IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE VIJU ABRAHAM

MONDAY, THE 20TH DAY OF MARCH 2023 / 29TH PHALGUNA, 1944

WP(C) NO. 39002 OF 2022

PETITIONER:

DHANYA. V.,AGED 37 YEARS
WIFE OF VIBIL, SOBHA HOUSE, NUT STREET,
VATAKARA DESOM, VATAKARA VILLAGE,
KOZHIKODE DISTRICT, PIN - 673104

BY ADVS.
N.M.MADHU
C.S.RAJANI

RESPONDENTS:

1 **CHERUVANNUR GRAMA PANCHAYAT**
P.O. CHERUVANNUR, KOZHIKODE DISTRICT,
REPRESENTED BY ITS SECRETARY

2 **THE SECRETARY**
CHERUVANNUR GRAMA PANCHAYAT,
P.O.CHERUVANNUR, KOZHIKODE - 673524

BY ADVS.
Vinod Singh Cheriyan
T.M.KHALID(K/000047/2013)
K.P.SUSMITHA(K/956/2001)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR HEARING ON 20.03.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

VIJU ABRAHAM, J.

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W.P.(C) No.39002 of 2022

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Dated this the 20th day of March, 2023

JUDGMENT

Petitioner has approached this Court aggrieved by Ext.P6 order whereby the application submitted by her for a permit has been rejected by the respondent Panchayat. The request made by the petitioner was for starting a business of sale of fire works in the building owned by the petitioner. Petitioner purchased a property having an extent of 2.04 Ares of land in Sy.No.71/6 of Cheruvannur Village as per Ext.P1 sale deed and constructed a building in the said property as per the approved plan and permit. Thereafter building number was also assigned and the petitioner is remitting property tax as well, as is evident from Ext.P2 property tax receipt. The petitioner had purchased the property and constructed the building for the purpose of starting a shop to do the business of sale of manufactured fireworks and chinese crackers/sparklers. Thereafter petitioner had made applications for necessary licences/permissions from the concerned departments. Petitioner has issued a licence from the Deputy Chief Controller of Explosives, Kakkanad as is evident from

Ext.P3 and as per Ext.P4 a no objection certificate from the Fire and Rescue Services, Regional Fire Office, Kozhikode and Ext.P5 no objection certificate from the Additional District Magistrate, Kozhikode as mandated under Rules 102 and 103 of the Explosives Rules, 2008. But the petitioner's application for permit was rejected as per Ext.P6 by the respondent Panchayat. It is aggrieved by the same the petitioner has approached this Court.

2. Petitioner has a specific case that on an application submitted under the Right to Information Act she was informed as per Ext.P7 that licence should be issued if applied for with the permissions from other departments and on payment of fees as stipulated. Petitioners contention is that she has obtained necessary permits and consents from all the authorities concerned. Thereafter going by the provisions of the Kerala Panchayat Raj (Issue of Licences to Factories, Trades, Entrepreneurship Activities and other Services) Rules, 1996 if the application submitted along with the requisite permissions from other departments stipulated under this Rules, for the grant of licence along with the fees stipulated in Schedule II, the President shall issue the licence applied for with within seven days from the date of receipt of the application along with the requisite permits and fees. Therefore the contention of the petitioner is that since she has obtained all the requisite licences from the authorities concerned, the rejection as per

Ext.P6 is against law and liable to be interfered with.

3. Respondent Panchayat has filed a detailed counter affidavit mainly contending that against Ext.P6 order there is an effective alternative remedy of filing an appeal before the Panchayat Committee and thereafter a revision before the Tribunal for Local Self Government Institutions. Petitioner has approached this Court without availing the statutory remedy and therefore no reliefs can be granted to the petitioner. The learned standing counsel for the respondent Panchayat would submit that in Ext.P6 order the reason for rejecting the application is clearly mentioned that the occupancy class of building is commercial (Group F) and the petitioner was directed to take steps to convert the occupancy to Group I which is relating to hazardous occupation. Admittedly the business which the petitioner proposes to start is a hazardous one and she has to comply with the same. Respondent Panchayat submits that the business now proposed to be conducted is a hazardous one and therefore it can only be started in a occupancy which is classed under Group I. The licence for keeping fire crackers is to be issued with due diligence and care since it is involved the safety of numerous innocent lives. Ext.P6 is a speaking order and no interference is called for. The learned standing counsel relies on the judgment in **Lorik Bhagat v. Bihar State Power (Holding) Company Limited, Patna and others (2021 KHC 3478)**

and in **Kerala Bottled Water Manufacturers Association and another v. State of Kerala (2020 (3) KHC 1)** to contend for the position that the public interest will prevail over the private interest and prayed for dismissal of the writ petition.

4. Admittedly the business run by the petitioner is a hazardous one which comes under Schedule I and therefore requires a licence under Rules of 1996. It cannot also be disputed that hazardous occupancy comes under the Group I in Rule 25 of the Kerala Panchayat Building Rules. Therefore, a hazardous occupancy like that of the petitioner can be allowed to be run only in a building which is a Group I occupancy. The only objection submitted by the Panchayat is that the application can be considered only if necessary change of occupancy is sought for or to provide another building which satisfy the conditions for a Group I occupancy. Petitioner has a specific case that going by the Full Bench judgment of this Court in **Tomy Thomas v. State of Kerala and others reported in 2019 (4) KHC 553** contended that if an application is submitted along with the requisite clearances from the departments stipulated under the Rules for grant of licences, the President has to issue the licence. But the issue here is as to whether such a hazardous occupancy could be permitted in the building of the petitioner. It is admitted that as per the Kerala Panchayat Building Rules Group I occupancy comes under the

hazardous activities and admittedly the storage and sale of fire crackers are hazardous activities which requires a building which satisfies the conditions of a Group I occupancy. Petitioner thereupon submitted that she is prepared to make necessary application seeking for change of occupancy and application will be filed within a period of two days from today. If such an application is submitted, the respondent Panchayat shall consider and pass orders on the same as expeditiously as possible, at any rate on or before 01.04.2023, after affording an opportunity of hearing to the petitioner.

With the abovesaid direction the above writ petition is disposed of.

Sd/-

VIJU ABRAHAM
JUDGE

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APPENDIX OF WP(C) 39002/2022

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF THE SALE DEED NO. 1418/2019 DATED 14.10.2019 OF S.R.O. MEPPAYYUR
Exhibit P2	TRUE COPY OF THE PROPERTY TAX RECEIPT DATED 29.12.2021 ISSUED BY THE FIRST RESPONDENT
Exhibit P3	TRUE COPY OF THE LICENSE ISSUED BY THE DEPUTY CHIEF CONTROLLER OF EXPLOSIVES, ERNAKULAM DATED 08.02.2022
Exhibit P4	TRUE COPY OF THE NO OBJECTION CERTIFICATE DATED 23.09.2021 ISSUED BY THE FIRE AND RESCUE SERVICES, KOZHIKODE
Exhibit P5	TRUE COPY OF THE NO OBJECTION CERTIFICATE DATED 01.01.2022 ISSUED BY THE ADDITIONAL DISTRICT MAGISTRATE, KOZHIKODE
Exhibit P6	TRUE COPY OF THE PROCEEDING DATED 26.02.2022 BEARING NO.B3-604/22 ISSUED BY THE SECOND RESPONDENT
Exhibit P7	TRUE COPY OF THE REPLY DATED 21.03.2022 ISSUED BY THE OFFICE OF THE DIRECTOR OF PANCHAYAT