

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

SATURDAY, THE 31ST DAY OF MAY 2014/10TH JYAISHTA, 1936

WP(C).No. 6595 of 2014 (Y)

PETITIONER:

K.J.SUNNY, AGED 54 YEARS
S/O K.K.JOHN, KUNNUMPURAM HOUSE, POTTASSERY ROAD
FATHIMAPURAM, CHANGANACHERY, KOTTAYAM DISTRICT
PIN:686 101.

BY ADVS.SRI.V.M.KURIAN
SRI.MATHEW B. KURIAN
SRI.K.T.THOMAS
SRI.N.SUNIL

RESPONDENTS:

1. CHANGANACHERY MUNICIPALITY
MUNICIPAL OFFICE, CHANGANACHERY, KOTTAYAM DISTRICT
PIN:686 101, REPRESENTED BY ITS SECRETARY.
2. THE KERALA STATE POLLUTION CONTROL BOARD,
DISTRICT OFFICE, ST.ANTONY'S COMPLEX, NAGAMBADOM
KOTTAYAM-686 001
REPRESENTED BY ITS ENVIRONMENTAL ENGINEER.
3. P.S.ANTONY, AGED 61 YEARS
S/O SOURJAR, PULIMOOTTIL HOUSE, FATHIMAPURAM P.O.
CHANGANACHERY-686 102, KOTTAYAM DISTRICT.

R1 BY ADV. SRI.M.P.ASHOK KUMAR
R1 BY ADV. SMT.BINDU SREEDHAR
R3 BY ADV. SRI.C.M.NAZAR
R3 BY ADV. SMT.M.V.ASHA BINDU
R3 BY ADV. SRI.SHAJI P.MATHEW
R2 BY SRI. M.AJAY, SC, KERALA STATE POLLUTION CONTROL BOARD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
31-05-2014, ALONG WITH W.P.(C)NO.13241 OF 2014, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT P1: TRUE COPY OF THE COMPLAINT DATED 29.3.2010 SUBMITTED BY PETITIONER.

EXHIBIT P2: TRUE COPY OF LETTER DATED 16.4.2010 ISSUED BY PUBLIC INFORMATION OFFICER.

EXHIBIT P3: TRUE COPY OF THE LETTER DATED 13.12.2010 ISSUED BY THE IST RESPONDENT.

EXHIBIT P4: TRUE COPY OF THE JUDGMENT IN O.S.NO.240/2010 OF THE MUNSIFF COURT, CHANGANACHERRY.

EXHIBIT P5: TRUE COPY OF THE COMPLAINT DATED 18.11.2011 SUBMITTED BY THE PETITIONER BEFORE THE MUNICIPALITY.

EXHIBIT P6: TRUE COPY OF THE COMPLAINT DATED 14.8.2012 SUBMITTED BY THE PETITIONER BEFORE THE MUNICIPALITY.

EXHIBIT P7: TRUE COPY OF THE COMPLAINT DATED 27.11.2013 SUBMITTED BY THE PETITIONER BEFORE THE MUNICIPALITY.

EXHIBIT P8: TRUE COPY OF THE APPLICATION DATED 24.1.2014 SUBMITTED BY THE PETITIONER.

EXHIBIT P9: TRUE COPY OF THE REPLY DATED 20.2.2014 ISSUED BY IST RESPONDENT.

EXHIBIT P10: TRUE COPY OF THE ORDER DATED 7.2.2014 ISSUED BY THE 2ND RESPONDENT.

RESPONDENTS' EXHIBITS: NIL

// TRUE COPY //

TKS

P.S. TO JUDGE

C.T.RAVIKUMAR, J.

W.P.(C)Nos.6595 & 13241 of 2014

Dated 31st May, 2014

JUDGMENT

The issues involved in these writ petitions are one and the same and therefore, they are taken up for joint hearing and disposal. For the convenient sake, hereinafter in this judgment, the parties are referred to in accordance with their status in W.P.(C)No.6595 of 2014 and the documents are also referred to in the order they are set out in the said writ petition, unless otherwise specifically mentioned.

