

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 18TH DAY OF MARCH 2022 / 27TH PHALGUNA, 1943

WP(C) NO. 23404 OF 2015

PETITIONER/S:

GIGI ROY
NADANKUZHY HOUSE, PULLUVAZHI P.O., VIA PERUMBAVOOR,
PIN-683 541.

BY ADVS.
SRI.P.RAMAKRISHNAN
SRI.C.ANIL KUMAR
SMT.ASHA K.SHENOY
SRI.T.C.KRISHNA
SMT.PREETHI RAMAKRISHNAN
SRI.PRATAP ABRAHAM VARGHESE

RESPONDENT/S:

- 1 N.T. GEORGE
NANGELIMALIL, PULLUVAZHI, VIA PERUMBAVOOR, PIN-683 541.
- 2 RAYAMANGALAM GRAMA PANCHAYATH
RAYAMANGALAM P.O., KURUPPAMPADY, PIN-683 545, REPRESENTED
BY ITS SECRETARY.
- 3 THE ENVIRONMENTAL ENGINEER
KERALA STATE POLLUTION CONTROL BOARD, DISTRICT OFFICE,
(ERNAKULAM-II), 1ST FLOOR, MANNA RESIDENCY, M.C.ROAD,
PERUMBAVOOR, PIN-683 542.
- 4 THE MEDICAL OFFICER IN CHARGE
PRIMARY HEALTH CENTRE, RAYAMANGALAM, PIN-683 545.

BY ADVS.
R1 BY SRI.M.P.ASHOK KUMAR
SRI.BINU PAUL
SRI.BINU PAUL
SMT.BINDU SREEDHAR
SMT.R.S.MANJULA

W.P.(C) No. 23404/2015

: 2 :

R4- SRI.JOBY JOSEPH, SENIOR GOVERNMENT PLEADER
R3 – SRI.NAVEEN.T, SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18.03.2022,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Dated this the 4th day of March, 2022.

JUDGMENT

This writ petition is filed by the petitioner seeking the following reliefs:

1. Issue a writ of certiorari or any other appropriate writ or order quashing and setting aside Ext.P6.
2. Issue a writ of mandamus or any other appropriate writ or order directing the 2nd respondent to consider and pass orders on Ext.P4 afresh.
3. Hold that the first respondent cannot run the cattle market in his property without licence contemplated in Section 222 of the Kerala Panchayat Raj Act, 1974.

2. According to the petitioner, a private cattle market is conducted close to the property belonging to herself and her sisters, without securing a licence in contemplation of Section 222 of the Kerala Panchayat Raj Act, 1994 ('Act, 1994' for short); and that even Ext. P5 notice dated 24.07.2015 was issued by the Pollution Control Board to the first respondent asking him to show cause as to why action shall not be taken for violation of the conditions prescribed under the consent to operate issued by the Environmental Engineer.

3. It is also pointed out therein that neither a properly roofed or sealed cow dung pit nor a septic tank and soak pit arrangement for the collection of urine/wash water are provided. According to her, even though Ext. P4 complaint was filed before the Secretary of the

Rayamangalam Grama Panchayat, Perumbavoor, Ernakulam District, the 2nd respondent, no action was initiated.

4. On the other hand, the 2nd respondent has issued Ext. P6 communication dated 20.07.2015 stating that the first respondent is conducting a cattle market for the past 30 years by renewing the licence successively. It is also the contention of the petitioner that a health and sanitary certificate was issued by the Health Inspector and the Medical Officer in charge of the Primary Health Centre, Rayamangalam without adequate precautions and without taking note of the action taken by the Pollution Control Board.

5. According to the petitioner, the licence that is renewed time and again by the first respondent is only a D & O licence and there is no licence secured by the first respondent as provided under Section 222 of the Act, 1994. The writ petition was pending before this Court for the past nearly 7 years without securing any interim orders.

6. I have heard the learned counsel for the petitioner Sri. Pratap Abraham Varghese, Smt. Bindu Sreekumar representing the learned counsel for the first respondent Sri. M. P. Ashok Kumar, Smt. Chitra representing the learned Standing Counsel for the Pollution Control Board Sri. T. Naveen, and Sri. Joby Joseph, the learned Senior Government Pleader, and perused the pleadings and materials on

record.

7. The subject issue revolves around Section 222 of the Act, 1994, which reads thus:

“222. **Licensing of private markets:** - (1) No person shall open a new private market or continue to keep open a private market unless he has obtained a licence from the Village Panchayat to do so. Such, licence shall be got renewed by the licensee every year.

