

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 8TH DAY OF DECEMBER 2015/17TH AGRAHAYANA, 1937

WP(C).No. 30715 of 2015 (L)

PETITIONER(S):

**BISMI HYPER MART PVT. LTD.,
664 & 665, OPP. GEEYEM MOTORS, N.H. BYEPASS,
NETTOOR .P.O, ERNAKULAM, PIN- 682 040,
REPRESENTED BY ITS HEAD AND
AUTHORISED SIGNATORY JINU JOSEPH.**

**BY ADVS.SRI.P.B.KRISHNAN,
SRI.SABU GEORGE,
SRI.P.M.NEELAKANDAN,
SRI.P.B.SUBRAMANYAN.**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF ELECTRICITY, SECRETARIAT,
THIRUVANANTHAPURAM -695 001.**
- 2. THE KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY, VIDYUTH BHAVAN,
THIRUVANANTHAPURAM -695 001.**
- 3. THE ELECTRICAL INSPECTOR,
OFFICE OF THE DEPUTY CHIEF ELECTRICAL INSPECTOR,
B BLOCK, CIVIL STATION, KOZHIKODE -673 020.**
- 4. M. ARIF MOHAMMED,
AGED 40 YEARS, S/O.MOOSAKUTTY, ENGINEER,
MANNATHU HOUSE, KIZHAKKOTH AMSOM,
PANNUR DESOM, KOZHIKODE- 673 122.**
- 5. K.P. HUSSAIN HAJI, AGED 59 YEARS,
S/O.K.P. MUHAMMED, MANASSERY HOUSE,
P.O. VALIYAPARAMBATH, PILICKAL VILLAGE,
KONDOTTI TALUK, MALAPPURAM- 673 637.**

6. ABDUL HAMEED KUDUKKAN,
AGED 48 YEARS, S/O.KUDUKKAN MUHAMMED ALI,
VALANCHERY HOUSE, CHEEKODU AMSOM, OMANUR DESOM,
ERANAD TALUK, MALAPPURAM- 673 640.
7. RAMLA BEGUM NANATH, AGED 39 YEARS,
W/O. ILLIKKAL MOOSA HAJI, POOKKODU AMSOM,
ARUVAKKARA DESOM, ERANAD TALUK, MALAPPURAM- 679 334.
8. T.V. MUHAMMED, AGED 49 YEARS,
S/O.ALIKOYA, JASEENA MAHAL, CHELANNUR,
KOZHIKODE -673 616.
9. A.P. ABOOBACKER SIDDIQUE, AGED 41 YEARS,
S/O.MOIDEEN KUTTY HAJI, ANNACHAM PALLI VEEDU,
KOTTU, TIRUR, MALAPPURAM -676 101.
10. MUHAMMED SHAFI, AGED 43 YEARS,
S/O.ALAVI HAJI, KOTTUVALA HOUSE, THENNALA,
THIRUR, MALAPPURAM- 676 101.
11. ABDUL SALAM, AGED 38 YEARS,
S/O.KUNJAHAMMADKUTTY HAJI, EANTHUMULLY HOUSE,
KOTT ALINCHODU, TIRUR TALUK, MALAPPURAM- 676 101.
12. ABDUL NAZAR. K., AGED 41 YEARS,
S/O.MAYAN, KANDATHU VAYAL,
KUNINGARATH HOUSE, VELLAMUNDA,
WAYANAD DISTRICT -670 731.

