

Rahmath, vs Bindu,

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Court : Kerala

Decided On : Jul-31-2023

Judge : Honourable Mr. Justice Anil K.Narendran,Honourable Mr.Justice P.G. Ajithkumar

Appeal No. : WA/48/2023

Appellant : Rahmath,

Respondent : BINDU,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ANIL K. NARENDRAN & THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR MONDAY, THE 31ST DAY OF JULY 2023 / 9TH SRAVANA, 1945 AGAINST THE JUDGMENT DATED 1/12/2022 IN WP(C)NO.24979/2022 OF HIGH COURT OF KERALA APPELLANT/6TH RESPONDENT: RAHMATH, AGED 42 YEARS W/O NAGARKOVIL VEETIL USMAN KHAN(LATE), WADAKKANCHERRY VILLAGE, WADAKKANCHERRY P.O, THALAPILLY TALUK, THRISSUR DISTRICT, PIN - 680582 BY ADVS.V.PREMCHAND SURYA MOHAN P. FATHIMA SHALU S. RESPONDENTS/PETITIONERS 1 TO 3 & RESPONDENTS 1 TO 5 IN

WP(C): 1 BINDU, AGED 51 YEARS, D/O.GANGADHARAN, 3RD FLOOR GANGA HOSTEL, A-1164, WADAKKANCHERRY VILLAGE, WADAKKANCHERRY P.O., TALAPPILLY TALUK, THRISSUR DISTRICT, PIN - 680582 2 HIMMATH, AGED 54 YEARS, S/O.GANGADHARAN, ENGANDIYUR VILLAGE, ENGANDIYUR DESOM, ENGANDIYUR P.O., CHAVAKKAD TALUK, THRISSUR DISTRICT, PIN - 3 MEENAKSHI, AGED 84 YEARS, W/O.GANGADHARAN, 3RD FLOOR GANGA HOSTEL, A-1164, WADAKKANCHERRY VILLAGE, WADAKKANCHERRY P.O., TALAPPILLY TALUK, THRISSUR DISTRICT, PIN - 680582 4 STATE OF KERALA, REP. BY ADDITIONAL CHIEF SECRETARY, HOME DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM., PIN - 695001 5 COMMISSIONER OF POLICE, THRISSUR, OFFICE OF COMMISSIONER OF POLICE, SHAKTHAN THAMPURAN NAGAR, VELIYANOOR P.O., THRISSUR DISTRICT., PIN - 680001 6 DEPUTY SUPERINTENDENT OF POLICE, KUNNAMKULAM, THRISSUR - KUNNAMKULAM ROAD, KUNNAMKULAM, THRISSUR DISTRICT., PIN - 680503

7 STATION HOUSE OFFICER, WADAKKANCHERRY POLICE STATION, WADAKKANCHERRY, THRISSUR DISTRICT, PIN - 8 SECRETARY WADAKKANCHERRY MUNICIPALITY, WADAKKANCHERRY P.O., THRISSUR DISTRICT, PIN - BY ADVS.DRISHYA K.PRAKASH K.RAJESH KANNAN P.P.THAJUDEEN SRI T.K.SHAJAHAN - SR GOVERNMENT PLEADER THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 31.07.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Anil K. Narendran, J.

The appellant is the 6th respondent in W.P.(C)No.24979 of 2022, which was one filed by respondents 1 to 3 herein seeking a writ of mandamus commanding the

7th respondent Station House Officer, Wadakkancherry Police Station to grant adequate protection to their life and property from the high-handed acts of the appellant; and a writ of mandamus commanding the 7th respondent Station House Officer, Wadakkancherry Police Station and his policemen to grant adequate protection to the petitioners to comply with Ext.P1 stop memo dated 12.07.2022 issued by the 8th respondent herein, the Secretary of Wadakkancherry Municipality.

