

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

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

WP(C).No. 25084 of 2013 (I)

PETITIONER:

K.G RAVEENDRAN, AGED 56 YEARS
S/O.GOVINDA MENON, KALLAMPARAMBIL HOUSE, THEKKUMBHAGOM
THRIPUBNITHURA, ERNAKULAM

BY ADV. SRI.C.K.GOVINDAN

RESPONDENTS:

1. THE CORPORATION OF KOCHI
REPRESENTED BY IT'S SECRETARY
OFFICE OF THE KOCHI CORPORATION, ERNAKULAM
2. HEALTH OFFICER
OFFICE OF THE KOCHI CORPORATION, ERNAKULAM

R1 BY ADV. SRI.PRAVEEN K. JOY
R BY SRI.P.K.SOYUZ,SC,COCHIN CORPORATION

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20-03-2015, ALONG WITH WPC. 18204/2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) .No. 25084 of 2013 (I)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1 COPY OF INTERIM ORDER IN WPC NO 18204 OF 2012 OF THE
HON'BLE KERALA HIGH COURT ERNAKULAM DATED 02-08-2012.

EXHIBIT P2 COPY OF ORDER IN WPC NO 18204 OF 2012 OF THE HON'BLE HIGH
COURT,ERNAKULAM DATED 15-03-2013.

EXHIBIT P3 COPY OF RENEWAL APPLICATION DATED 14-02-2013 FILED BY THE
PETITIONER BEFORE THE 2ND RESPONDENT.

EXHIBIT P4 COPY OF COMMUNICATION ISSUED BY THE SECOND RESPONDENT
DATED 08-03-2013.

EXHIBIT P5 COPY OF THE LEGAL NOTICE DATED 25-03-2013 ISSUED TO THE
RESPONDENTS.

EXHIBIT P6 COPY OF THE POSTAL ACKNOWLEDGEMENT CARD SIGNED BY THE
FIRST RESPONDENT DATED 27-03-2013.

EXHIBIT P7 COPY OF THE POSTAL ACKNOWLEDGEMENT CARD SIGNED BY THE
SECOND RESPONDENT DATED 27-03-2013.

RESPONDENT'S EXHIBITS: NIL

TRUE COPY

PA TO JUDGE

Scl.

DAMA SESHADRI NAIDU, J.

W.P.(C) No. 18204 of 2012

&

W.P.(C) No.25084 of 2013

Dated this the 20th day of March, 2015.

COMMON JUDGMENT

Briefly stated, the petitioner established a workshop in 1983 after obtaining necessary trade licence from the first respondent Corporation. The petitioner being a tenant, initially obtained the vacant land on lease from the third respondent, the ostensible landlord of the property, and with his consent, he raised a structure to start his business of two-wheeler workshop.

2. Later, there arose certain disputes between the third respondent, who actually inducted the petitioner into the property, and the fourth respondent concerning the title of the property. It appears eventually the fourth respondent emerged victorious, having been legally declared to be the owner of the property.

3. According to the petitioner, when the fourth

respondent has tried to forcibly dispossess the petitioner, he filed O.S.No.277 of 1996 and invited Ext.P1 judgment whereby the learned Principal Munsiff Court of Ernakulam held that the petitioner should not be evicted without due process of law.

4. It is the singular contention of the petitioner that at the behest of the fourth respondent, the respondent Corporation, which continuously renewed the petitioner's trade licence till recently, insisted on a consent letter from the fourth respondent, the present landlord.

5. As it could be seen from the record, in the wake of the petitioner's inability to produce the consent letter from the fourth respondent, the first respondent Corporation issued Ext.P5 proceedings refusing to renew the trade licence. In Ext.P5, it has also been mentioned that if the petitioner fails to produce the consent letter, the Corporation will close down the business. Aggrieved thereby, the petitioner has filed the present writ petition.

6. Evident is the fact that this court on 2.8.2012 granted an interim stay of all further proceedings pursuant to

Ext.P5.

7. The learned counsel for the petitioner, having elaborately made submissions on the title dispute between third and fourth respondent and also what are said to be the illegal efforts on the part of the fourth respondent to forcibly evict the petitioner, has eventually submitted in terms of Section 492(4) of the Kerala Municipality Act, 1994 ('the Act' for brevity) that there is no legal obligation on the petitioner's part to obtain consent from the landlord for the renewal. In support of his submissions, the learned counsel has placed reliance on ***Marimuthu v. Director General of Police [1999 (3) KLT 662]***.

8. Per contra, the learned Standing Counsel for the first respondent Corporation, in tune with the averments made in the counter affidavit, has strenuously contended that the petitioner has an efficacious alternative remedy under Section 509 of the Act. He has also further submitted that the petitioner, despite sufficient opportunity given by the respondent Corporation, could not obtain the necessary

consent from the fourth respondent, the landlord.

9. It appears that though the fourth respondent has entered appearance through a counsel, no defence has been placed on record.

10. Heard the learned counsel for the petitioner and the learned counsel for the respondent Corporation, apart from perusing the record.

11. It is quite evident that the respondent Corporation has nothing to do with either the title dispute concerning the property in question, or the dispute between the petitioner and the fourth respondent. Even in the wake of objection, if any, on the part of the fourth respondent, the respondent Corporation is required to consider the request of the petitioner for the renewal of licence strictly within the statutory scheme.

12. Indeed, there is sufficient force in the contention of the learned counsel for the petitioner that in terms of Section 492(4), so long as the same person continues to carry on the business and seeks renewal thereof, the respondent

Corporation cannot insist on any consent from the landlord. While the legislature has made mandatory to have the consent at the very beginning, ie; when a person obtained the licence for the first time, it has disputed with the said reasoning at the time of renewal. This court through a plethora of precedents, including *Marimuthu's case (supra)* rendered by the learned Division Bench of this Court, has affirmed the said legal position.

13. Before concluding, I may have to address the contention raised by the learned Standing Counsel that the petitioner has an efficacious alternative remedy under Section 509 of the Act.

14. Indisputably, Section 509 of the Act provides an alternative remedy. The fact, however, remains that the writ petition was filed way back in 2012 and subsequently stood admitted. I am of the considered opinion that at this point of time, the petitioner cannot be non-suited on the ground that an alternative remedy, which is not an absolute bar, but only a self-imposed limitation as far as the public law remedy is

concerned.

In the facts and circumstances, having regard to the respective submissions of the learned counsel for the petitioner and the learned Standing Counsel, this Court hereby sets aside Ext.P5 and directs the first respondent Corporation to consider the petitioner's application afresh for renewal of licence, without insisting on any consent from the fourth respondent. Needless to observe that, since the matter has been pending for the last three years, the respondent Corporation shall expedite the process of considering the petitioner's application and pass appropriate orders thereon at the earliest.

With the above observation, W.P.(C) No.18204 of 2012 stands allowed.

In the light of the disposal of W.P.(C) No.18204 of 2012, W.P.(C) No.25084 of 2013 is closed as having not survived for further consideration.

Sd/-
DAMA SESHADRI NAIDU
JUDGE

W.P.(C) Nos. 18204/2012 & 25084/2013

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Scl.