R1 & R3 BY GOVT. PLEADER SRI.R. RANJITH.
R2 BY ADV. SRI.SAJEEVKUMAR K.GOPAL, SC.
R8 BY ADVS. SRI.K.M.FIROZ,
SMT.M.SHAJNA,
SRI.S.KANNAN.
R11 & R12 BY ADV. SRI.NIRMAL. S.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 08-12-2015, ALONG WITH WP(C).NO.36588 OF 2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT P1 COPY OF THE LEASE AGREEMENT DATED 02/01/2015.
- EXHIBIT P2 COPY OF THE WORK ORDER DATED 05/05/2015 GIVEN BY THE PETITIONER TO TESLATON SOLUTIONS PVT. LTD FOR DUCTABLE A/C INSTALLATION WORK.
- EXHIBIT P3 COPY OF TGHE PURCHASE ORDER DATED 05/05/2015 GIVEN BY THE PETITIONER TO HITTACHI HOME AND LIFE SOLUTIONS (INDIA) LTD.
- EXHIBIT P4 COPY OF THE WORK ORDER DATED 07/06/2015 GIVEN BY THE PETITIONER TO MR.JACOB K.M.FOR ELECTRICAL WORK.
- EXHIBIT P5 COPY OF THE WORK ORDER DATED 16/06/2015 GIVEN BY THE PETITIONER TO M/S.COLORINGS INTERIORS AND EXTERIORS FOR PAINTING WORK.
- EXHIBIT P6 COPY OF THE LETTER DATED 03/08/2015 ISSUED BY RESPONDENT NO.3 GRANTING APPROVAL OF THE SCHEME.
- EXHIBIT P7 COPY OF THE LETTER DATED 16/09/2015 ISSUED BY RESPONDENT NO.3 GIVING SANCTION FOR ENERGISATION.
- EXHIBIT P8 COPY OF THE PLAINT DATED 11/08/2015 IN OS NO. 90/2015 BEFORE THE SUB COURT IIA, KOZHIKODE.
- EXHIBIT P9 COPY OF THE OBJECTION DATED 11/08/2015 IN IA NO.3034/2015 IN OS NO.90/2015 BEFORE THE SUB COURT IIA, KOZHIKODE.
- EXHIBIT P10 COPY OF THE NOTICE DATED 28/09/2015 GIVEN BY RESPONDENT NO.3 TO THE PETITIONER.
- EXHIBIT P11 COPY OF THE LETTER DATED 30/09/2015 SUBMITTED BY THE PETITIONER BEFORE RESPONDENT NO.3.
- EXHIBIT P12 COPY OF THE LETTER NO.B3-5917/15/EIC DATED 23/09/2015 ISSUED BY RESPONDENT NO.3.
- EXHIBIT P13 COPY OF THE WORK COMPETITION REPORT DATED 02/10/2015 ALONG WITH THE RECEIPT OF ACKNOWLEDGMENT OF THE SAME.
- EXHIBIT P14 COPY OF THE RECEIPT DATED 12/10/2015.
- EXHIBIT P15 COPY OF THE REPLY DATED 13/10/2015 SUBMITTED BY THE PETITIONER.

WP(C).No. 30715 of 2015 (L)

**EXHIBIT P16 COPY OF THE LETTER DATED 07/10/2015 ISSUED BY
RESPONDENT NO.3.**

**EXHIBIT P17 COPY OF THE LETTER NO.B3-5942/15/EIC DATED 15/10/2015
ISSUED BY RESPONDENT NO.3.**

**EXHIBIT P18 COPY OF THE LETTER DATED 30/10/2015 ISSUED BY
RESPONDENT NO.3 TO THE PETITIONER.**

EXHIBIT P19 COPY OF THE REQUEST LETTER DATED 30/11/2015.

**EXHIBIT P20 COPY OF THE COMMUNICATION DATED 27/11/2015 ISSUED BY
THE DEPUTY CHIEF ENGINEER.**

RESPONDENT'S EXHIBITS:-

**EXT.R11A COPY OF THE ORDER IN I.A. NO.3034/2015 IN O.S. NO.90/2015
DATED 12/08/2015 OF IIND ADDITIONAL SUB COURT, KOZHIKODE.**

EXT.R11B COPY OF THE LETTER DATED 23/09/2015 OF 3RD RESPONDENT.

