

Soja M Joseph vs Kerala State Pollution Control Board

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Court : Kerala

Decided On : Jan-03-2024

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : WP(C)/22477/2013

Appellant : Soja M Joseph

Respondent : Kerala State Pollution Control Board

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
WEDNESDAY, THE 3RD DAY OF JANUARY 2024 / 13TH POUSHA,
1945 WP(C) NO. 22477 OF 2013 PETITIONERS: 1 SOJA M JOSEPH
AGED 36 YEARS PROPRIETOR, A.J.RUBBERS, MAZHUVANCHERIL
HOUSE PERUMBAIKKADU, KOTTAYAM. 2 ALICE JOSE WO. JOSEPH
AGED 63 YEARS PROPRIETRESS, J.S.RUBBERS,
MAZHUVANCHERIL HOUSE PERUMBAIKKADU, KOTTAYAM. BY
ADVS. SRI.BABU JOSEPH KURUVATHAZHA SRI.T.K.BIJU
MANJINIKARA SRI.O.V.RADHAKRISHNAN SR. RESPONDENTS: 1
KERALA STATE POLLUTION CONTROL BOARD REPRESENTED BY
ITS MEMBER SECRETARY, PLAMOOD, PATTOM

THIRUVANANTHAPURAM - 695 004 2 THE DISTRICT ENVIRONMENTAL ENGINEER KERALA STATE POLLUTION CONTROL BOARD, ST.ANTONY'S COMPLEX, NAGAMPADOM, KOTTAYAM - 686 001. 3 THE DISTRICT MEDICAL OFFICER CIVIL STATION, KOTTAYAM - 686 001 4 KOTTAYAM MUNICIPALITY REPRESENTED BY ITS SECRETARY, OFFICE OF THE KOTTAYAM MUNICIPALITY, KOTTAYAM - 686 001.

5 THE DISTRICT COLLECTOR COLLECTORATE, KOTTAYAM - 686 001. 6 P.M. RAJU SO.P.M.MANUAL POOZHIKKUNNEL HOUSE, PERUMBAIKADU, KOTTAYAM-686 028 7 K.J. JACOB SO.JOSEPH KAROTTE SAKETH HOUSE, PERUMBAIKADU, KOTTAYAM-686 028.

8 THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS DISTRICT AND SESSIONS COURT COMPLEX, VANCHIYOOR THIRUVANANTHAPURAM-695 035, REPRESENTED BY ITS SECRETARY 9 KOTTAYAM MUNICIPAL COUNCIL REPRESENTED BY ITS CHAIRMAN, OFFICE OF THE KOTTAYAM MUNICIPALITY, KOTTAYAM - 686 001. BY ADVS. SRI.SIBY CHENAPPADY, SC, KOTTAYAM MUNICIPALITY SRI.K.JAYAKUMAR SR. SRI.PHILIP J.VETTICKATTU SRI.SIBY MATHEW SRI.M.SREEKUMAR C.S.MANILAL OTHER PRESENT: SRI.RIYAL DEVASSY, GP THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: P.V.KUNHIKRISHNAN ----- W.P.(C).No.22477 of 2013 ----- Dated this the 3rd day of January, 2024

JUDGMENT

This writ petition is filed with the following prayers:-

i) to declare that the petitioners are not legally required to apply for licence or for renewal of the licence under Section 448 of the Kerala Municipality Act in view of the fact that the industrial units owned and run

by the petitioners were constructed and established in the area which fell within the limits of Kumaranalloor Panchayath and the Kumaranalloor Panchayath did not notify the place over which the industrial units were constructed for obtaining licence contemplated by or required under Section 233 of the Kerala Panchayath Raj Act;

ii) issue a writ of certiorari or any other appropriate writ, order or direction quashing Ext.P16 and Ext.P2; iii) issue any appropriate writ, order or direction declaring that petitioners have the right to operate their industries in strict compliance to the directions issued by the Pollution Control Board in Exts.P2 and P2(a); iv) issue such other writ, order or direction which may deem fit in the facts and circumstances of the case. (SIC)

2. This Court passed interim order on 09.09.2013 rejecting the interim prayer of the petitioner. It will be better to extract the same. Adv.M.Ajay appears for respondents 1 and 2. Adv Siby Mathew appears for respondents 4 and 9, the Govt. Pleader appears for respondents 3 and 5 and Adv.M.Sreekumar appears for respondents 6 and 7.

2. This writ petition is filed challenging Ext.P21

common order of the Tribunal for Local Self Government Institutions in two revision petitions, one filed by the petitioners and the other filed by respondents 6 and 7. One revision has been allowed while the other revision has been dismissed. The Tribunal has further directed the petitioners herein not to function their units until proper installation/establishment permit under Section 448 of the Kerala Municipality Act, 1994 (the 'Act for short) and a proper licence under Section 447 of the same enactment are obtained. The contention of the counsel for the petitioners is that Ext.P21 is liable to be set aside. In spite of the voluminous records produced, the counsel for the petitioners has not been able to draw my attention to any licence issued under Section 448 of the Act. Therefore, prima facie I do not find any infirmity with Ext.P21. Since the direction is only to obtain an establishment permit

under Section 448 and a licence under Section 447 of the Act, I do not find any grounds to grant an interim order of stay of the said direction. The petitioners may apply for the said permit and licence. Post after holidays for further consideration.

