

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937

WP(C).No. 30911 of 2012 (L)

PETITIONER(S) :

**SUNIL, AGED 44 YEARS,
S/O.GANGADHARAN, AMPOLIYIL VEEDU, KADAKKAVOOR VILLAGE,
CHIRAYINKEEZHU TALUK, THIRUVANANTHAPURAM DISTRICT.**

**BY ADVS.SRI.M.R.RAJESH
SRI.K.M.ALEXANDER**

RESPONDENT(S) :

- 1. ATTINGAL MUNICIPALITY,
REPRESENTED BY THE SECRETARY, MUNICIPALITY OFFICE,
ATTINGAL, THIRUVANANTHAPURAM DISTRICT, PIN- 695 301.**
- 2. THE SECRETARY,
ATTINGAL MUNICIPALITY, PIN- 695 101.**
- 3. ABDUL RAHIM,
S/O.MYTHEEN KUNJU, 'SHA NILAYAM', PATTATHIL MURI,
MELTHONNAKKAL VILLAGE, THIRUVANANTHAPURAM TALUK,
THONNAKKAL P.O., THIRUVANANTHAPURAM DISTRICT, PIN- 695 317.**

**R1 & R2 BY ADV. SRI.AYYAPPAN SANKAR
R3 BY ADVS. SRI.R.T.PRADEEP
SRI. S.SUNIL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 23-09-2015, THE COURT ON 05-10-2015 DELIVERED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXHIBIT-P1: A TRUE COPY OF THE RECEIPT DATED 17.07.2012 ISSUED BY THE ACCOMMODATION CONTROLLER/TAHSILDAR, CHIRAYINKEEZHU NO.D1/39865/12.**
- EXHIBIT-P2: A TRUE COPY OF THE PLAINT IN O.S.NO.186/2012 BEFORE THE MUNSIF COURT, ATTINGAL.**
- EXHIBIT-P3: A TRUE COPY OF THE PETITION FOR INTERIM INJUNCTION, I.A.NO.536/2012 IN EXT.P1 SUIT.**
- EXHIBIT-P4: A TRUE COPY OF THE COMMISSION REPORT DATED 05/09/2012.**
- EXHIBIT-P5: A TRUE COPY OF THE INTERIM INJUNCTION ORDER DATED 28.07.2012 ISSUED BY THE BEFORE THE MUNSIF COURT, ATTINGAL IN EXT.P3 PETITION ALONG WITH THE PROCESS SERVERS' REPORT.**
- EXHIBIT-P6: A TRUE COPY OF THE PETITION FILED BEFORE THE 2ND RESPONDENT DURING AUGUST 2012.**
- EXHIBIT-P7: A TRUE COPY OF THE PETITION DATED 22.08.2012 FILED BEFORE THE 2ND RESPONDENT.**
- EXHIBIT-P8: A TRUE COPY OF THE PETITION DATED 23.08.2012 SUBMITTED TO THE STATE POLICE CHIEF.**
- EXHIBIT-P9: A TRUE COLOR PHOTOSTAT COPY OF THE PHOTOGRAPH SHOWING THE DUMPING OF METAL IN FRONT OF THE BAKERY.**
- EXHIBIT-P10: A TRUE COPY OF THE PETITION DATED 24.08.2012 SUBMITTED TO THE SUB INSPECTOR OF POLICE ALONG WITH THE ACKNOWLEDGMENT OF THE SAME.**
- EXHIBIT-P11: A TRUE COPY OF THE JUDGMENT DATED 04/09/2012 IN W.P.(C).NO.20361/2012.**
- EXHIBIT-P12: A TRUE COPY OF THE FILE P.H./7505/2012 OF THE 1ST RESPONDENT.**
- EXHIBIT-P13: A TRUE COPY OF THE NOTICE NO.PH-12816/12 DATED 19.09.2012.**
- EXHIBIT-P14: A TRUE COPY OF THE RECEIPT DATED 10.10.2002 EXECUTED BY THE FATHER OF THE 3RD RESPONDENT MAITHEEN KANNU HAJI.**
- EXHIBIT-P15: A TRUE COPY OF THE RECEIPT NO.027235 DATED 31.03.2005 ISSUED BY THE 2ND RESPONDENT.**

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**EXHIBIT-P16: A TRUE COPY OF THE RECEIPT NO.027234 DATED 31.03.2005
ISSUED BY THE 2ND RESPONDENT.**

