

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE

MONDAY, THE 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937

WP(C).No. 33908 of 2014 (K)

PETITIONER(S) :

**S.SOMANATHAN NAIR,
PRASANNA SADANAM, KIDANGOOR, KOTTAYAM DISTRICT,
PIN- 686 572.**

BY ADV. SRI.P.S.GEORGE

RESPONDENT(S) :

- 1. THE DISTRICT TOURISM PROMOTION COUNCIL,
DEPARTMENT OF TOURISM, KODIMATHA, KOTTAYAM- 686 039,
REPRESENTED BY ITS SECRETARY.**
- 2. THE DISTRICT COLLECTOR,
(CHAIRMAN, DISTRICT TOURISM PROMOTION COUNCIL,
KOTTAYAM), KOTTAYAM- 686 039.**
- 3. THE ASST.ENGINEER,
IRRIGATION SECTION, KOTTAYAM.**
- 4. THE SECRETARY,
KUMARAKOM GRAMA PANCHAYAT, KUMARAKOM P.O.,
KOTTAYAM- 686 001.**

**R1 BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL, S.C, KTDC
R2 & R3 BY SPL.GOVERNMENT PLEADER SRI.M.K.JOHN (TOURISM)
R4 BY SRI.T.A.SHAJI (SENIOR ADVOCATE)
ADV. SMT.NAMITHA JYOTHISH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 12-10-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXHIBIT P1: TRUE COPY OF THE G.O. DATED 20/05/2010.**
- EXHIBIT P2: TRUE COPY OF ESTIMATE REPORT DATED NIL FOR
THE CONSTRUCTION OF LAKE VIEW PLATFORM & WALKWAY.**
- EXHIBIT P3: TRUE COPY OF THE COMMUNICATION DATED 23/06/2010 ISSUED
BY THE DEPARTMENT OF TOURISM.**
- EXHIBIT P4: TRUE COPY OF TENDER NOTICE APPEARED IN MALAYALA
MANORAMA DAILY DATED 29/05/2013.**
- EXHIBIT P5: TRUE COPY OF AGREEMENT DATED 22/06/2013 BETWEEN
THE 1ST RESPONDENT AND THE PETITIONER.**
- EXHIBIT P6: TRUE COPY OF THE COMMUNICATION DATED 15/07/2013 ISSUED
TO THE 4TH RESPONDENT.**
- EXHIBIT P7: TRUE COPY OF THE COMMUNICATION DATED 11/11/2013 ISSUED
BY THE CENTRE FOR EARTH SCIENCE STUDIES UNDER
DEPARTMENT OF SCIENCE AND TECHNOLOGY.**
- EXHIBIT P8: TRUE COPY OF THE COMMUNICATION DATED 20.11.2013 ISSUED
BY THE DISTRICT TOURISM PROMOTION COUNCIL TO
THE 4TH RESPONDENT.**
- EXHIBIT P9: TRUE COPY OF THE PROCEEDINGS DATED 21/04/2014 OF
4TH RESPONDENT.**
- EXHIBIT P10: TRUE COPY OF NOTICE DATED 30/05/2014 ISSUED BY
THE 4TH RESPONDENT.**
- EXHIBIT P11: TRUE COPY OF THE COMMUNICATION DATED 06/06/2014 ISSUED
BY THE 1ST RESPONDENT TO 4TH RESPONDENT.**
- EXHIBIT P12: TRUE COPY OF THE REPRESENTATION DATED 07/07/2014 FILED
BY THE PETITIONER BEFORE 2ND RESPONDENT.**
- EXHIBIT P13: TRUE COPY OF THE LETTER DATED 21/07/2014 ISSUED BY
THE 1ST RESPONDENT.**
- EXHIBIT P14: TRUE COPY OF THE COMMUNICATION DATED 23/07/2014 ISSUED
BY THE 4TH RESPONDENT.**

RESPONDENT(S)' EXHIBITS : **NIL**

//TRUE COPY//

P.A.TO JUDGE

A.M. SHAFFIQUE, J.

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W.P. (C) No. 33908 of 2014

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Dated this, the 12th day of October, 2015

J U D G M E N T

Petitioner has approached this Court seeking for a direction to respondents 1 and 2, the District Tourism Promotion Council as well as the District Collector to take appropriate steps to enable the petitioner to conduct business in the snack bar in the Lake-view Platform and Walkway at Vembanadu lake near Kumarakom Boat Jetty, which he had undertaken in terms of Ext.P5 licence.

