

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

WP(C).No. 19009 of 2014 (A)

PETITIONER(S):

**LISSY JOSHY, 52 YEARS,
W/O LATE M. JOSHY, MULLASHERIL HOUSE, PERAPOOR MURI,
ARANMULA P.O. - 689 533, KOZHENCHERY TALUK,
PATHANAMTHITTA DISTRICT.**

**BY ADVS.SRI.ABRAHAM SAMSON
SMT.LOVELY SAMSON**

RESPONDENT(S):

- 1. PATHANAMTHITTA MUNICIPALITY,
PATHANAMTHITTA DISTRICT, PIN:689 645.**
- 2. THE MUNICIPAL SECRETARY,
PATHANAMTHITTA MUNICIPALITY, PATHANAMTHITTA DISTRICT,
PIN:689 645.**
- 3. RAJAMMA A. NAIR,
GOKULAM HOUSE, KODUMTHATRA MURI,
PATHANAMTHITTA VILLAGE
PATHANAMTHITTA DISTRICT-689 645.**

**R1 & 2 BY ADV. SRI.V.K.SUNIL
R3 BY ADVS. SRI.GEORGE ABRAHAM PACHAYIL
SMT.JEBI MATHER HISHAM**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
13-02-2015 THE COURT ON 20-05-2015, DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 19009 of 2014 (A)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF RENT DEED DATED 17.2.2003.

EXHIBIT P2: TRUE COPY OF THE CONSENT LETTER DATED 18.2.2003.

**EXHIBIT P3: TRUE COPY OF PLAINT AND INJUNCTION PETITION IN O.S.NO.92/2014
BEFORE THE MUNSIFFS COURT, PATHANAMTHITTA DATED 24.2.2014
PRODUCED AS A SINGLE ENTITY.**

**EXHIBIT P4: TRUE COPY OF THE NOTICE ISSUED BY THE 1ST RESPONDENT
DATED 19.5.2014.**

EXHIBIT P5: TRUE COPY OF THE LICENSE APPLICATION DATED 20.5.2014.

EXHIBIT P6: TRUE COPY OF THE REPLY DATED 23.5.14.

EXHIBIT P7: TRUE COPY OF THE LETTER INFORMATION DATED 27.5.2014.

EXHIBIT P8: TRUE COPY OF THE NOTICE DATED 3.7.2014.

EXHIBIT P9: TRUE COPY OF THE DETAILED REPLY SENT DATED 3.7.2014.

EXHIBIT P10: TRUE COPY OF THE REGD POST RECEIPT DATED 4.7.2014.

EXHIBIT P11: TRUE COPY OF THE REGD POST A/D CARD DATED 4.7.2014.

**EXHIBIT P12: TRUE COPY OF THE REPRESENTATION GIVEN BY HAND TO THE
MUNICIPAL SECRETARY DATED 18.7.2014**

**EXHIBIT P13: TRUE COPY OF THE NOTICE OF SEAL ALONG WITH THE LIST OF ITEMS
SEALED DATED 19.7.2014.**

**EXHIBIT P14: TRUE COPY OF THE AUTHORITY LETTER AUTHORIZING THE HEALTH
SUPERVISOR TO SEAL THE SHOP ROOM DATED 18.7.2014.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 19009 of 2014

Dated this the 20th day of May, 2015

J U D G M E N T

The decision of the respondent municipality for sealing the shop room of the petitioner and the consequential implementation of the same are under challenge in this writ petition.

2. The petitioner is seeking a direction to the 1st respondent to open the shop room in Ward No.30/739 within the local limits of the respondent municipality and also for a direction to consider and pass orders on Ext.P5 licence application dated 20.05.2014. The petitioner alleges that she is a tenant of the aforesaid shop room belonging to the 3rd respondent and the tenancy commenced on 17.02.2003. According to the petitioner, since the aforesaid date, she was in possession of the aforesaid shop room, wherein she was conducting a public telephone booth, which is the sole source of her

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livelihood. According to her, she is a widow and her son is a student. The grievance of the petitioner is that the respondent municipality has unilaterally sealed the petitioner's shop room on the ground that she has not obtained licence for running the business. This, according to the petitioner, was on the basis of a complaint by the 3rd respondent. As result of that, the petitioner is factually evicted and left in penury. According to her, what could not be done directly, is achieved indirectly; and the beneficiary is the 3rd respondent.

3. In the counter affidavit filed by the 3rd respondent, she contended that she gave a space below the staircase of her building to the petitioner to conduct an STD booth in the year 2003 as per Ext.P1. She also admitted that she has given Ext.P2 consent in the year 2003 to start the STD booth. This was on the understanding that the petitioner would apply for licence for running her proposed business. However, the

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petitioner gradually installed a fax machine and a photocopier machine in the given space. To this, the 3rd respondent did not raise any objection believing that it would serve as an additional source of income of the petitioner. It is also contended that throughout these years, the petitioner made her to believe that she had procured licence for running the business. The petitioner never renewed the rent agreement after 2003 and she defaulted payment of rent from 2013. When the 3rd respondent demanded rent along with arrears, the petitioner filed OS No.92/2014 against forcible eviction. In that case, the court has passed an interim injunction. The 3rd respondent pleaded ignorance regarding the petitioner's application before the respondent municipality for licence. The 3rd respondent has made clear that she no more wants to renew the rent agreement and to let the space to the petitioner for non-payment of rent and its arrears. She also stated that she did not commit anything in violation of the injunction

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order passed by the Munsiff's Court, Pathanamthitta.

