

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

WP(C).No. 18662 of 2014 (G)

PETITIONER :

**T.K.SATHYABABU, AGED 55 YEARS,
S/O KRISHNAN, "ARUVIS", T.C.7/1629
ROSE GARDENS 227, PANGUMMOODU,
MEDICAL COLLEGE (P.O), THIRUVANANTHAPURAM - 695 024.**

BY ADV. SRI.G.S.REGHUNATH

RESPONDENTS :

- 1. CITY CORPORATION OF THIRUVANANTHAPURAM,
THIRUVANANTHAPURAM - 695 001
REPRESENTED BY ITS SECRETARY.**
- 2. HEALTH INSPECTOR, (KANNAMOOLA WARD),
CORPORATION OF THIRUVANANTHAPURAM,
THIRUVANANTHAPURAM - 695 001.**
- 3. SHARAFUDEEN
S/O SHAHUL HAMEED, NAZAR MANZIL, KAMALEESWARAM,
MANNACAUD (P.O), THIRUVANANTHAPURAM - 695 009.**
- 4. STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
LOCAL SEFL GOVERNMENT INSTITUTIONS, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695 001.**

**R1 TO R2 BY SRI.N.NANDAKUMARA MENON SENIOR ADVOCATE
BY ADV. SRI.P.K.MANOJKUMAR,SC, TVPM CORPORATION
R3 BY ADVS. SRI.M.R.SUDHEENDRAN
SRI.S.I.SHAH
R4 BY GOVERNMENT PLEADER SRI. RAFAEEK V.K.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 18-02-2015, THE COURT ON 22-05-2015 DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1 : TRUE COPY OF THE SKETCH SHOWING THE GROUND FLOOR OF THE BUILDING AND THE LOCATION OF ELECTRIC AND WATER METERS.
- EXHIBIT P2 : TRUE COPY OF THE RENT AGREEMENT DATED 30.01.2012 EXECUTED BETWEEN THE PETITIONER AND THE 3RD RESPONDENT.
- EXHIBIT P3 : TRUE COPY OF THE PLAINT IN OS NO.1584/2013 DATED 27.10.2013 ON THE FILE OF THE MUNSIF'S COURT, TRIVANDRUM.
- EXHIBIT P4 : TRUE COPY OF THE INJUNCTION APPLICATION IN OS NO.1584/2013 DATED 27.10.2013.
- EXHIBIT P5 : TRUE COPY OF THE COUNTER AFFIDAVIT IN IA NO.7676/2013 IN OS NO.1584/2013 DATED 13.11.2013.
- EXHIBIT P6 : TRUE COPY OF THE OBJECTION SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT DATED 08.11.2013.
- EXHIBIT P6(a) : TRUE COPY OF THE RECEIPT FROM THE CORPORATION DATED 08.11.2013.
- EXHIBIT P7 : TRUE COPY OF THE PETITION SUBMITTED TO THE 2ND RESPONDENT BY THE PETITIONER DATED 30.10.2013.
- EXHIBIT P8 : TRUE COPY OF THE PETITION SUBMITTED BY PETITIONER TO THE FOOD AND SAFETY OFFICER, THIRUVANANTHAPURAM DATED 19.11.2013
- EXHIBIT P9: TRUE COPY OF THE JUDGMENT DATED 10.12.2013 IN WP(C) NO.30245/13
- EXHIBIT P10 : TRUE COPY OF THE ORDER OF THE 1ST RESPONDENT DATED 08.01.2014.
- EXHIBIT P11 : TRUE COPY OF THE ORDER OF THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS IN IA NO.241/2014 IN APPEAL NO.147/2014 DATED 06.02.2014.
- EXHIBIT P12 : TRUE COPY OF THE IA NO.548 OF 2014 FOR IMPEADING IN APPEAL NO.147/2014 DATED 28.02.2014 ON THE FILE OF THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS.
- EXHIBIT P13 : TRUE COPY OF THE WRITTEN STATEMENT SUBMITTED BY THE PETITIONER IN APPEAL NO.147/2014 ON THE FILE OF THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTION DATED 07.05.2014.
- EXHIBIT P14 : TRUE COPY OF THE ORDER DATED 25.06.2014 IN APPEAL NO.147/2014 OF THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS.
- EXHIBIT P15: COPY OF THE ORDER DT 13/1/2015 ON I.A.NO. 6417/2014 IN OS NO. 1541/2014 OF THE MUNSIF'S COURT, THIRUVANANTHAPURAM.