2. It is stated by the petitioner that respondents 1 and 2 had constructed a platform abutting the lake for conducting the snack bar. Petitioner was selected as the licensee for conducting the snack bar. However, the 4th respondent issued a stop memo which was taken up before the 2nd respondent and the 2nd respondent directed the 4th respondent not to interfere in the matter. Initially the 4th respondent objected to the functioning of the snack bar on the ground that it violates CRZ Regulations. Once it was clarified that the said Regulations has no application to the Kumarakom lake which is a fresh water lake, the 4th

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respondent raised objection that people in the locality has objection regarding the functioning of the said snack bar and they expect demonstration by the DYFI activists. Petitioner's case is that the construction has been made by the Government through the District Tourism Promotion Council with permission from the Irrigation Department. He being a licensee of the Government, he does not require any further permission to conduct the snack bar.

3. Counter affidavit has been filed by the 4th respondent *inter alia* stating that in view of Section 218 of the Kerala Panchayat Raj Act, all water courses come within the jurisdiction of the Panchayat and therefore, respondents 1 and 2 had no right to construct a floating snack bar in the lake without permission of the Panchayat. That apart, the petitioner who is only a licensee cannot operate the snack bar without permission from the Panchayat as it causes substantial pollution to the locality. It is also pointed out that in addition to the snack bar, there is a toilet and there is no provision for appropriate treatment of the effluents which also will cause pollution in the area.

4. Counter affidavit has been filed by the 1st respondent

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inter alia stating the need for putting up such facilities for tourism promotion. It is pointed out that the thodu portion is forming part of the Meenachil river system which is being maintained and under the control of Irrigation Department. As per the provisions of the Irrigation and Water Conservation Act, 2003, water and water way in the portion is maintained by Irrigation Department. It is further stated that Kumarakom being a Global Tourist Destination, the Department of Tourism is executing so many infrastructure development project at Kumarakom and it is for the local Grama Panchayat to make appropriate facilities to cater the needs of the tourists. The District Tourism Promotion Council is to play a vital role to satisfy the need of tourists and it is to enable proper functioning and ensure proper maintenance of the lake view platform and allied facilities, the DTPC has leased out the project.

5. Having regard to the aforesaid factual situation, there is justification on the part of the 4th respondent to contend that the water courses other than what is notified vests in the Panchayat. Going by Section 237 of the Kerala Panchayat Raj Act,

the Government does not require any licence in respect of any place in the possession or under the control of or any property belonging to the Government. Section 237 reads as under;

“237. Government not to obtain licence and permission- *Nothing in this Act or in rule or bye-law made thereunder shall be construed as requiring any State Government or the Central Government to take out a licence in respect of any place in the possession or under the control of or any property belonging to such Government.”*

6. It is apparent that the construction has been made by the Government through the 1st respondent and it is apparent that as far as Government constructions are concerned, no permission from local authority is required. The petitioner is only a licensee who had been permitted to run the snack bar.

7. As far as the allegation of pollution as contended by the 4th respondent is concerned, it is for the competent authorities to ensure that no pollution is being caused on account of functioning of the snack bar/toilet. It has to be ensured that the effluent from the said facility is not discharged into the lake where as appropriate steps have to be taken to ensure the discharge of

effluent and management of waste.

8. In so far as the petitioner has been granted permission by the District authorities to run the snack bar/toilet, the Panchayat should not oppose the same on frivolous reasons. It is stated that the 2nd respondent had already submitted an application for licence to run the snack bar/toilet. There is no reason why the Panchayat should refuse the same especially when the same is required for the purpose of tourism. The present contention urged on behalf of the Panchayat is not sustainable. They have to consider the application in accordance with the statutory provisions. As far as the petitioner is concerned, he is only a licensee and it is on behalf of the Government that he conducts the snack bar/toilet. Having regard to the aforesaid factual situation, I am of the view that the attitude taken by the Panchayat in this regard is too technical and a positive approach has to be taken in the matter.

Accordingly, this writ petition is disposed of as under;

(1) The 2nd respondent shall submit a fresh application to the 4th respondent to enable the conduct of snack bar/toilet in the

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aforesaid area, which shall be considered by the 4th respondent in accordance with law in the light of the observations made above.

(2) Necessary orders shall be passed expeditiously and in the meantime, the petitioner shall be permitted to operate the snack bar/toilet on condition that the conduct of the said snack bar/toilet shall be under the strict supervision of the 2nd respondent.

Sd/-
A.M. SHAFFIQUE, JUDGE

Rp
13/10/2015

//True Copy//

PS to Judge