**EXHIBIT-P17: A TRUE COPY OF THE PETITION U/SEC.509 OF THE ACT FILED BY
THE PETITIONER.**

**EXHIBIT-P18: A TRUE COPY OF THE NOTIFICATION NO.PH12906/2011
DATED 31.11.2011 OF THE 1ST RESPONDENT.**

EXHIBIT-P19: NIL

EXHIBIT-P20: NIL

**EXHIBIT-P21: A TRUE COPY OF THE INFORMATION GIVEN FROM
THE ELECTRICAL SECTION OF THE KSEB ATTINGAL
DATED 02.05.2013 NO.10/ATL/ES/2013-14 TO THE PETITIONER
UNDER THE RIGHT TO INFORMATION ACT.**

RESPONDENT(S)' EXHIBITS :

**EXHIBIT R1(A): TRUE PHOTOCOPY OF SHOW CAUSE NOTICE
DATED 10.09.2012 ISSUED TO THE 3RD RESPONDENT.**

**EXHIBIT R1(B): TRUE PHOTOCOPY OF CONFIRMATION NOTICE
DATED 19.09.2012 ISSUED TO THE 3RD RESPONDENT.**

EXHIBIT R1(C): TRUE PHOTOCOPY OF AUTHORIZATION DATED 08.10.2012.

EXHIBIT R1(D): TRUE PHOTOCOPY OF MAHASAR DATED 08.10.2012.

**EXHIBIT R1(E): TRUE PHOTOCOPIES OF DECISION NO.7 DATED 07.01.2013
OF MUNICIPAL COUNCIL AND NOTICE DATED 19.01.2013.**

**EXHIBIT R1(F): TRUE PHOTOCOPIES OF OFFICE NOTES AND
COMMUNICATIONS FROM 28.01.2013 TO 30.01.2013.**

**EXHIBIT R3(A): TRUE COPY OF RENT DEED DATED 10.01.2008 WITH
NOUSHAD.**

**EXHIBIT R3(B): TRUE COPY OF DEED DATED 20.07.2012 REGARDING
HANDING OVER OF POSSESSION OF SHOP ROOMS BY
THE TENANT.**

**EXHIBIT R3(C): TRUE COPY OF REPRESENTATION DATED 23.08.2012
SEEKING RELEASE OF SEIZED ARTICLE.**

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**EXHIBIT R3(D): TRUE COPY OF WRITTEN STATEMENT DATED 18.09.2012
IN O.S.NO.186/2012 FILED BY THE 3RD RESPONDENT
BEFORE SUB COURT, ATTINGAL.**

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.30911 of 2012

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Dated this the 5th day of October, 2015

JUDGMENT

Ext.P13 notice issued by the respondent municipality by which, the petitioner was asked to close down his business run within the local limits of municipality in the shop room owned by the third respondent, is under challenge.

2. The petitioner alleges that he is a businessman and was conducting sale of fruits under the name and style "G.S.S Fruits" in the shop room bearing Door No.II/834 and a bakery by name "Best Bakery" in the shop room bearing Door No.II/163 on the ground floor of the building owned by the third respondent. The petitioner further alleges that the third respondent wanted to evict him at any cost and for the same, the rent for the fruit stall was asked to be hiked to ₹2,000/- per day the rent for the bakery was asked to be hiked to ₹1,000/- per day, to which the petitioner did not yield. He alleges that the elder brother of the third respondent in collusion with municipal authorities, closed down his bakery and the respondent municipality refused to accept the licence from him stating that he is not a tenant. The State Electricity Board Officials were also won over leading to the disconnection of the electric supply to the tenanted premises.

According to the petitioner, he has moved the Accommodation Controller under the Rent Control Act and the proceedings for restoration of the amenities are pending.

3. The petitioner's case is that he is a tenant under the third respondent and as the third respondent disputed the status of the petitioner as tenant, he filed O.S No.186 of 2012 before the Munsiff's Court, Attingal for a declaration that he is a tenant and also for a permanent prohibitory injunction restraining the third respondent and his men from causing obstructions to the petitioner's peaceful occupation of the shop rooms, and from evicting the petitioner otherwise than by due process of law. The petitioner points out that the Munsiff's Court has granted an ad-interim injunction against forceful eviction on 28.7.2012. The petitioner further alleges that the elder brother of the third respondent used to come to the petitioner's shop and make scenes in front of the petitioner's customers. The petitioner further alleges that at about 12 noon on 21.8.2012, he along with the office bearers of the Vyapari Vyavasayi Samithi had a discussion with the C.I of Police and consequently, he filed W.P(C) No.20361 of 2012 complaining Police harassment, which was disposed of by this Court by judgment dated 4.9.2012 recording the submission of the Government Pleader that there would not

be any interference by the Police in the civil dispute between the parties. The petitioner points out that the income from the aforesaid business is the sole source of his livelihood and now it is dwindled because of the illegal closure of the bakery.