RESPONDENT(S)' EXHIBITS :

- EXT.R3(1): COPY OF THE ORDER DT 7/3/2014 I IA 7676/13 IN OS NO. 1584/13.
- EXT.R3 (2): COPY OF THE NOTICE DT 26/11/2013.
- EXT.R3(3): COPY OF THE FIR DT 17/7/2014.
- EXT.R3(4): COPY OF THE RECEIPT ACKNOWLEDGING THE APPEAL DT 25/7/2014.
- EXT.R3(5)(a): SCANNED COPY OF THE RECEIPT DT 5/3/2012.
- EXT.R3(5)(b): SCANNED COPY OF THE RECEIPT DT 15/8/2013.
- EXT.R3(6): COPY OF THE RECEIPT DT 16/7/2014 ISSUED BY THE R1 CORPORATION.

//TRUE COPY//

P.A. TO JUDGE

bp

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 18662 of 2014

Dated this the 22nd day of May, 2015

J U D G M E N T

Aggrieved by the inaction on the part of the 1st respondent as ordered in Ext.P10, the petitioner has come up before this Court.

2. The petitioner is the owner of the building bearing No.T.C.2/3193 within the respondent corporation. He agreed to rent out the said building to the 3rd respondent. The petitioner alleges that no rent deed or consent deed to conduct a restaurant was executed in favour of the 3rd respondent. Therefore, the 1st respondent has not issued any trade licence to the 3rd respondent and refused his application for trade licence. The 3rd respondent filed an appeal before the Tribunal for Local Self Government Institutions and obtained a stay of the order passed by the respondent corporation. On the strength of the stay order passed by the Tribunal, the 3rd

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respondent was conducting a non-vegetarian restaurant in T.C.2/3193 without any licence and without any right. The appeal before the Tribunal was dismissed on 25.06.2014. The 1st respondent after hearing the petitioner and the 3rd respondent, passed an order refusing licence to the 3rd respondent as per Ext.P10. The petitioner's grievance is that no action has been taken by the 1st respondent as ordered in Ext.P10 in spite of the dismissal of the appeal by the learned Tribunal. It is with this background, the petitioner has come up before this Court.

3. In the counter affidavit filed by the 3rd respondent, it is contended that there is no provision for a consent deed for permitting him to conduct the restaurant. It is contended that he has paid a sum of ₹10,00,000/- as advance and is paying a sum of ₹55,000/- as monthly rent. The rent deed was signed only after accepting the advance amount. After the interior works were done, the petitioner demanded to increase the

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advance deposit to ₹75,00,000/- and threatened that the 3rd respondent would be evicted from the building if the amount is not paid. There was attempt of forcible eviction and the 3rd respondent filed OS No.1584/2013; and after hearing, an interim injunction has been granted restraining the petitioner and his agents from forcibly evicting the 3rd respondent from the rented building. Therefore, he prayed for a dismissal of the writ petition.

4. Arguments have been heard.

5. The question regarding the right of parties over the premises need not be gone into in this writ petition as separate forums are provided for that. The only grievance of the petitioner is that as the 1st respondent corporation has already passed Ext.P10, the respondent corporation is bound to close down the business run by the 3rd respondent in the premises. It is settled law that licence to conduct business in the premises within the local limits of the concerned local authority can be obtained only if the owner of the premises gives consent

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to the same. According to the 3rd respondent, he is the lessee of the premises and he has approached the local civil court for an injunction against forcible eviction. The petitioner has produced Ext.P15 order passed by the Additional Munsiff's Court - I, Thiruvananthapuram in IA No.6417/2014 in OS No.1541/2014, which was filed by the 3rd respondent. By Ext.P15, the learned Munsiff has found that the petitioner therein is not entitled to get the injunction as prayed for and it was found that if an order of injunction, as prayed for, is granted, it would be against the order and spirit of the directions and orders given by this Court as well as the Tribunal for Local Self Government Institutions. Admittedly, the appeal filed before the Tribunal for Local Self Government Institutions has been dismissed; and therefore, the 1st respondent is bound to implement the directions in Ext.P10.

In the result, the writ petition is allowed.

The 1st respondent is directed to proceed against the 3rd respondent for conducting the restaurant in the

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building without any licence from the 1st respondent. The 3rd respondent is directed not to conduct any restaurant in the premises of the petitioner detailed in Ext.P10 until a trade licence is obtained from the 1st respondent and if the 3rd respondent fails in obtaining the licence, the 1st respondent shall take actions detailed in Ext.P10 forthwith.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-