

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

Friday, the 14th day of January 2022 / 24th Pousha, 1943
WP(C) NO. 29749 OF 2021

PETITIONER:

PAULY VADAKKAN, AGED 50 YEARS, S/O. JOSEPH VADAKKAN, VADAKKAN HOUSE,
ANNAMANADA P.O., THRISSUR DISTRICT, KERALA-680 741.

RESPONDENTS:

1. LULU INTERNATIONAL SHOPPING MALL PVT. LTD., REPRESENTED BY ITS DIRECTOR, 34/1000, NH-47, EDAPPALLY, ERNAKULAM-682 034.
2. STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, LOCAL SELF GOVERNMENT DEPARTMENT, THIRUVANANTHAPURAM-695 001.
3. THE SECRETARY, KALAMASSERY MUNICIPALITY, BPO CHANGAMPUZHA NAGAR, THIRUNILATH HOUSING COLONY, SOUTH KALAMASSERY, KALAMASSERY, ERNAKULAM-682 033.
4. KALAMASSERY MUNICIPALITY, REPRESENTED BY ITS SECRETARY, BPO CHANGAMPUZHA NAGAR, THIRUNILATH HOUSING COLONY, SOUTH KALAMASSERY, ERNAKULAM-682 033.
5. DIRECTOR OF URBAN AFFAIRS, SWARAJ BHAVAN, NANTHANCOD, KOWDIAR P.O., THIRUVANANTHAPURAM-695 003.

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to direct the 1st respondent not to collect the parking fee from their customers for parking their vehicles in the parking premises, pending disposal of the present Writ Petition (civil).

This petition coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of SRI. JOMY K. JOSE, Advocate for the petitioner, SRI. AJAY, Advocate for R1, GOVERNMENT PLEADER for R2 and R5 and of STANDING COUNSEL for R3 and R4, the court passed the following:

p. t. o

P.V.KUNHIKRISHNAN, J.

W.P.(C).Nos. 23932 & 29749 of 2021

Dated this the 14th day of January, 2022

ORDER

The grievance raised in these two writ petitions is that the the 3rd respondent in WP(C) No.23932 of 2021 (1st respondent in WP(C) No.29749 of 2021) is collecting parking fee for vehicles parked in the parking space of their building without any authority. The Standing Counsel for the Municipality submitted that the licence is given only under Section 447 of the Kerala Municipality Act.

2. As per the Building Rules, sufficient area for parking space is necessary for constructing a building. Parking space is part of the building. The building permit is issued on condition that there will be parking space. Based on this undertaking the building is constructed. After constructing the building, whether the owner of the building can collect parking fee is the question. *Prima facie* I am of the opinion that it is not possible. The

counsel for the 3rd respondent in WP(C) No.23932 of 2021 submitted that there are decisions of this Court which support his contentions. The counsel is free to produce those judgments at the time of final hearing. The statement filed by the Municipality is not clear on this issue. This Court want to know the stand of the Municipality on this issue. The Municipality concerned will file statement/counter affidavit about their stand regarding the issue, whether the parking fee can be collected for the parking space earmarked to a building as per the permit.

3. The further collection of parking fee by the 3rd respondent in WP(C) No.23932 of 2021 (the 1st respondent in WP(C) No.29749 of 2021) for parking vehicles in the area which is earmarked in the building permit for parking will be subject to the result of the final decision of this writ petition. But I make it clear that they can collect the parking fee at their risk.

The Municipality should place on record the affidavit/statement, if any, within two weeks.

Post on 28.01.2022.

sd/-

**P.V.KUNHIKRISHNAN
JUDGE**

Hand over copy to all the parties.

das