2. On receipt of notice in the said writ petition, the

appellant entered appearance and filed a counter affidavit, opposing the reliefs sought for. After considering the rival contentions, the learned Single Judge disposed of W.P.(C)No.24979 of 2022 by the impugned judgment. Paragraph 6 and also the last paragraph of that judgment read thus; 6. Having considered the contentions advanced, I am of the opinion that the question with regard to eviction from the property is to be considered in the appropriate proceedings. However, the 6th respondent cannot contend

that she has any right to conduct a hostel in the premises in the absence of any licence issued by the Municipality. Section 563 of the Kerala Municipality Act specifically bars the jurisdiction of civil courts in respect of any action taken or order passed under the provisions of Chapters XVII, XVIII and XIX of the Act and Rules and Regulations, if any, made thereunder. The Municipality specifically contends that at present, there is no licence in force for the conduct of the hostel in the premises. In the above view of the matter, in case the stop memo is in force and is not being enforced, it is for the Municipality to approach the police with an appropriate request for assistance for enforcing the same. If any such request is made by the Secretary of the Municipality, appropriate steps to grant protection for the enforcement of the stop memo shall be taken by the 4th respondent. All other

issues are left open to be decided in the appropriate

proceedings. Feeling aggrieved, the appellant is before this Court in this writ appeal, invoking the provisions under Section 5 of the High Court Act, 1958.

3. Heard the learned counsel for the appellant-6th

respondent, the learned counsel for respondents 1 to 3-writ petitioners, the learned Senior Government Pleader for respondents 4 to 7 and the learned Standing Counsel for Wadakkancherry Municipality for the 8th respondent.

4. The issue that requires consideration in this writ

appeal is as to whether any interference is warranted on the impugned judgment of the learned Single Judge, whereby that writ petition was disposed of with the directions contained therein.

4. During the course of arguments, on a query made by

this Court, the learned counsel for the appellant-6th respondent would submit that the appellant is not holding a valid licence to conduct a hostel in the building in question.

5. The document marked as Ext.P1 is a stop memo

dated 12.07.2022 issued by the 8th respondent Secretary of Wadakkancherry Municipality, whereby the 1st petitioner is restrained from conducting hostel in the building in question, without renewing the licence, after complying with the statutory requirements. The said notice reads thus; 21-)O 1164 , 1164 , , () . .

6. In the writ petition, the case of the writ petitioners is

that the 1st petitioner-1st respondent herein was conducting the hostel and the role of the appellant-6th respondent in the writ petition, was only to run the canteen. On the other hand, the learned counsel for the appellant-6th respondent would contend that the hostel itself is run by the appellant, on the strength of a rent deed.

7. We do not propose to consider those aspects in this

writ appeal, since the dispute in respect of the building in question is now pending adjudication before the Munsiff Court, Wadakkancherry in O.S.No.306 of 2022.

8. Insofar as the direction contained in the impugned

judgment of the learned Single Judge is concerned, we notice the

statutory provisions under Section 550 of the Kerala Municipality Act, 1954, which read thus; 550. Duties of Police Officer.- (1) It shall be the duty of every police officer-

(a) to communicate without delay to the proper officer of a

Municipality any information which he receives of the design to commit or of the commission of any offence under this Act or any rule, bye-law or regulation made thereunder; and

(b) to assist the Chairperson, the Secretary or any Officer or employee of a Municipality demanding his aid for the exercise of any power vested in them under this Act in or any rule, bye-law or regulation made thereunder.

(2) Any Police Officer who omits or refuses to perform any duty imposed on him by this Act shall be deemed to have committed an offence under clause (d) of section 41 of the Kerala Police Act, 1960 (5 of 1960).

9. In view of the provisions under Section 550(1)(b) of the Kerala Municipality Act, quoted hereinbefore, we find no reason to interfere with the direction contained in the impugned

judgment dated 13.12.2022 of the learned Single Judge in

W.P.(C)No.24979 of 2022. In the result, this writ appeal fails and the same is accordingly dismissed; however, without prejudice to the rival contentions taken by both sides in O.S.No.306 of 2022 pending adjudication before the Munsiff Court, Wadakkancherry. Sd/- ANIL K. NARENDRAN, JUDGE Sd/- P.G. AJITHKUMAR, JUDGE AV/3/8 APPENDIX OF WA 48/2023 PETITIONER ANNEXURES

Annexure-1 A TRUE COPY OF THE NOTICE DATED 24-12-2022 ISSUED BY
THE SECRETARY WADAKKANCHERRY MUNICIPALITY

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