

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA, 1937

WP(C).No. 32174 of 2015 (V)

PETITIONER :

**SAJU K., AGED 30 YEARS,S/O. KUTTAPPAN,
T.G BHAVAN, MALAPPANAMCODE P.O.,
THIRUVANANTHAPURAM
NOW RESIDING AT MANAKKAPPADI VEEDU,
PULIYANAM P.O., ANKAMALI, ERNAKULAM**

BY ADV. SRI.J.JAYAKUMAR

RESPONDENTS :

- 1. ELOOR MUNICIPALITY
ELOOR, ERNAKULAM DISTRICT
REPRESENTED BY ITS SECRETARY PIN 682 306**
- 2. THE SECRETARY
ELOOR MUNICIPALITY, ELOOR
ERNAKULAM DISTRICT PIN 682 306**

**R1&2 BY ADV. SRI.R.SANJITH
SMT.C.S.SINDHU KRISHNAH
SMT.LEKSHMI RAMAKRISHNAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 01-12-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: TRUE COPY OF THE SAID APPEAL NO 4649/2015 DATED 11/5/2005
FILED BY THE PETITIONER BEFORE THE COUNCIL OF THE 1ST
RESPONDENT.
- EXHIBIT P2: TRUE COPY OF THE UNDERTAKING DATED 15/5/2015 EXECUTED BY
THE PETITIONER TO THE 2ND RESPONDENT.
- EXHIBIT P3: TRUE COPY OF THE APPEAL DATED 19/5/2015 FILED BY THE
PETITIONER BEFORE THE TRIBUNAL FOR LOCAL SELF
GOVERNMENT INSTITUTIONS.
- EXHIBIT P4: TRUE COPY OF THE ORDER DATED 19/5/2015 PASSED BY THE
TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS.
- EXHIBIT P5: TRUE COPY OF THE JUDGMENT DATED 17/8/2015 IN WP(C)
NO 23480/2015 OF THIS HON'BLE COURT
- EXHIBIT P6: TRUE COPY OF THE RECEIPT DATED 10/09/2015 ISSUED BY THE 2ND
RESPONDENT
- EXHIBIT P7: COPY OF THE NOTICE DT 4/5/011 ISSUED BY THE R2.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A.TO JUDGE

bp

K.HARILAL, J.

W.P.(C) No.32174 of 2015

Dated this the 1st day of December, 2015.

JUDGMENT

The petitioner is conducting a motor workshop from 2012 onwards at the property of one Noorudheen and subsequently it was shifted to the property of one Aboobacker on the basis of a licence issued by the 2nd respondent. Thereafter, the petitioner applied for a new licence before the 2nd respondent and the 2nd respondent rejected that application on the ground that some complaints are existing against his workshop and there is no building or other equipments to conduct his workshop as required under law. Aggrieved by the order rejecting the application for licence, the petitioner filed Ext.Pl appeal before the Municipal Council and the Municipal Council also upheld the order rejecting the application for building permit passed by the Secretary, by Ext.R1(2). During the pendency of the above appeal, the 2nd

respondent seized the petitioner's workshop on 12.5.2015 and issued notice under Section 447 of the Kerala Municipalities Act and locked by the Municipality in execution of the order passed by the Municipality. Now, the limited relief sought for in this writ petition is to direct the 2nd respondent to allow the petitioner to take away the tools and articles which are kept in the said workshop.

2. Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

3. The facts are not disputed and it stands admitted that the Municipality has locked the petitioner's workshop in exercise of power under Section 449 of the Municipalities Act. So also, there is no claim under Section 474 of the aforesaid Act against the petitioner for realisation of the fee leviable under Section 472(1) of the Municipalities Act and the seizure was effected under Section 532 of the Municipalities Act only. In that circumstance, I am of the opinion that in so far as the Municipality has no claim over the property seized, the same can be released to the

petitioner under the supervision of the Municipality.

4. In the above view of the matter, the petitioner is allowed to take away the tools and articles kept in the workshop under the supervision of the Municipality. The petitioner shall intimate the Municipality as regards the date and time for taking away the materials from the workshop and, in that event, the Municipality shall allow the petitioner to take his articles and tools from the workshop, under their supervision. This permission is granted to take away the tools and articles from the workshop only.

This writ petition is disposed of accordingly.

K. HARILAL, JUDGE

okb.