(2) The village panchayat may, -

(a) grant the licence applied for, subject to such conditions as it may think fit as to supervision and inspection, sanitation and water supply, weights and measures to be used, rents and fees to be charged and such other matters as may be prescribed.

(b) refuse renewal of a licence if it is satisfied that such refusal is justified in public interest.

(c) at any time suspend or cancel any licence granted under clause

(a) for breach of any of the conditions thereof;

(d) modify the conditions of the licence to take effect from a specified date; and

(e) In a case where renewal of licence is refused under clause (b) the reasons therefor shall be intimated to the licensee and in case the licensee cures such defects within the time prescribed such application shall be reconsidered.

(3) No market fee shall be charged in evening markets (Anthichanthas) and the licence for the same shall be granted free of charge, but shall be subject to such conditions as to supervision and inspection, sanitation and weights and measures to be used as may be prescribed.

(4) when a licence granted under sub-section (2) permits the licensee to levy any fee from the private market, a licence fee not exceeding one third of the gross income of the owner from the market in the preceding year shall be charged by the village panchayat:

Provided that in the case of a new market the licence fees shall be

fixed by the Panchayat at rates which shall not be less than the amounts given hereunder, namely:-

(i) if the area of the market is not more than 0.1 hectare, rupees two hundred;

(ii) if the area is more than 0.1 hectare but less than 0.2 hectare, rupees four hundred;

(iii) and if the area is more than 0.2 hectare, rupees five hundred.

(5) The Village Panchayat or any officer duly authorised by it may close a private market which is unlicensed or the licence for which has been suspended or cancelled, or which is held or kept open contrary to the provisions of this Act after prior intimation.

8. On a perusal of the provision, it is categoric and clear that in order to conduct a private cattle market, a licence is required from the Village Panchayat itself. The case projected by the petitioner is that even though the first respondent has successfully secured renewal of the D & O licence, no licence in contemplation of Section 222 of the Act, 1994 is secured.

9. In my considered opinion, in the absence of any counter affidavit filed by the first respondent or the Grama Panchayat, I am unable to sort out the issue. That apart, a licence under Section 222 of the Act, 1994 is to be secured from the Village Panchayat. The complaint filed by the petitioner was before the Secretary of the Grama Panchayat. Therefore the Panchayat alone is vested with powers to take any action, for not securing a licence as per Section 222 of the Act, 1994 .

10. In that view of the matter, I am of the considered view that the petitioner can be relegated to the Village Panchayat seeking appropriate action, if no license is secured by the 1st respondent in accordance with Section 222 of Act 1994. Therefore, the writ petition is disposed of, leaving open the liberty of the petitioner to file a suitable complaint before the Village Panchayat in contemplation of Section 222 of the Act, 1994 and if any such complaint is filed within three weeks from the date of receipt of a copy of this judgment, it shall be finalised at the earliest and at any rate within a month thereafter, after providing a notice of hearing to the petitioner as well as the first respondent.

I make it clear that if any adverse consequences are still remaining for non compliance of the conditions contained in the consent to operate issued by the Pollution Control Board to the 2nd respondent, the Pollution Control Board is at liberty to take appropriate action in accordance with law.

sd/- **SHAJI P. CHALY, JUDGE.**

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APPENDIX OF WP(C) 23404/2015

PETITIONER'S EXHIBITS:

- EXT.P1 P1 : COPY OF SETTLEMENT DEED NO.588/2008 OF KURUPPAMPADY SUB REGISTRY, DTD.12.2.2008.
- EXT.P2 P2 : COPY OF APPLICATION DTD.8.6.2015 MADE UNDER THE RIGHT TO INFORMATION ACT BEFORE THE 1ST RESPONDENT.
- EXT.P3 P3 : COPY OF REPLY DTD.10.6.2015 RECEIVED FROM THE PUBLIC INFORMATION OFFICER OF THE 1ST RESPONDENT PANCHAYATH.
- EXT.P4 P4 : COPY OF COMPLAINT DTD.10.7.2015 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
- EXT.P5 P5 : COPY OF THE LETTER DTD.24.7.2015 ISSUED BY THE 3RD RESPONDENT.
- EXT.P6 P6 : COPY OF LETTER DTD.20.7.2015 FROM THE 2ND RESPONDENT TO THE PETITIONER.
- EXT.P7 P7 : COPY OF CERTIFICATE DTD.1.7.2015 ISSUED BY THE 3RD RESPONDENT.

RESPONDENTS' EXHIBITS :NIL

/True Copy/

PS to Judge.

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