy shop to a new building No.XIII/86 of Parakkadavu Grama Panchayath owned by Smt.Deepa and Smt.Joicy as per Ext.P1 order passed by the Deputy Commissioner of Excise, Ernakulam. According to the petitioner, when he started operation of the said toddy shop, the same was obstructed by respondents 7 to 9 and their men. In the meantime, the Panchayath has also issued a stop memo as per order dated 04/06/2015. Petitioner challenged the stop memo by filing W.P.C.No.16908/2015 and interim direction has been issued by the learned Single Judge keeping in abeyance the said stop memo for a period of two weeks. Interim order continues and still remains in force. While so, even after staying of the stop memo, the petitioner is unable to conduct toddy shop on account of the

obstruction being caused by respondents 7 to 9. Petitioner preferred Ext.P3 complaint to the police seeking necessary police protection to conduct the toddy shop. Since no action has been taken by the police in this regard, this writ petition is filed.

2. Counter affidavit has been filed by respondents 7 to 9 inter alia stating that they are persons in the locality. Petitioner is conducting the toddy shop in a residential area which is obstructed by the entire persons in the locality and that apart, no permission was obtained from the Panchayath for change of occupancy. Learned counsel appearing on behalf of respondents 7 to 9 also submits that Ext.P1 order had been issued without conducting proper enquiry into the matter.

3. Counter affidavit has been filed by the 10th respondent Grama Panchayath stating that they have issued stop memo to the landlord of the building since change of occupancy certificate has not been obtained from the Panchayath. They have already taken steps to file Counter affidavit in W.P.C.No.16908/2015 which is pending consideration before the learned Single Judge. According to the learned counsel appearing for the Panchayath, the people in the locality are totally against the functioning of the

toddy shop in the area and therefore the petitioner is not entitled to proceed with the conduct of the toddy shop.

4. The learned Government Pleader, on instructions, would submit that law and order situation has arisen in the matter relating to functioning of the toddy shop on account of the objection raised by the people in the locality especially it being a residential area.

5. Having heard the learned counsel appearing on either side, we are of the view that the petitioner, having obtained a valid licence to operate toddy shop in the building as per Ext.P1, cannot be obstructed by the private respondents on the guise that the order has been passed without hearing them. If respondents 7 to 9 have a case that Ext.P1 order is passed in violation of the principles of natural justice and against law, their remedy is to approach the authorities concerned. They cannot take law into their hands and prevent the functioning of the toddy shop. As far as Panchayath is concerned, their right to proceed with the stop memo arise only subject to the final decision in W.P.C.No.16908/2015 which is still pending and the stop memo remains stayed. Under such circumstances, we are of the view

that subject to any decision in W.P.C.No.16908/2015, there will be a direction to the 1st respondent to ensure that law and order is maintained in the matter relating to the functioning of the toddy shop by the petitioner.

With the above observation, this writ petition is disposed of.

(sd/-)
(ASHOK BHUSHAN, CHIEF JUSTICE)

(sd/-)
(A.M.SHAFFIQUE, JUDGE)

jsr