2. The grievance of the petitioner is regarding the alleged illegal action on the part of the third respondent in conducting a poultry farm without a valid permit. Contending that the third respondent is not permitted to conduct sale of chicken and at the same time, he is indulging in the said business illegally without a valid permit the petitioner filed Ext.P1 complaint before the first respondent. Subsequently, the petitioner filed O.S.No.240 of 2010 before the Munsiff's Court, Changanachery seeking an injunction against the third respondent in conducting business not in terms of the conditions in Ext.P1 licence, referred as such in the latter writ petition, and conducting the business of sale of broiler chicken. The petitioner filed

Exts.P5 to P7 complaints on being aggrieved by the continued activities of the 3rd respondent in effecting sale of chicken without a valid permit. The inaction of the Municipal authorities made the petitioner to approach the Pollution Control Board, the second respondent seeking initiation of appropriate action against the 3rd respondent for running the said business without its consent. Subsequently, the second respondent issued Ext.P10 order dated 7.2.2014 directing the 3rd respondent to stop the unauthorised business. Despite the said order the 3rd respondent is continuing with the business. The former writ petition has been filed in the said circumstances with the prayer to issue a writ of mandamus commanding the first respondent Municipality to stop the illegal functioning of the poultry farm and the broiler chicken business conducted by the 3rd respondent. The latter writ petition has been filed by the third respondent in the former writ petition. It has been filed seeking quashment of Exts.P6 and P8 therein and also for issuance of a writ of mandamus commanding the first respondent to take a decision on Ext.P3. Ext.P6 in the latter writ petition is a communication to the third respondent (the petitioner in the latter writ petition) from the common second respondent intimating him that the application for consent to operate could not be considered owing to the pendency of the former

writ petition. Ext.P8 is a notice issued by the first respondent to the third respondent pursuant to Ext.P7 order passed by this Court in the former writ petition on 11.4.2014, directing the common first respondent viz., the Municipality to take appropriate steps to see that the poultry farm is not functioning without a valid permit. The third respondent is having a case that for the renewal of Ext.P1 permit, referred as such in the latter writ petition, he had earlier submitted an application on 23.3.2012, but that application was not taken up for consideration by the first respondent.

3. I have heard the learned counsel for the petitioner, the learned standing counsel appearing for the first respondent, the learned standing counsel appearing for the second respondent and also the learned counsel appearing for the third respondent.

4. It is the common case that the third respondent was granted Ext.P1 permit dated 17.7.2010. The petitioner approached the Munsiff's Court, Changanachery by filing O.S.No.240 of 2010 for an injunction restraining the third respondent from conducting business in the sale of broiler chicken virtually, in violation of the conditions in

Ext.P1. That suit was decreed as per Ext.P2 in the latter writ petition. The third respondent was restrained from conducting the sale of broiler chicken in his property and also from making environmental pollution. He was further restrained from trespassing into the plaint scheduled property and doing any waste or mischief thereon. The contention of the third respondent is that he was restrained from trespassing into the property having an extent of 5 Ares 27 sq. metre comprised in Survey No.146-3/8 of Changanassery Village and he is conducting business on the strength of Ext.P1 in the property comprised in Survey No.146/3/73 having an extent of 4.05 Ares. Thus, according to the 3rd respondent, he is not injuncted from conducting business in the property comprised in Survey No.146/3/73 of Changanacherry Village. He is injuncted from conducting sale of broiler chicken alone in his property. In other words, it is the contention of the third respondent that since there is no objection for conducting the sale of chicken meat from his property and he has obtained Ext.P1 permit from the first respondent it cannot be said that he is conducting the business illegally or unauthorisedly.