EXT.R11C COPY OF THE ORDER OF THE 3RD RESPONDENT DATED 07/10/2015.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.
.....
W.P.(C).No.36588 of 2015
&
W.P.(C).No.30715 of 2015
.....
Dated this the 8th day of December, 2015

J U D G M E N T

Since the issue involved in both these writ petitions is the same they are taken up for consideration together and disposed by this common judgment. For the sake of convenience, the reference to facts and the exhibits is from W.P.(C).No.30715 of 2015.

2. The petitioner is a private limited company engaged in the business of conducting hypermarkets. The petitioner had taken the ground floor of a building, having an area of 9200 square feet, owned by respondents 4 to 10, on lease with effect from 21.01.2015 for the purposes of starting a hypermarket at Kozhikode. It is stated that the rent of the building was fixed at Rs.5,24,000/- per month, and an amount of Rs.52,44,000/- was paid by the petitioner as security deposit to the landlord. The petitioner also produces a lease agreement which is marked as Ext.P1. The said agreement is dated 02.01.2015 but has not been formally registered. It is the case of the petitioner that, after taking premises on lease, he had furnished the building spending almost about two crores of rupees and there are various items that are displayed in the hypermarket

after expending substantial amounts of money. It is further stated that goods of approximate value of Rs.12 crores are stocked in the godown of the petitioner for the purposes of uninterrupted supply of goods to the hypermarket. The petitioner produces as Exts.P2, P3, P4 and P5, copies of work orders that have been placed by the petitioner in connection with electrical work, as also interior work, in the premises. Ext.P6 is the sanction granted by the 3rd respondent for the scheme for electrical installation. The scheme itself was submitted to the 3rd respondent on 25.06.2015 and a revised scheme was submitted on 24.07.2015. Thereafter, by Ext.P7 order dated 16.09.2015, the petitioner was granted a permission for temporary installation by the 3rd respondent and the said permission is valid till 10.12.2015. Within a fortnight after the grant of permission for temporary installation, the petitioner was informed by Ext.P10 communication dated 28.09.2015 that a complaint had been received from respondents 11 and 12, with regard to the continued occupation by the petitioner of the premises wherein he was conducting the hypermarket. By the said communication, he was also informed of an injunction order that had been obtained by the 11th and 12th respondents from the civil court, whereby the owner of the building was enjoined from

alienating by way of sale, lease, license etc, an extent of 1800 square feet of built up area in the premises in question. The petitioner was therefore told that the 3rd respondent was contemplating an enquiry into the matter, and therefore, further proceedings pursuant to Ext.P7 would be kept on hold. The petitioner therefore preferred Ext.P11 reply wherein, it was indicated that he was not a party to the suit that was instituted by the 11th and 12th respondents. Thereafter, by an order dated 07.10.2015, the 3rd respondent suspended the operation of Ext.P7 order. The said suspension order, however, was subsequently withdrawn with effect from 15.10.2015 by Ext.P17 order of the 3rd respondent. In the meanwhile, by Ext.P13 work completion report, the petitioner informed the 3rd respondent of the fact of complying with the requirements in Ext.P6 approval, and requested for granting him a permission for permanent installation. The writ petition was filed at a stage when Ext.P10 communication was issued to the petitioner asking him to furnish his explanation with regard to the objections that were raised by the 11th and 12th respondents. During the pendency of this writ petition, the 11th and 12th respondents filed W.P.(C).No.36588 of 2015 challenging Ext.P17 order dated 15.10.2015 whereby the order suspending

Ext.P7 order was subsequently withdrawn by the 3rd respondent.

3. In W.P.(C).No.30715 of 2015, the petitioner now seeks a direction to the 3rd respondent to consider and pass orders on his application for an extension of the period of the temporary installation permission granted to him by the 3rd respondent by Ext.P7 order, which is admittedly valid only till 10.12.2015. The said prayer of the petitioner in the aforesaid writ petition is opposed by the writ petitioners in W.P.(C).No.36588 of 2015, who would contend that, the petitioners have no right to the continued possession of the extent of 1800 square feet of built up area in the premises, which is the subject matter of the suit filed by the said respondents before the civil court.

