

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

WP(C).No. 22553 of 2013 (T)

PETITIONER(S) :

P.SANTHAKUMARY AMMA,
BRINDAVAN GARDENS, HOUSE NO 1, SECOND MOLE STONE,
MUSALIYAR NAGAR, KILIKOLLOOR, KOLLAM - 691 004.

BY ADVS.SRI.S.SREEKUMAR (SR.)
SRI.LEO GEORGE
SRI.T.T.RAKESH.

RESPONDENT(S) :

1. KOLLAM CORPORATION,
REPRESENTED BY ITS SECRETARY, KOLLAM CORPORATION,
KOLLAM-691 001.
2. THE SECRETARY,
KOLLAM CORPORATION, KOLLAM-691 001.
3. VAHID,
S/O.KUNJU MYTHEEN KUNJU, KURUTTAZHAKATHU VEEDU
MANAKATTU CHERRY, VADAKKEVILA VILLAGE, KOLLAM - 691 001.
4. KABEER,
S/O. KUNJU MYTHEEN KUNJU, KURUTTAZHAKATHU VEEDU,
MANAKATTU CHERRY, VADAKKEVILA VILLAGE, KOLLAM - 691 001.
5. JALALUDEEN,
S/O KUNJU MYTHEEN KUNJU, KURUTTAZHAKATHU VEEDU,
MANAKATTU CHERRY, VADAKKEVILA VILLAGE, KOLLAM - 691 001.
6. NAZEEMA,
W/O LATE ABDUL BASHEER, SUFINA MANZIL, ASHRAMAM CHERRY,
KOLLAM - 691 001.
7. A. SULFI,
SUFINA MANZIL, ASHRAMAM CHERRY,
KOLLAM - 691 001. (R7 IS DELETED FROM THE PARTY ARRAY AS
PER ORDER DATED 17.10.2013 IN IA NO.13383/2013).
8. SUFINA,
SUFINA MANZIL, ASHRAMAM CHERRY, KOLLAM - 691 001.

R4&5 BY ADV. SRI.K.SUBASH CHANDRA BOSE,
R3 6 & 8 BY ADV. SRI.R.SURAJKUMAR,
R3,R6 & 8 BY ADV. SRI.SUNIL J.CHAKKALAKAL,
R3,R6 & 8 BY ADV. SMT.V.BEENA &
R1 & 2 BY SRI.M.K.CHANDRA MOHAN DAS, SC,KOLLAM MPT.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 20-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXHIBIT P1 TRUE COPY OF THE DEALER AGREEMENT ENTERED INTO BETWEEN GOPINATHAN PILLAI AND INDIAN OIL CORPORATION DATED 13-09-1967.0
- EXHIBIT P2 TRUE COPY OF THE RENEWED LICENCE ISSUED FROM VADAKKEVILA GRAMA PANCHAYATH IN RESPECT OF THE PETROLEUM OUTLET RUN BY THE PETITIONER DATED 04-10-1989.
- EXHIBIT P3 TRUE COPY OF THE RECEIPT ISSUED FROM VADAKKEVILA GRAMA PANCHAYATH EVIDENCING PAYMENT OF LICENCE FEE IN RESPECT OF THE PETROLEUM OUTLET RUN BY THE PETITIONER FOR THE PERIOD 1995-96 DATED 31-10-1995.
- EXHIBIT P3 (A) TRUE COPY OF THE RECEIPT ISSUED FROM VADAKKEVILA GRAMA PANCHAYATH EVIDENCING PAYMENT OF LICENCE FEE IN RESPECT OF THE PETROLEUM OUTLET RUN BY THE PETITIONER FOR THE PERIOD 2000-01 DATED 30-09-2000.
- EXHIBIT P4 TRUE COPY OF THE PLAINT IN O.S NO 761/2010 BEFORE THE SUB COURT, KOLLAM DATED 19-01-2009.
- EXHIBIT P5 TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER AND OTHER IN O.S NO 761/2010 BEFORE THE SUB COURT, KOLLAM DATED 24-10-2011.
- EXHIBIT P6 TRUE COPY OF THE RECEIPT ISSUED BY THE CORPORATION EVIDENCING PAYMENT OF PROPERTY TAX IN RESPECT OF BUILDING IN THE PROPERTY DATED 27-03-2013.
- EXHIBIT P7 TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER FOR THE RENEWAL OF LICENCE BEFORE THE CORPORATION DATED 31-08-2013.
- EXHIBIT P8 TRUE COPY OF THE COVERING LETTER SUBMITTED BY THE PETITIONER TO THE CORPORATION DATED 31-08-2013.
- EXHIBIT P9 TRUE COPY OF THE NO OBJECTION LETTER SUBMITTED ALONG WITH EXHIBIT P7 APPLICATION FOR RENEWAL DATED 31-08-2013.
- EXHIBIT P9 (A) TRUE COPY OF THE HEIRSHIP CERTIFICATE OF THE GOPINATHAN PILLAI DATED 19-08-2004.
- EXHIBIT P10 TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE SECRETARY OF THE CORPORATION DATED 02-09-2013.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 22553 of 2013