4. The petitioner further alleges that the third respondent is trying his level best to close down the fruit stall also in collusion with the second respondent. He further alleges that the second respondent has given a notice dated 6.6.2012 asking the third respondent to apply for licence within 24 hours or else the business conducted in AMC II/163 would be closed. According to the petitioner, this was a dubious method adopted by the third respondent to see that the petitioner's business is closed. Later on 19.9.2012, the third respondent issued notice to the effect that the petitioner was running a fruit stall in AMC II/834 without trade licence. The petitioner further alleges that as far as the respondent municipality is concerned, no notification is published as per Section 447 of the Municipalities Act or Rule 4 of the Kerala Municipality (Issue of Licence to Dangerous and Offence Trade, other Trades and Factories) Rules, 2011 (for short, the Rules) which is a condition precedent for the insistence of a licence under the Act for carrying out any trade. It is with this background, the petitioner has approached this Court.

5. The second respondent has filed a detailed counter affidavit contending as follows:

This respondent has only performed the statutory duty and initiated proper legal proceedings against the licensee, the third respondent, for conducting business without renewing the licence. After receiving show cause notices, the third respondent submitted a letter intimating that he is not continuing the business. However, on finding that the business was continuing without licence, necessary proceedings were initiated in accordance with law and the sop room was closed and sealed on 8.10.2012. Copy of the show cause notice dated 10.9.2012 issued to third respondent is produced as Ext.R1(a), copy of the confirmation notice dated 19.9.2012 issued to the third respondent is produced as Ext.R1(b), copy of the authorisation dated 8.10.2012 is produced as Ext.R1(c), and copy of the mahazar dated 8.10.2012 is produced as Ext.R1(d).

It was further contended that the second respondent is not aware of any petition filed by the petitioner before the Accommodation Controller or any other authority as alleged in the W.P(C). The second respondent has not received notice of any such proceedings as alleged in the said paragraphs. In the copy of the order of interim injunction produced by the petitioner as

Ext.P5, the respondent municipality is not a party. Moreover, the order only prohibits eviction of the petitioner by the defendant otherwise than by due process of law.

It was further contended that that Ext.P6 cannot be acted upon since the petitioner is not the owner or licensee of the shop room. Moreover, the shop was closed in accordance with law consequent to the default in the renewal of licence by the licensee (the third respondent) despite repeated notices and the articles such as utensils for teashop and plastic chairs were found kept and used in unauthorised manner outside the closed shop room by extending the roof. Those were removed and kept in the office of the premises of the first respondent and the same could not be returned since the petitioner and third respondent raised rival claims in respect of the articles.

It was further stated that the pendency of any litigation between the petitioner and third respondent was not a reason to permit continuance of business by anyone without licence from the local authority. Moreover, the municipality is not made a party to Ext.P2 and there are no prohibitory orders against the municipality. The shop was closed down strictly in accordance with law for valid and legal reasons after duly observing all legal procedural formalities. It was also stated that

the petitioner's attempt seems to create confusion in the mind of the court and divert the attention from the most fundamental fact that he is not a person doing business in the disputed premises with licence. He cannot raise any claim better than the actual owner and licensee of the shop rooms in question. The respondent municipality pursued proper legal proceedings against the licensee and passed final orders and closed the shop rooms only after a period of 28 days from the first notice and after giving ample chances and repeated notices and opportunity to renew licence.

It was further contended that even going by the petitioner's own contentions, he does not have a contention that he was having licence for doing any business in respect of the shop rooms in question. The petitioner is attempting to defraud this Court by producing dubious and spurious documents viz., Exts.P15 and P16. Ext.P17 is already disposed of by the municipal council vide decision dated 7.1.2013 and the same is duly intimated to the petitioner. Copy of the decision of the municipal council is produced as Ext.R1(e). The contention that no licence is required for running the fruit stall in Attingal municipality is contrary to law. It was also pointed out that Ext.P18 envisages only revision of license fees which was

originally fixed as per license schedule published by the municipality in 1995. Obtaining licence is a condition precedent and is a mandate of law. The municipality has the limited power to fix license fee and to revise it periodically.

According to the second respondent, after procuring the *ex parte* interim order, the petitioner had forcibly opened the locks of the shop rooms in question which were closed by the municipality which was illegal and high handed acts offending the law and the lawful orders of the statutory authorities. Therefore, appropriate legal actions are pursued by the municipality including prosecution. Copy of the office notes and communications from 28.1.2013 to 30.1.2013 are produced as Ext.R1(f). Therefore, according to the second respondent, the *ex parte* interim order be vacated in the light of the said wrongful conduct of the petitioner.

