

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 28TH DAY OF JULY 2015/6TH SRAVANA, 1937

WP(C).No. 32677 of 2014 (H)

PETITIONER :

**A.P. UDAYAN, AGED 48 YEARS,
S/O.PRABHAKARAN, PROPRIETOR, N.N.LADIES STORES,
NEAR AYYAPPA TEMPLE, WILLINGDON ISLAND,
KOCHI -682 003.**

**BY ADVS.SRI.B.ASHOK SHENOY
SMT.C.G.PREETHA
SRI.K.V.GEORGE
SRI.P.N.RAJAGOPALAN NAIR
SRI.P.S.GIREESH**

RESPONDENT :

**COCHIN PORT TRUST,
REPRESENTED BY ITS CHIEF ENGINEER, ESTATE DIVISION,
SECRETARY'S DEPARTMENT, WILLINGDON ISLAND,
KOCHI - 682 009.**

**BY STANDING COUNSEL SRI.V.ABRAHAM MARKOS
SRI.BINU MATHEW
SRI.TOM THOMAS (KAKKUZHIYIL)
SRI.ABRAHAM JOSEPH MARKOS
SRI.ISAAC THOMAS**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 28-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P-1: TRUE COPY OF LETTER NO.EM-6/APU/2014 DATED 7.7.2014 ISSUED BY RESPONDENT TO PETITIONER
- EXT.P-2: TRUE COPY OF TENDER NO.EM1/BUNK/SHOP/TENDER-II/2014 DATED NIL ISSUED BY RESPONDENT
- EXT.P-3: TRUE COPY OF BILL NO.6647 DATED 1.10.2014 ISSUED BY RESPONDENT TO PETITIONER
- EXT.P-4: TRUE COPY OF COUNTERFOIL DATED 10.11.2014 TOWARDS PAYMENT OF LICENCE FEE BY THE PETITIONER TO THE CREDIT OF THE RESPONDENT'S BANK ACCOUNT, FOR THE PERIOD UNTIL 30.11.2014
- EXT.P-5: TRUE COPY OF THE NOTICE NO.EM6/0119/APU/2007 DATED 16.9.2014 ISSUED BY RESPONDENT TO PETITIONER
- EXT.P-6: TRUE COPY OF REPRESENTATION DATED 22.9.2014 SUBMITTED BY PETITIONER TO RESPONDENT.
- EXT.P-7: TRUE COPY JUDGEMENT DATED 15.10.2014 IN WRIT PETITION (CIVIL) NO.26718 OF 2014 OF THE HON'BLE HIGH COURT OF KERALA.
- EXT.P-8: TRUE COPY OF LETTER NO.EM/BUNK/SHOP/TENDER/2014 DATED 3.11.2014 ISSUED BY THE RESPONDENT
- EXT.P-9: TRUE COPY OF THE PROCEEDINGS NO.EM6/0119/APU/2014-S DATED 19.11.2014 ISSUED BY RESPONDENT TO THE PETITIONER
- EXT.P-10: TRUE COPY OF THE LETTER NO.EM6/0119/APU/2007 DATED 7.1.2014 ISSUED BY RESPONDENT TO THE PETITIONER.
- EXT.P-11: TRUE PHOTOGRAPHS OF THE AREA COMPRISING PETITIONER'S SHOP AND KENDRIYA VIDYALAYA, COCHIN PORT TRUST IN WILLINGDON ISLAND, TAKEN ON 16/1/2015, EIGHT IN NUMBER
- EXT.P-12: TRUE COPY OF THE NOTICE DATED 3/12/2014 SENT BY PETITIONER TO THE SECRETARY OF RESPONDENT

RESPONDENT(S)' EXHIBITS

- EXT.R1(A) TRUE COPY OF THE REQUEST FROM THE KENDRIYA VIDYALAYA AUTHORITIES
- EXT.R1(B) TRUE COPY OF THE INSPECTION REPORT DATED 02/10/2013

WP(C).NO.32677/2014

- EXT.R1(C) COPY OF THE NOTICE DATED 09/12/2013 ISSUED TO THE PETITIONER
BY THE RESPONDENT
- EXT.R1(D) COPY OF THE PETITIONER'S REPRESENTATION DATED 19/12/2013
SUBMITTED TO THE RESPONDENT
- EXT.R1(E) COPY OF THE INSPECTION REPORT DATED 30/12/2013.
- EXT.R1(F) COPY OF THE SKETCH OF THE AREA WHERE THE PETITIONER'S
SHOP IS LOCATED.

/TRUE COPY/

P.S.TO JUDGE

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K. Vinod Chandran, J

W.P.(C).No.32677 of 2014-H

Dated this the 28th day of July, 2015

JUDGMENT

Petitioner is aggrieved with the cancellation of the licence as per Exhibit P9. The petitioner admittedly was the licensee of a space, but with a bunk shop. The respondent, Port Trust, who had granted the licence, had decided to tender the bunks in public auction and all the licensees were issued with orders similar to Exhibit P1, issued to the petitioner, for participation in the tender. The participation of the petitioner in the tender is evidenced by Exhibit P2 and the petitioner had also paid licence fee from 01.10.2014 to 31.10.2014, as per Exhibit P3. Subsequently, the petitioner was issued with Exhibit P5 notice of eviction.

2. The Cochin Port Trust had issued a notice, Exhibit P5, alleging illegal and unauthorised sale of tobacco items in the bunk shop, near the Kendriya Vidyalaya Port Trust School. By Exhibit P5, the licence of the shop was cancelled and directed handing over vacant possession of the area within seven days of the notice; upon which the petitioner approached this Court. The writ petition was

allowed by this Court, by Exhibit P7, directing the Port Trust to treat Exhibit P5 as a show cause notice and to consider the issue afresh and if at all the allegation was found to be factually true, then it was also directed the Port Trust to consider abatement of such illegal activities. The Port Trust had taken up the matter for consideration, treating Exhibit P5 as a show cause notice, and passed Exhibit P9 order, which is now challenged.

3. In Exhibit P9 obviously the Port Trust had given up the contention with respect to the sale of illegal and unauthorised sale of cigarettes. However, by paragraph 6 of Exhibit P9, it was found that the area is congested due to plying and parking of school vans/buses and, hence, the Port Trust had decided to keep the area vacant. Accordingly, it was ordered that renewal of licence was not possible. The petitioner was also advised to take part in tender-cum-auction for other shops in the Willingdon Island, which has been notified.

4. It is to be noticed that the reason stated in Exhibit P5 notice is not the reason stated in Exhibit P9 order for cancellation of the licence. The Port Trust could not have taken such decision without the petitioner being first informed of the same. The

petitioner was the licensee of a space, which was issued earlier under due process of tender. The petitioner had been in possession and licence fees were accepted, as is evident from Exhibit P3, even after the period of lease. In such circumstance, if the Port Trust takes a decision to evict the petitioner and keep the site vacant, then necessarily proceedings will have to be initiated under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 [for brevity "the Act of 1971"]. Till such proceedings are initiated, the petitioner cannot be evicted.

The writ petition would stand allowed, leaving open the remedy of the Port Trust to proceed under the Act of 1971. Parties are left to suffer their respective costs.

Sd/-

K.Vinod Chandran
Judge.

vkul/-

[true copy]