Dated this the 20th day of March, 2015

J U D G M E N T

Aggrieved by the non-consideration of Exts.P7 and P8 applications submitted by the petitioner for renewal of the licence before the respondent corporation, the petitioner has come up before this Court.

2. The petitioner's husband, late P.Gopinathan Pillai, was conducting a petroleum outlet within the limits of the respondent corporation since September 1967 after obtaining licence from Vadakkevila Grama Panchayath. The property, in which the above petroleum outlet is established, belonged to the predecessor of respondents 3 to 8. The petitioner's husband established the petroleum outlet in the said property in terms of a 'tharapattam' agreement and the licence was being renewed from time to time. During the year 2000, Vadakkevila Grama Panchayath was merged with the respondent corporation

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and thereupon, the licence was being renewed from time to time by the corporation.

3. After the death of the petitioner's husband on 09.05.2003, the petitioner is running the above petroleum outlet on behalf of his legal representatives. While so, a dispute arose between the petitioner and the legal representatives of the owner of the property, who died in the meanwhile and there was an attempt to evict the petitioner from the property. Therefore, the petitioner and other legal representatives of late Gopinathan Pillai filed OS No.498/2004 before the Munsiff's Court, Kollam, seeking a decree of permanent prohibitory injunction restraining respondents 3 to 8 from evicting the petitioner from the property otherwise than by due process of law. The suit was dismissed and the matter was taken in appeal before the District Court, Kollam. During the pendency of appeal, respondents 3 to 8 filed OS No.761/2010 before the Sub Court, Kollam seeking a decree of mandatory injunction directing the

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petitioner and others to surrender vacant possession of the property. The petitioner and others have filed a written statement in the said suit contending inter alia that they are entitled to protection under Section 106 of the Transfer of Property Act and that therefore, they are not liable to be evicted from the property. The petitioner alleges that in view of the pendency of the dispute, the licence in respect of the petroleum outlet is not renewed by the corporation since 2005-06 at the instance of respondents 3 to 8.

4. The petitioner submitted Ext.P7 application for renewal of licence of the petroleum outlet at the Vadakkevila Zonal Officer of the corporation, which was not considered on the ground that the petitioner has not produced consent in writing from the land owners of the property. According to the corporation, without the consent of the owners of the property in writing, application for renewal of licence cannot be considered by them. Therefore, the petitioner submitted Ext.P10

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representation before the Secretary of the Corporation seeking directions to the Zonal Office of the Corporation to consider the application for renewal of licence submitted by the petitioner without insisting for the consent of the landlords, which is not being considered by the Secretary of the Corporation. The petitioner further alleges that she is given to understand that at the instance of respondents 3 to 8, steps are being taken to stop the functioning of the petroleum outlet run by the petitioner without notice to her. It is with this background, the petitioner has come up before this Court.

5. In the statement filed by the respondent corporation, it was stated that on verification of the relevant records with them, it has been found that licence has been issued to the husband of the petitioner in the year 2001-02 after the formation of the corporation. Thereafter, the petitioner has submitted an application for renewal of the licence only on 31.08.2013. As there was a long gap between the issue of licence and the

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application for renewal of the licence, the corporation asked to furnish adequate documents. It is further stated that as the licensee is no more, the petitioner's request is liable to be examined to see whether adequate documents are with her, entitling to continue the licence in her name. According to the respondent corporation, the contention that Ext.P7 application for renewal of the licence of the petroleum outlet should be renewed unconditionally, is untenable.

6. Today, when the matter came up for hearing, the learned counsel for the petitioner confined his argument to the limited prayer for a direction to the respondent corporation to consider and pass appropriate orders on Exts.P7 & P8.

In the light of the above submission, the writ petition is disposed of directing the respondent corporation to consider and pass appropriate orders on Exts.P7 & P8 submitted by the petitioner after affording the petitioner, respondents 3 to 8 and other affected parties, if any, an

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opportunity of being heard. This exercise shall be completed within a period of one month from the date of receipt of a copy of this judgment.

Till that exercise is completed, no coercive action shall be taken against the petitioner and the existing state of affairs shall be continued.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-