6. The third respondent filed a separate counter affidavit contending that the challenge against Ext.P13 would not lie as there is an alternate remedy of filing appeal under Section 509 of the Kerala Municipality Act, 1994. According to the him, the petitioner is a trespasser to the shop room bearing No.II/834 pursuant to the surrender of possession by the original tenant named Noushad on 20.7.2012. According to the respondent, the

petitioner, who was a worker of Noushad, trespassed into the shop room taking advantage of the absence of the third respondent from station due to overseas employment. According to him, he has let out the temporary shed constructed in front of the building in his property to conduct a vegetable business on daily rent of ₹500/- to Noushad on 10.1.2008 as per Ext.R3(a) rent deed. The building was constructed in the year 2005 with cellar and ground floor under due permits from the respondent municipality and the establishment in dispute was let on rent to Noushad in continuance of Ext.R3(a) where he was conducting fruit business, for a bakery unit in those rooms. The third respondent alleges that both these business were conducted by him on the strength of the licence obtained from the first respondent in his name. The daily rent payable to Room No.II/834 was ₹1,400/- per day and for Room No.II/163 was Rs.500/- per day. The daily rent payable to the respondent was remitted in the chits subscribed by him with Gokulam Chits Private Limited.

7. It was further contended that the petitioner was engaged as a worker by the tenant. As he knew the manner of adjustment of rent, he clandestinely obtained the details of payment of rent in the chitties. The copy of laminated licence exhibited in the shop rooms were also fraudulently obtained by the petitioner. He

further alleges that Noushad had handed over possession of both the shop rooms on 20.7.2012 and the third respondent had taken the movables in both the shop rooms for an amount of ₹58,000/-. He had also paid ₹93,000/- which takes in the advance of ₹35,000/- plus ₹58,000/- which was the price of movables. The third respondent wanted to start a mall of various articles in the building of his own by stopping the business of fruits and bakery. Ext.R3(b) is the copy of the deed dated 20.7.2012 regarding handing over of possession.

8. The third respondent asserts that he did not seek for renewal of licence for the year 2012-13. The fruit business was completely stopped and the bakery was conducted on his behalf through a manager engaged by him in a small manner. He further alleges that the first respondent downed the shutter and sealed the bakery for want of D&O licence on 2.7.2012. He further alleges that he placed a tea kit in front of the sealed bakery and conducted sale of tea and snacks, as the shop room is in proximity with the KSRTC bus station. However, this was also seized by the first respondent for want of licence. The third respondent sought release of the seized articles as per Ext.R3(c) representation on undertaking that he would not pursue the bakery business without licence. By letter dated 11.9.2012, the

first respondent was informed by the third respondent that the third respondent did not intend to do any business in the shop rooms. He alleges that the shop room bearing No.II/138 is in his possession where he was running a hotel styled as “Al-Raj” hotel.

9. The third respondent points out that the petitioner has filed a suit raising various contentions and he has trespassed into the shop room bearing No.II/834 armed with Ext.P5 injunction dated 28.7.2012. According to the third respondent, the petitioner is rank trespasser and his aim to have a mall did not take off due to the illegal occupation of the petitioner. Ext.R3(d) is the written statement filed by the petitioner in the original suit. Though the petitioner sought police assistance to continue his illegal occupation, the police officials who were convinced of the violation of law by the petitioner asked him to vacate the shop room. The definite case of the third respondent is that his absence from the station was taken advantage by the petitioner and he continued with his illegal occupation by flexing muscles. The third respondent denied the allegation regarding collusion between himself and the municipal authorities. It was also contended that Exts.P14 and P16 are forged documents. It was also pointed out that as on the date of filing of the counter, i.e., 4.8.2015, total loss to the third respondent on account of the

daily rent would be ₹10,30,400/-. Therefore, they prayed for a dismissal of the writ petition.

10. The petitioner has filed a reply affidavit controverting the allegations of the second respondent in the counter affidavit.

11. Arguments have been heard.

12. The learned counsel for the petitioner would argue that the decision contained in Ext.P13 notice and the non consideration of Exts.P6, P7 and P17 are unjust, illegal and arbitrary. According to the learned counsel for the petitioner, the petitioner is conducting the fruit stall and he has not been given any mandatory statutory notice as stipulated under Section 532 (1)(a) of the Act. It was argued that in the case of the first respondent municipality, for the first time, a notification as per Section 447 r/w. Rule 4 of the Rules, which is a condition precedent for the insistence of a licence under the Act for carrying out any trade, was published on 31.12.2011 fixing the license fee as ten times the minimum fees provided under the Schedules I & II of the Rules. It was pointed out that the schedule appended to the notification is the same as in the Rules and entry 25 deals with the storage and sale of fruits.