4. In the counter affidavit filed by the respondent municipality, it was contended that the petitioner had never obtained any licence for the conduct of any business in the shop room. On the basis of the report of the Health Supervisor, Ext.P4 notice was issued to the petitioner. The respondent municipality has not taken any step in haste. However, it has given an opportunity to the petitioner to apply for and obtain licence for the continued operation of her business. Though the petitioner submitted an application for licence, she has not produced the required documents in support of her claim. According to them, the landlord has given consent only to conduct the STD booth and no consent was given to conduct a photostat shop. Thus, they prayed for a dismissal of the writ petition.

5. Arguments have been heard.

6. Admittedly, the premises belonging to the 3rd respondent was given on rent to the petitioner as per

Ext.P1; and the 3rd respondent has given NOC for commencing the telephone booth. The case of the 3rd respondent is that she was under the bona fide belief that the petitioner has acquired licence from the respondent municipality. Evidently, and admittedly too, the petitioner has not obtained any licence and only after getting a notice from the respondent municipality, she has submitted Ext.P5 application for licence.

7. The learned counsel for the petitioner relied on a decision of the Division Bench of this Court in **Marimuthu v. Director General of Police** [1999 (3) KLT 662], wherein it was held that the local authority cannot insist upon the production of written consent from the landlord for the purpose of issuance of licence for conducting the business by the tenant holding-over. In this case, the consent by the 3rd respondent, who is the owner, was given for the conduct of telephone booth. Even for conducting the telephone booth, no licence has been obtained. Now, the petitioner has requested for

licence for installing a photocopier machine as well as fax machine. The stand taken by the respondent municipality is that no consent has been given by the 3rd respondent for the said business.

8. This Court in **Alexander P.C. v. Mavelikkara Municipality & Others** [2014 (3) KHC 131] has observed that the owner of the building has right to see what business is going on in his premises and whether that business is detrimental to his interest with respect to the building concerned. There, the tenant started a vegetable shop in the tenanted premises with the consent of the landlord; and later, he started a restaurant, for which, the municipality demanded production of consent from the landlord. When this was challenged before the Tribunal for Local Self Government Institutions, the Tribunal held that the tenant obtained a deemed licence. This Court found that the municipality in its discretion found that consent of landlord is necessary for grant of licence for valid reasons.

9. Here, the case of the petitioner stands on a different footing. The petitioner has taken a licence earlier for the conduct of the telephone booth. On the basis of Ext.P2 consent, no further consent is required for obtaining licence for the telephone booth. Later, the petitioner ventured to run the business without obtaining a licence from the municipality and, thereafter, continued to run it without any such licence for more than a decade thereby avoiding payment of licence fees, other fees, taxes and cesses payable to the respondent municipality. Still, later, the petitioner submitted Ext.P5 application for installing photocopier machine without the consent of the 3rd respondent, who is the owner of the building. The respondent municipality maintained the stand that it cannot be processed without the consent of the 3rd respondent. It has to be noted that the petitioner is a tenant by holding-over on the basis of Ext.P1 rent agreement. Therefore, she has every right to continue in the shop room till she is legally evicted. Admittedly, a

civil suit is pending before a competent civil court against forcible eviction. There is a valid consent from the 3rd respondent to conduct the STD booth. In the counter affidavit filed by the 3rd respondent, it is admitted that she did not raise any objection against the installation of the photocopier by the petitioner believing that it would serve as an additional source of income to the petitioner. That means, there was implied consent from the 3rd respondent for the installation of the photocopier. Therefore, the respondent municipality is bound to consider the request of the petitioner for licence to run the telephone booth and photocopy unit if the same is otherwise in order.

Therefore, the writ petition is disposed of as follows;

- The petitioner is permitted to approach the respondent municipality with a fresh proper application for licence to conduct the telephone booth and photocopying unit on the strength of Ext.P1 rent agreement and Ext.P2 consent and the deemed consent of the 3rd respondent.

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- On submitting the application within a period of one month from the date of receipt of a copy of this judgment, the same shall be processed and licence for running the telephone booth and photocopying unit shall be granted to the petitioner if the same is otherwise in order.
- On getting the said licence, it shall be open to the petitioner to conduct the telephone booth and photocopying unit till she is legally evicted by the 3rd respondent through a competent proceeding.
- It is hereby made clear that for starting any other business within the tenanted premises, licence would be required, which shall be given only if a valid consent by the 3rd respondent is produced.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-