Hand over copy of the order to all counsel.

3. Even though, an appeal is filed against the above

order, the same was withdrawn with liberty to approach the single judge. This court perused the pleadings in this writ petition and the interim order passed by this court on 09.09.2013. I am of the considered opinion that there is nothing to change the view taken by the Tribunal in the impugned order. The Tribunal has only directed the petitioner not to function their units until proper installation/ establishment permit under Section 448 of the Kerala Municipality Act, 1994 and a proper licence under Section 447 of the same enactment are obtained. If the petitioner obtained the same, the petitioner can proceed with the unit, in accordance with law. Hence, recording the order dated 09.09.2013 and confirming Ext.P21 order, this writ petition is dismissed. Sd/- P.V.KUNHIKRISHNAN JUDGE
bng APPENDIX OF WP(C) 22477/2013 PETITIONER EXHIBITS EXHIBIT P1 TRUE PHOTOCOPY OF THE APPROVED PLAN OF M/S.J.S.RUBBERS ISSUED BY THE KUMARANALLOOR GRAMA PANCHAYAT DATED 4-5- 2003. EXHIBIT P1(A) TRUE PHOTOCOPY OF THE BUILDING PERMIT OF

M/S.J.S.RUBBERS DATED 16-12-2005 ISSUED BY THE KUMARANALLOOR GRAMA PANCHAYAT ALONG WITH THE APPROVED PLAN.

EXHIBIT P1(B) TRUE COPY OF THE LICENSE DATED 5-4-2005 EXHIBIT P1(C) TRUE COPY OF THE LICENSE DATED 1-4-2006 EXHIBIT P1(D) TRUE COPY OF THE LICENSE DATED 2-4-2007 EXHIBIT P1(E) TRUE COPY OF THE LICENSE DATED 1-4-2008 EXHIBIT P1(F) TRUE COPY OF THE LICENSE DATED 1-4-2009 EXHIBIT P1(G) TRUE COPY OF THE LICENSE DATED 22-7-2010 EXHIBIT P1(H) TRUE COPY OF THE LICENSE DATED 5-4-2006 PANCHAYAT TO M/S.A.J.RUBBERS. EXHIBIT P1(I) TRUE COPY OF THE LICENSE DATED 4-4-2007 PANCHAYAT TO M/S.A.J.RUBBERS. EXHIBIT P1(J)

TRUE COPY OF THE LICENSE DATED 1-4-2008 PANCHAYAT TO M/S.A.J.RUBBERS. EXHIBIT P1(K) TRUE COPY OF THE LICENSE DATED 1-4-2009 PANCHAYAT TO M/S.A.J.RUBBERS. EXHIBIT P1(L) TRUE COPY OF THE LICENSE DATED 27-7-2010 PANCHAYAT TO M/S.A.J.RUBBERS. EXHIBIT P2 TRUE COPY OF THE CONSENT

NO.PCB/KTM/ICO/R1/1345/2012 DATED 14-11- 2012 VALID UP TO 30-6-2015 ISSUED BY THE 2ND RESPONDENT IN FAVOUR OF THE INDUSTRY OF THE 1ST PETITIONER. EXHIBIT P2(A) TRUE COPY OF THE CONSENT NO.PCB/KTM/ICO/R2/1314/2012 DATED 6-11- 2012 VALID UP TO 30-6-2013 ISSUED BY THE 2ND RESPONDENT IN FAVOUR OF THE INDUSTRY OF THE 2ND PETITIONER.

EXHIBIT P3 TRUE COPY OF THE LICENSE NO.KMR-08/13 DATED 4-4-2013 VALID UP TO 31-3-2014 ISSUED BY THE 4TH RESPONDENT IN FAVOUR OF THE INDUSTRY OF THE 1ST PETITIONER. EXHIBIT P4 TRUE COPY OF THE LICENCE NO.KMR-09/13 DATED 4-4-2013 VALID UP TO 30-6-2013 ISSUED BY THE 4TH RESPONDENT IN FAVOUR OF THE INDUSTRY OF THE 2ND PETITIONER