13. According to the learned counsel for the petitioner, as per sub-rule (2) of Rule 4, a notification comes into existence

immediately after 60 days of publication. It was also pointed out that the first respondent immediately after publication of the notification freezed the same noticing the unconscionable rates of license fee and the same was removed from the website of the municipality also. The learned counsel for the petitioner relied on Ext.P18, the true copy of the notification dated 31.11.2011 issued by the first respondent. It is his definite case that prior to Ext.P18, there was no publication of notice as per Section 447 read with Rule 4 of the Rules. However, in spite of this, the first respondent used to issue various notices; so submitted the learned counsel.

14. The learned counsel for the petitioner invited my attention to Ext.P15 and P16 which are the so called receipts evidencing the acceptance of license fee of any such licence. It was pointed out that it was thereafter respondents 1 and 2 have refused to accept the license fee from the petitioner, which according to the learned counsel for the petitioner, was in collusion with the third respondent.

15. The learned counsel for the respondent municipality as well as the learned counsel for the party respondent would contend that the petitioner is a trespasser. According to them, the occupant of the bakery was an admitted tenant of the third

respondent and the third respondent was running the bakery on surrender of possession by the tenant as could be seen from Exts.P6 and P7. Ext.P6 is the representation submitted by the petitioner before the respondent municipality in August, 2012 wherein he has stated that the officials of the municipality has illegally locked the bakery in collusion with the brother of the landlord. Had the position been as alleged by the petitioner, he would have immediately moved on sealing the bakery for want of D&O licence.

16. It appears that there is no D&O licence to do fruit business in the shop room No.II/834 subsequent to the non-renewal of licence by the third respondent. Therefore, respondents 1 and 2 are statutorily bound to stop the business in the shop room No.II/834 without D&O licence, in exercise of the powers conferred under the Kerala Municipalities Act and Rules framed thereunder, and there is a bar of civil suit to injunct the municipality in exercise of its statutory powers. It is obligatory on the part of respondents 1 and 2 to plunge into action to stop the business run in its jurisdiction without valid licence. According to the third respondent, Exts.P14 and P16 are forged documents. The contention of the petitioner that he had taken shop room No.II/138 on rent does not hold good due to the reason that the

said shop room is now occupied by the third respondent and is doing hotel business under the name and style “Al-Raj” hotel.

17. As already pointed out, the main argument advanced by the learned counsel for the petitioner is that there is no proper notification by the respondent municipality, as provided by Section 447 r/w. Rule 4 of the Rules. In answer to the said submission, the learned counsel for the petitioner invited my attention to the decision of a Division Bench of this Court in **Sivadasan v. Mattannur Municipality** [2008 (4) KLT 684] which stated that even if no rules are notified covering the trade run by the petitioner, still he is liable to take the licence in view of Section 447(1) which not only deals with the purpose specified by the Rules, but also with other trades. It was also held that the decision by this Court in **Shaji v. State of Kerala** [2004 (1) KLT 118] to the extent it says that no licence is necessary for running a trade under Section 447(1) in the absence of any rules framed by the Government does not lay down the correct legal position. It was also held that the decision in **Unnikrishnan v. Paravur Municipality** [2008 (2) KLT 711] which took a different view, lays down the correct law. Though it was strenuously argued by the learned counsel for the petitioner that the decision of the Division Bench in ***Shaji's*** case (cited supra) was on a wrong interpretation

of statutes, I am bound to follow the same as a different view was not taken by this Court subsequently.

18. It is definite stand taken by the respondent that the room which was closed down was forcefully occupied by the petitioner and he is doing it as it is there without any valid licence from the respondent municipality. As rightly pointed out by the learned counsel for the third respondent, on account of the continuation of illegal occupation of the shop room by the petitioner, the third respondent is losing the rent from the shop room. Though it was stated by the third respondent in the counter affidavit that the aforesaid loss has to be ordered to be paid to the third respondent, it is open to the petitioner to seek a remedy for the same in appropriate civil proceedings.

On a consideration of the materials now placed on board, this Court is of the view that the petitioner is not entitled to the relief prayed for in this writ petition.

In the result, the writ petition fails and accordingly, it is dismissed.

Sd/-
A.V.RAMAKRISHNA PILLAI
JUDGE

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