

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

WP(C).No. 35098 of 2014 (J)

PETITIONER:

BINUKUMAR P., S/O PARAMESWARAN NADAR,
AGED 43, BS PALACE, MULLUVILA THEKKETHIL,
VENGANOOR P.O., THIRUVANANTHAPURAM.

BY ADVS.SRI.C.A.CHACKO
SMT.C.M.CHARISMA

RESPONDENTS:

1. VENGANOOR GRAMA PANCHAYATH,
REPRESENTED BY SECRETARY, VENGANOOR,
THIRUVANANTHAPURAM-695 523.
2. THE SECRETARY, VENGANOOR GRAMA
PANCHAYAT, VENGANOOR,
THIRUVANANTHAPURAM - 695 523.
3. ANEESH N.S., S/O NELSON, S.N.BHAVAN,
AMARAVILA, VENGANOOR P.O.,
THIRUVANANTHAPURAM - 695 523.
4. ANILKUMAR, S/O SASIDHARAN, THEKKEVILAKATH
MELE VEEDU, VENGANOOR P.O.,
THIRUVANANTHAPURAM, WARD NO.14,
VENGANOOR GRAMA PANCHAYAT - 695 523.
5. G.CHANDRAN, S/O GANGADHARAN,
MULLUVILA VEEDU, CICILIPURAM,
VENGANOOR P.O., THIRUVANANTHAPURAM-695 523.

ADDL. R6 IMPEADED

KERALA STATE POLLUTION CONTROL BOARD,
REPRESENTED BY ENVIRONMENTAL ENGINEER,
DISTRICT OFFICE, PLAMOODU JUNCTION, PATTOM PO.,
THIRUVANANTHAPURAM.

IMPEADED AS PER ORDER DATED 11.02.2015 IN IA 2124/15.

R1 & R2 BY ADVS. SRI.POOVAPPALLY M.RAMACHANDRAN NAIR
SRI.R.V.ABHISHEK
R3-R5 BY ADV. SRI.R.GOPAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
04-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 35098 of 2014 (J)

PETITIONER'S EXHIBITS:

EXHIBIT P1: TRUE COPY OF DECISION DATED 4.5.2013 OF PANCHAYAT COMMITTEE.

EXHIBIT P2: TRUE COPY OF INTEGRATED LICENSE DATED 23.8.13 ISSUED BY POLLUTION CONTROL BOARD.

EXHIBIT P3: TRUE COPY OF DECISION TAKEN BY THE PANCHAYAT COMMITTEE ON 27.8.2013.

EXHIBIT P4: TRUE COPY OF REVISION PETITION NO.130/2013 FILED BEFORE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS.

EXHIBIT P5: TRUE COPY OF WRITTEN STATEMENT FILED BY IST RESPONDENT IN REVISION PETITION NO.130/13.

EXHIBIT P6: TRUE COPY OF OBJECTION FILED BY RESPONDENTS 3 TO 5 IN REVISION PETITION NO.130/2013.

EXHIBIT P7: TRUE COPY OF ORDER IN IA 36/2014 DATED 24.4.2014 AND 22.5.2014 OF AIR (PREVENTION AND CONTROL OF POLLUTION) APPELLATE AUTHORITY.

EXHIBIT P8: TRUE COPY OF ORDER OF TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS IN EXT.P4 DATED 8.12.2014.

EXHIBIT P9: TRUE COPY OF ORDER IN APPEAL NO.13/2014 DATED 6.12.2014 OF AIR APPELLATE AUTHORITY

EXT. P10: TRUE COPY OF RECEIPT DATED 29.1.15 ISSUED BY POLLUTION CONTROL BOARD WITH ENGLISH TRANSLATION

RESPONDENT'S EXHIBITS:

EXT.R3(a) TRUE COPY OF THE ROUGH LOCATION SKETCH WATER TANK CONSTRUCTED UNDER JAPAN DRINKING WATER SCHEME

EXT.R3(b) TRUE COPY OF THE TREATMENT CERTIFICATE OF CHANDRIKA ISSUED BY THE REGIONAL CANCER CENTRE DATED 27.3.2014

EXT.R3(c) TRUE COPY OF THE TREATMENT CERTIFICATE OF SUNDARESAN ISSUED BY DOCTOR MINI DATED 14.12.2013

EXT.R3(d) TRUE COPY OF THE TREATMENT CERTIFICATE OF ANISH N. ISSUED BY THE GOVERNMENT AYURVEDA DISPENSARY DATED 9.10.2014

EXT.R3(e) TRUE COPY OF THE TREATMENT CERTIFICATE OF SREEMATHY ISSUED BY DOCTOR INI DATED 13.3.2011

EXT.R3(f) TRUE COPY OF THE TREATMENT CARD OF SMT.SHEELA ISSUED BY REVISED NATIONAL TUBERCULOSIS CONTROL PROGRAMME PATIENT'S INFORMATION LEAFLET DATED 13.9.2014

EXT.R3(g) TRUE COPY OF THE TREATMENT CERTIFICATE OF AJEESH, ISSUED BY THE COMMUNITY HEALTH CENTRE, VIZHINJAM

Dama Seshadri Naidu, J.

W.P.(C)No.35098 of 2014 J

Dated this the 4th day of March, 2015

JUDGMENT

Heard the learned counsel for the petitioner and the learned Standing Counsel for respondents 1 and 2 and additional sixth respondent, as well as the learned counsel for respondents 3 to 5, apart from perusing the record. Since the issue lies in a narrow compass, this Court proposes to dispose of the writ petition at the admission stage itself.

2. Briefly stated, the petitioner has started a small pig farm in thirty cents of property jointly owned by him and his wife, within the jurisdiction of the first respondent Grama Panchayat. The petitioner is said to have obtained necessary licence from the additional sixth respondent, the Pollution Control Board, through Exhibit P2, but it was

subsequently cancelled by the said respondent. When the cancellation was assailed, through Exhibit P7 the appellate authority stayed the order of cancellation. At any rate, while the appeal was pending, the very No Objection Certificate (NOC) granted by the additional sixth respondent expired.

3. It is the case of the petitioner that presently an application for renewal of licence is pending with the additional sixth respondent. In so far as the licence from the respondent Grama Panchayat is concerned, initially, when the second respondent rejected the petitioner's application, he filed a statutory appeal before the Executive Committee, which in turn, issued Exhibit P3 order confirming the rejection of the second respondent. Under those circumstances, the petitioner further carried the matter in revision before the Tribunal for Local Self Government Institutions, Thiruvananthapuram, which passed Exhibit P8 order affirming the order of rejection. Eventually, assailing

Exhibit P8 order, the petitioner has filed the present writ petition.

4. The learned counsel for the petitioner has strenuously contended that either in compliance with certain statutory requirements or based on the complaints from the neighbourhood, various authorities, including those from the Health Department and Animal Husbandry Department, visited the petitioner's pig farm and forwarded favourable reports to the first respondent for issuance of licence. According to the learned counsel, the first respondent cannot have any tenable objection, except the unfounded complaints made by the people in the neighbourhood, for granting a valid licence to the petitioner to run his business.

5. At any rate, the learned counsel would contend that once the additional sixth respondent considers petitioner's application for renewal of NOC and grants it

favourably, based on the same, the first respondent shall be bound to issue necessary licence. The learned counsel has, therefore, urged this Court to set aside Exhibit P8 order and issue a positive direction to the first and additional sixth respondents to consider the petitioner's applications for licence and also for renewal of NOC respectively.

6. Per contra, the learned counsel for respondents 3 to 5, in tune with the averments made in the counter affidavit filed by the third respondent, has strenuously contended that the petitioner has been carrying on the pig farming in the midst of residential houses for the past nine years, without any valid licence of whatever nature. Referring to Exhibit R3(a) rough sketch showing the locality of the petitioner's pig farm and also Exhibit R3(g) medical certificates, the learned counsel would contend that in view of the continuation of the pig farming in the residential area, people's health is affected and even the drinking

water in the locality is contaminated.

