

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

WEDNESDAY, THE 28TH DAY OF JANUARY 2015/8TH MAGHA, 1936

WP(C).No. 18029 of 2014 (C)

PETITIONER(S) :

JOHN JOSEPH,
S/O.THE LATE SHRI. JOSEPH,
KARUNATT THOPPIL,
SAKTHIKULANGARA, KOLLAM - 691 581.

BY ADVS.SRI.M.V.BOSE
SRI.VINOD MADHAVAN
SMT.NISHA BOSE

RESPONDENT(S) :

1. THE REVENUE DIVISIONAL OFFICER,
KOLLAM - 691 001.
2. THE EXECUTIVE ENGINEER,
HARBOUR ENGINEERING DIVISION,
SAKTHIKULANGARA - 691 581.

BY SENIOR GOVERNMENT PLEADER SRI.JOSEPH GEORGE.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 28-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXT. P1 - TRUE COPY OF JUDGMENT IN OP 13143/93.
- EXT. P2 - TRUE COPY OF JUDGMENT IN WPC NO. 7880/2001.
- EXT. P3 - TRUE COPY OF JUDGMENT IN WPC NO. 27287 OF 2007.
- EXT. P4 - TRUE COPY OF ORDER DT. 28.7.09 I.D.NO.194/88.
- EXT. P5 - TRUE COPY OF IDENTITY CARD OF THE PETITIONER'S FATHER.
- EXT. P6 - TRUE COPY OF THE DEATH CERTIFICATE OBTAINED FROM ST.JOHN D'BRITTO'S CHURCH.
- EXT. P7 - TRUE COPY OF RECEIPT SHOWING THE PAYMENT OF ARREARS OF RENT OF RS. 10,000/-.
- EXT. P8 - TRUE COPY OF CERTIFICATE DT. 05.5.2014 ISSUED BY THE VILLAGE OFFICER, SAKTHIKULANGARA.
- EXT. P9 - TRUE COPY OF REPRESENTATION SUBMITTED BY THE PETITIONER DT. 10.6.14.

RESPONDENT(S) ' EXHIBITS :

- EXT. R2 (A) - TRUE COPY OF THE JUDGMENT IN WP(C)NO.25918/2009.
- EXT. R2 (B) - TRUE COPY OF THE GOVERNMENT ORDER G.O.(RT) NO.522/11/F&PD DATED 23/07/2011.
- EXT. R2 (C) - A TRUE COPY OF THE G.O.(RT) NO.315/12/F&PD DATED 31/03/2012
- EXT. R2 (D) - A TRUE COPY OF THE G.O.(RT) NO.368/13/F&PD DATED 10/05/2013.
- EXT. R2 (E) - A TRUE COPY OF THE NOTICE NO. 10/2000/AE1 DATED 29/03/2014.
- EXT. R2 (F) - A TRUE COPY OF THE G.O.(RT) NO.185/14/F&PD DATED 28/02/2014.
- EXT. R2 (G) - A TRUE COPY OF THE ORDER NO E2-339/10/EE DATED 28/04/2014.
- EXT. R2 (H) - A COPY OF THE ACKNOWLEDGE SIGNED BY THE ALLOTTEE.

/TRUE COPY/

P.A.TO JUDGE

RVS.

P.R. RAMACHANDRA MENON J.

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W.P.(C) No. 18029 of 2014

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Dated, this the 28th day of January, 2015

JUDGMENT

The petitioner has approached this Court with the following prayers :

(i) To issue a writ of mandamus to the respondents to permit the petitioner to continue function in stall No. 4 of Sakthikulangara side of Neendakara Fishing Harbour.

(ii) To issue a writ of mandamus compelling the respondents to refrain from allotting stall No. 4 in Sakthikulangara side of Neendakara Fishing Harbour to any one other than the petitioner.

(iii) To issue any other order or direction as this Honourable Court may deem fit and proper in the nature and circumstances of the case.

and

(iv) To award the cost of the petitioner in these proceedings.

2. When the matter came up for consideration on 15.07.2014, an interim order was granted, which was subsequently being

extended from time to time. A counter affidavit was being filed by the second respondent producing Exts. R2(a) to R2(h). It is stated that even much prior to filing of the writ petition, stall No. 4 of Sakthikularangara side of Neendakara Fishing Harbour has already been allotted to another person in April 2014, which was taken over on 29.04.2014 in terms of the order of the Government. The factual position leading to taking over and handing over is explained in several paragraphs, with reference to the documents produced. It is also pointed out that the allotment was originally made in the name of father of the petitioner and that substantial amount was due to be cleared by father. Though father of the petitioner expired, the said fact was not brought to the notice of the concerned respondent at any point of time. The version of the respondents, as discernible from paragraph 9, is to the following effect.

9. That is, while issuing the Ext. R2 (e) notice, the father of the petitioner was to remit an amount of Rs.41,593/- as on 28.02.2014 and the death of the father was not informed to the Department by the petitioner at any time except through this Writ Petition. No response was received to the above notice and on local enquiry it was revealed that the father of the petitioner was died during 2010 and the petitioner was not at the shop instead someone

else was in the shop. Hence the proposal was submitted to Government and Government issued G.O.(Rt) No. 185/14/F&PD dated 28.02.2014 allotting the shop No. 4 allowed to the father of the petitioner to Smt. Mary Henry, Poottumvathukkal veedu, Sakthikulangara, a widow. A copy of the Government order is produced herewith and marked as **Exhibit R2(f)**. In terms of the Government Order above, the 2nd respondent initiated action to cancel the shop allotted to the father of the petitioner as per Order No. E2 339/10/EE dated 28.04.2014 and is produced herein with and marked as **Exhibit R2(g)**. Smt. Mary Henry, a widow has taken over the shop on 29.04.2014. A copy of the acknowledgment signed by the allottee taking over the shop No. 4 at Sakthikulangara side is produced herewith and marked as **Exhibit R2(h)**. That is, the interim order passed by this Hon'ble Court on 15.07.2014 was unable to be complied with by the respondents since the allotment of the shop and taking over of the allotted shop was over 29.04.2014. Here it is to be noted that Ext. P9 representation attached with the writ petition is dated 10.06.2014, which is much later than the allotment of shop No. 4 at Sakthikulangara as per Ext. R2(g) & (h) which are dated 28.04.2014 and 29.04.2014

3. The petitioner has filed reply affidavit as well and in paragraph 2 the petitioner has stated that Smt. Mary Henry (i.e.

person to whom stall No. 4 was allotted) has sublet the premises to one Sri. Baheer Pookunju, who is now conducting the business therein. In view of the above admitted fact, this Court finds that the relief sought for is not liable to be entertained. It is also to be noted that the petitioner has not chosen to implead either Smt. Mary Henry or Sri. Basheer Pookunju in the party array.

In the above circumstances, interference is declined and the writ petition is dismissed, however without prejudice to the rights and liberties of the petitioner to pursue other appropriate remedy, if any, in accordance with law.

Sd/-

**P. R. RAMACHANDRA MENON,
(JUDGE)**

kmd