4. I have heard Sri.P.B.Krishnan, the learned counsel for the petitioner in W.P.(C).No.30715 of 2015, Sri.Nirmal.S, the learned counsel for the petitioners in W.P.(C).No.36588 of 2015, Sri.K.M.Firoz, the learned counsel for respondent landlord in W.P.(C).No.30715 of 2015 and the learned Government Pleader appearing on behalf of the 3rd respondent in the said writ petition. I have also heard the learned Standing counsel for the Electricity

Board in both the writ petitions.

5. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that the dispute in W.P.(C).No.30715 of 2015 is essentially between the petitioner and the 3rd respondent, and the petitioner is aggrieved by the inaction on the part of the 3rd respondent in not passing orders on his application (Ext.P19) for extension of the permission for temporary installation that was granted with effect from 16.09.2015. The facts in the writ petition would indicate that the reluctance on the part of the 3rd respondent, to extend the permission for temporary installation, was on account of the communication received from the 11th and 12th respondents with regard to the injunction obtained by them from the civil court, in a suit instituted by the said respondents. The issue to be considered therefore is whether the injunction obtained by the 11th and 12th respondents, in a suit where the said respondents claim a right over an extent of 1800 square feet of built up area in the premises where the petitioner is conducting the hypermarket, would in any way affect the right of the petitioner in conducting the hypermarket after complying with the directions of the 3rd respondent with

regard to the installation of electrical equipment in the premises. As already noted, the petitioner had entered into possession of the property in question as early as in January 2015 and, although the possession obtained by the petitioner was pursuant to a lease agreement stated to have been entered into between the petitioner and the landlord, the other documents such as Exts.P2 to P5 produced along with the writ petition would indicate that the petitioner had expended considerable amounts of money for the purposes of establishing his hypermarket in the said premises. The order of injunction obtained by the 11th and 12th respondents effectively interdicts the landlord from alienating any portion of the plaint schedule properties by way of sale, lease or licence arrangements. The said order of injunction can apply only in respect of subsequent alienation of the property in any of the manner aforestated and cannot, at any rate, affect the interest created in the said property prior to the date of the injunction order. Inasmuch as the petitioner had obtained an interest in the property in question prior to the date of the injunction order obtained by the 11th and 12th respondents, I am of the view that, the consideration of the petitioners case for extension of the permission for temporary installation, by the 3rd respondent must

proceed untrammelled by the injunction order obtained by the 11th and 12th respondents in the suit instituted before the civil court. Thus, I dispose these writ petitions with the following directions:

(i) The 3rd respondent shall consider and pass orders on Ext.P19 application, preferred by the petitioner in W.P.(C).No.30715 of 2015, for an extension of the permission for temporary installation for the period beyond 10.12.2015. Needless to say till such time as the 3rd respondent passes orders as directed, the continuation of the petitioner in the premises shall be treated as in accordance with Ext.P7 permission for temporary installation granted to him.

(ii) While considering Ext.P19 application of the petitioner as aforementioned, the 3rd respondent shall not take into account the injunction order obtained by the 11th and 12th respondents in the suit instituted by them before the civil court.

(iii) The challenge in W.P.(C).No.36588 of 2015 against Ext.P17 order dated 15.10.2015, withdrawing the order dated 07.10.2015 by

which Ext.P7 order passed in favour of the petitioner W.P.(C).No.30715 of 2015 was suspended, is dismissed as not maintainable.

(iv) I make it clear that, after considering and passing orders on Ext.P19 application preferred by the petitioner, the 3rd respondent will be free to consider and pass orders on Ext.P13 application preferred by the petitioner for permission for permanent installation in the premises.

**A.K.JAYASANKARAN NAMBIAR
JUDGE**

W.P.(C).No.36588 of 2015
&
W.P.(C).No.30715 of 2015