5. Though the parties have taken up various contentions and contra contentions I do not think it necessary to consider those rival

contentions in detail and I am of the considered view that certain undisputed facts alone need be taken into account for the purpose of disposal of these writ petitions. Ext.P1 in the latter writ petition is the permit obtained by the third respondent from the common first respondent for the purpose of running the business in the name and style "M/s.Aida Cold Storage". A perusal of Ext.P1 would reveal that it was granted for the purpose of sale of chicken meat in the cold storage. As against the column for the purpose for which the licence is issued it was entered " കോഴിയിറച്ചി കോൾഡ് സ്റ്റോറേജ് ". Admittedly, it was issued on 17.7.2010 and though it was renewed once, according to the 3rd respondent, his application for renewal of Ext.P1 permit submitted on 23.3.2012 was not taken up and considered. Even if it is taken that owing to the failure on the part of the first respondent in considering the said application dated 23.3.2012 for renewal of Ext.P1 permit the third respondent could have continued with the business under a deemed permit, he could not have continued the sale on the strength of such a deemed permit beyond 31.3.2013. There is no case for the third respondent that he had submitted another application subsequently either in the year 2013 or in the year 2014. In that context, it is to be noted that the specific stand of the 2nd respondent is that the 3rd

respondent has been running it without a consent to operate. In the said circumstances, seeking initiation of appropriate action against the third respondent for running the said business without its consent the second respondent has already took up the matter before the first respondent. The learned standing counsel appearing for the first respondent also submitted that the 3rd respondent is conducting the business without getting Ext.P1 permit renewed. The contention of the 3rd respondent that he is entitled to continue to conduct the cold storage cannot be accepted in the said circumstances as the 3rd respondent is not now, possessing a valid permit issued by the first respondent as also the consent to operate issued by the second respondent. When that be the case, the 3rd respondent cannot go on with the business of cold storage without obtaining proper consent to operate issued by the second respondent and the renewed permit issued by the first respondent. The question what could be issued, even on an application, is a renewed permit or a fresh permit is also a matter to be considered in the contextual situation as there is no case for the 3rd respondent that subsequent to 23.3.2012 he submitted any application for renewal of Ext.P1 permit. In the light of the decree in O.S.No.240 of 2010 of Munsiff's Court, Changanacherry the 3rd respondent cannot engage in the

business of broiler chicken in his property comprised in Survey No.146/3/73 of Changanacherry Village. True that, though the contention of the 3rd respondent is that as per Ext.P2 in the latter writ petition he was enjoined only from conducting the business of broiler chicken in his property there cannot be any doubt with respect to the position that right of conducting a business in any property would depend upon the question whether for such an activity the competent authorities granted the required permit or licence. Therefore, merely because he was enjoined only from conducting sale of broiler chicken alone in the aforesaid property belonging to him that by itself could not and would not confer any right on the third respondent to conduct the business in chicken meat in the cold storage without a valid permit issued by the first respondent and a consent to operate issued by the second respondent. In the said circumstances, the prayer of the petitioner for issuance of a writ of mandamus commanding the first respondent Municipality to take appropriate steps to stop the illegal functioning of the poultry farm and the broiler chicken business conducted by the 3rd respondent is to be allowed. Hence, there will be a direction to the first respondent Municipality to take steps to ensure that the third respondent is not conducting the poultry farm without a valid permit issued by the first

respondent or a consent to operate issued by the second respondent. I have already adverted to the fact that the third respondent is having a grievance that his application for renewal of Ext.P1 permit was not taken up by the respondents. In view of the reasons and observations made on that issue it is ordered that in case the 3rd respondent viz., the petitioner in W.P.(C)No.13241 of 2014 submits appropriate applications for consent to operate and for permit before the second and first respondents they shall consider such applications expeditiously and in accordance with law, at any rate, within a period of one month from the date of receipt of the respective application. In the said circumstances, W.P.(C)No.6595 of 2014 is allowed and W.P.(C)No.13241 of 2014 is disposed of as above.

Sd/-
C.T.RAVIKUMAR
Judge

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