EXHIBIT P5 TRUE COPY OF THE PROCEEDING NO.PCB/KTM/CO/330/2010 DATED 29-6-2012 ISSUED BY THE 2ND RESPONDENT. EXHIBIT P6 TRUE COPY OF THE PROCEEDING NO.PCB/KTM/CO/1599/2011 DATED 29-6-2012 ISSUED BY THE 2ND RESPONDENT. EXHIBIT P7 TRUE COPY OF THE PROCEEDING NO.PCB/RO- EKMGEN-29/11 DATED 25-7-2012 OF THE CHIEF ENVIORNMENTAL ENGINEER, KERALA STATE POLLUTION CONTROL BOARD ERNAKULAM EXHIBIT P8 TRUE COPY OF THE PROCEEDING NO.PCB/KTM/CO/330/2010 DATED 25-9-2012 ISSUED BY THE 2ND RESPONDENT. EXHIBIT P9 EXT.P9 - TRUE COPY OF THE PROCEEDING NO.PCB/KTM/CO/330/2010 DATED 25-9-2012 ISSUED BY THE 2ND RESPONDENT. EXHIBIT P10 TRUE PHOTOCOPY OF THE HEARING NOTICE NO.PCB/HO/KTM/COMP/140/2011 DATED 4-7- 2012 ISSUED BY THE CHAIRMAN OF THE 1ST RESPONDENT. EXHIBIT P11 TRUE PHOTOCOPY OF THE HEARING NOTICE NO.PCB/HO/KTM/COMP/140/2011 DATED 20-7- 2012

ISSUED BY THE CHAIRMAN OF THE 1ST RESPONDENT. EXHIBIT P12 TRUE PHOTOCOPY OF THE HEARING NOTICE NO.PCB/HO/KTM/COMP/140/2011 DED 9-8-2012 ISSUED FROM THE 1ST RESPONDENT. EXHIBIT P13 TRUE COPY OF THE PROCEEDING NO.C2/9270/2011 DATED 10-7-2012 ISSUED BY THE 3RD RESPONDENT. EXHIBIT P14 TRUE COPY OF THE REPRESENTATION DATED 19- 10-2012 SUBMITTED BY THE 1ST PETITIONER BEFORE THE 3RD RESPONDENT. EXHIBIT P14(A) TRUE COPY OF THE REPRESENTATION DATED 19- 10-2012 SUBMITTED BY THE 2ND PETITIONER BEFORE THE 3RD RESPONDENT. EXHIBIT P14(B) TRUE COPY OF THE SIGNATURE WITH DATED 20- 10-2012 EVIDENCING THE RECEIPT OF EXTS.P14 AND P14(A) AT THE OFFICE OF THE 3RD RESPONDENT. EXHIBIT P15 TRUE COPY OF THE PROCEEDING NO.C2- 3RD RESPONDENT. EXHIBIT P15(A) TRUE COPY OF THE ORDER NOKH1-16391/11 DATED 19-2-2013 ISSUED BY THE 4TH RESPONDENT. EXHIBIT P16 TRUE COPY OF THE RESOLUTION DATED 10-5- 2013 PASSED BY THE 9TH RESPONDENT. EXHIBIT P16(A) TRUE COPY OF THE NOTICE NO.KH 1-16391/11 DATED 23-5-2013 ISSUED BY THE 4TH RESPONDENT. EXHIBIT P17 TRUE COPY OF REVISION PETITION

NO.100/2013 FILED BY THE PETITIONERS BEFORE THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS (EXCEPT WITH THE DOCUMENTS) EXHIBIT P17(A) TRUE COPY OF THE REPLICATION FILED IN EXT.P17 (EXCEPT WITH THE DOCUMENTS) EXHIBIT P18 TRUE COPY OF REVISION PETITION NO.103/2013 FILED BY THE RESPONDENTS 6 AND 7 BEFORE THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS (EXCEPT WITH THE DOCUMENTS)

EXHIBIT P18(A) TRUE COPY OF THE WRITTEN STATEMENT FILED IN EXT.P18 EXCEPT WITH THE DOCUMENTS. EXHIBIT P19 TRUE COPY OF THE ORDER DATED 18-6-2013 IN I.A.NO.1054/2013 IN REVISION PETITION NO.103/2013 OF THE 8TH RESPONDENT. EXHIBIT P20 TRUE COPY OF THE ORDER DATED 21-6-2013 IN WPC.NO.15773/2013 OF THIS HON'BLE COURT. EXHIBIT P20(A) TRUE COPY OF THE JUDGMENT DATED 3-7-2013 IN WPC.NO.15773/2013 OF THIS HON'BLE COURT. EXHIBIT P21 TRUE COPY OF

THE COMMON ORDER DATED 31-8- 2013 IN REVISION PETITION NOS.100 AND 103 OF 2013 OF THE 8TH RESPONDENT. EXHIBIT P22 TURE PHOTOCOPY OF THE LETTER DATED 09.07.2013 ISSUED BY THE KOTTAYAM MUNICIPALITY EXHIBIT P23 TURE PHOTOCOPY OF EXT.R3(D) DATED 05.08.2013 PRODUCED BEFORE THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS. EXHIBIT P24 TURE COPY OF THE APPLICATION DATED 27.09.2013 SUBMITTED BY THE 1ST PETITIONER UNDER THE RIGHT TO INFORMATION ACT. EXHIBIT P25 TURE COPY OF THE REPLY DATED 23.10.2013 IN RESPONSE TO EXT.P24 RESPONDENTS' EXHIBITS EXHIBIT R6(A) TURE COPY OF THE REVISION PETITION

NO.103/2013 FILED BY RESPONDENTS 6 & 7 BEFORE THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM DATED 18.06.2013 WITHOUT ANNEXURES .

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