7. The learned counsel has also drawn my attention to the observations in Exhibit P8 order of the learned Tribunal. In elaboration of his submissions, the learned counsel has contended that unless and until the petitioner has a valid permit or licence, he cannot be allowed to carry on the business which is deleterious to the well-being of the people in the vicinity.

8. The learned Standing Counsel for respondents 1 and 2, supporting the contentions of the learned counsel for respondents 3 to 5, has submitted that the petitioner has no justification in continuing with the pig farming without valid licence from the respondent Grama Panchayat. Accordingly, he has urged this Court to dismiss the writ petition.

9. Indeed, the issue runs in a very narrow compass requiring no detailed consideration. The singular issue that falls for consideration is whether the petitioner, in the face

of persistent rejection of the applications and concurrent findings by the quasi-judicial authorities that he is not entitled to licence, can be allowed to continue with the pig farming in violation of the statutory provisions.

10. The learned counsel for the petitioner has earnestly urged this Court to grant reasonable time to enable the petitioner to obtain necessary licences from the first and additional sixth respondents. The fact, however, remains that the pig farm has been in existence for the past nine years, which has not been denied; the respondent Grama Panchayat has concurrently rejected, both at the Secretary level and at the level of Executive Committee, to grant any licence. Even the learned Tribunal has not found any justification in the claim of the petitioner seeking licence from the first respondent Grama Panchayat and accordingly, it dismissed the revision petition through Exhibit P8 order.

11. It is pertinent to observe that while dismissing the revision petition, the learned Tribunal issued a specific direction to the petitioner to dispose of the pigs now available in the farm within a period of two weeks. If the petitioner fails to comply with the said direction, the learned Tribunal has given liberty to the respondent Grama Panchayat to proceed against the petitioner under Rule 12 of the Rules.

12. Based on the incidental observation made by the learned Tribunal that it is open for the petitioner to get clearance from the Pollution Control Board by providing proper waster disposal mechanism as provided under Rule 5 of the Kerala Panchayat (Licensing of Live Stock Farms) Rules, 2012, the learned counsel for the petitioner would urge this Court that already an application has been submitted for renewal of the licence.

13. The learned Standing Counsel for the additional sixth respondent as well as the learned counsel for respondents 3 to 5 have vehemently contended that in the first place the licence was granted on a mistake and later, when the additional sixth respondent came to know about the ground reality, it cancelled the NOC. I do not, however, propose to enter into that controversy.

14. In the totality of circumstances, it is to be observed that the petitioner has been continuing with his pig farming without any valid licence. It is not the case of the petitioner that he established it very recently and before he could obtain necessary permits or licences from the authorities precipitous action has been taken to close it down. On the contrary, the petitioner has been continuing with the same for about nine years without any licence, to say the least. Under these circumstances, unavailable this Court's power under Article 226 of the Constitution of India,

which cannot, in fact, be used for the purpose of allowing an illegality to be perpetuated -- in this case, running a pig farm without any valid licence. The courts have time and again frowned upon any exercise of discretion that directly contradicts any statutory provision.

15. Having regard to the respective submissions of the learned counsel for the petitioner, learned counsel for respondents 3 to 5, and the learned Standing Counsel, this Court is constrained to dismiss the writ petition as being devoid of merit.

16. Nevertheless, considering the submission made by the learned counsel for the petitioner that the petitioner requires some breathing time to shift his pig farm, this Court is of the opinion that the petitioner shall be given a month's time from the date of receipt of a copy of this judgment to vacate the pig farm.

17. It is further made clear that while either the first respondent or the additional sixth respondent considers the petitioner's application concerning licence or NOC, as the case may be, the observations made in the present writ petition simply for the purpose of disposing of the writ petition shall not be treated as an expression on merits. In other words, the authorities are required to consider the petitioner's applications independently and strictly in terms of the statutory requirements.

With the above observation the writ petition stands dismissed. No order as to costs.

Dama Seshadri Naidu, Judge

tkv