

**M.Binish Vs. State of Kerala and Others**

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**SooperKanoon Citation :** [sooperkanoon.com/62479](http://sooperkanoon.com/62479)

**Court :** Kerala

**Decided On :** Jul-28-2015

**Judge :** Honourable Mr.Justice K.Vinod Chandran

**Appellant :** M.Binish

**Respondent :** State of Kerala and Others

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN TUESDAY, THE 28<sup>H</sup> DAY OF JULY 2015 6<sup>TH</sup> SRAVANA, 1937 WP(C).No. 34315 of 2008 (I) ----- PETITIONER(S): ----- M.BINISH, S/O M.CHANDRAN, AGED 22 YRS, BENOY NIVAS, NEAR PANANKAVUKULAM.P.O, CHIRAKKAL KANNUR-670011. BY ADV. SRI.T.P.PANKAJAKSHAN RESPONDENT(S): ----- 1. STATE OF KERALA, REPRESENTED BY SECRETARY DEPARTMENT OF INDUSTRIES AND COMMERCE, SECRETARIAT, TRIVANDRUM.

2. THE DIRECTOR, DEPARTMENT OF INDUSTRIES AND COMMERCE, VIKAS BHAVAN, PMA JUNCTION, TRIVANDRUM.

3. THE GENERAL MANAGER, DISTRICT INDUSTRIES CENTRE, CIVIL STATION COMPOUND, KANNUR.

4. P.C.JAYARAMAN, S/O P.C.KUNJIRAMAN, CHERAMBATH HOUSE, AZHEEKKAL.P.O., KANNUR. R4 BY ADV. SRI.M.V.AMARESAN, R4 BY ADV. SRI.V.N.RAMESAN NAMBISAN & BY GOVERNMENT PLEADER SRI. MANOJ P.KUNJACHAN. THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: vs. WP(C).No. 34315 of 2008 (I) APPENDIX PETITIONER(S)' EXHIBITS : ----- EXT. P1: TRUE COPY OF THE APPLICATION DATED 09/02/2005. EXT. P2: TRUE COPY OF THE PROJECT REPORT. EXT. P3: TRUE COPY OF THE PROCEEDINGS NO.C1-671/2005 DATED 17/02/2005. EXT. P4: TRUE COPY OF THE MAHAZAR DATED 17/02/2005. EXT. P5: TRUE COPY OF THE REPAYMENT SCHEDULE OF HIRE PURCHASE COST. EXT. P6: TRUE COPY OF THE RECEIPT DATED 17/02/2005 BOOK NO.35, RECEIPT NO.68. EXT. P7: TRUE COPY OF THE RECEIPT DATED 23/02/2005 BOOK 35 RECEIPT NO.81. EXT. P8: TRUE COPY OF THE AGREEMENT DATED 28/02/2005. EXT. P9: TRUE COPY OF THE RECEIPT NO.181719 DATED 19/03/2005. EXT. P10: TRUE COPY OF THE RECEIPT NO.278272 DATED 27/11/2005. EXT. P11: TRUE COPY OF THE PROVISIONAL REGISTRATION CERTIFICATE. EXT. P12: TRUE COPY OF THE APPROVED PLAN. EXT. P13: TRUE COPY OF THE FRONT ELEVATION OF ADDITIONAL CONSTRUCTION. EXT. P14: TRUE COPY OF THE BUILDING PERMIT NO.BUL/236/06-07 DATED 17/11/2006. EXT. P15: TRUE COPY OF THE LETTER/NOTICE DATED 05/05/2005 NO.C1-671/05. EXT. P16: TRUE COPY OF THE

ORDER

FORM DATED 10/06/2006. EXT. P17: TRUE COPY OF THE INTIMATION OF M/S FOURRIGHT PRODUCT. EXT. P18: TRUE COPY OF THE RECEIPT ISSUED BY LATERITE STONE AGENT. EXT. P19: TRUE COPY OF THE STAMPED RECEIPT. EXT. P20: TRUE COPY OF THE PURCHASE BILL. EXT. P21: TRUE COPY OF THE RECEIPT NO.216 DATED DC1608/2006. EXT. P22: TRUE COPY OF THE PHOTOGRAPH. EXT. P23: TRUE COPY OF THE

JUDGMENT

IN WP(C)NO.13314/05(I) WP(C).No. 34315 of 2008 (I) EXT. P24: TRUE COPY OF THE

ORDER

NO.GO(MS)477/2008/INDUSTRIES DATED1305/2008. EXT. P25: TRUE COPY OF THE

ORDER

NO.C1-2459/05 DATED3005/2008. EXT. P26: TRUE COPY OF THE REGISTERED LETTER HAVING NO.C1-2459/05 DATED3005/2008. EXT. P27: TRUE COPY OF THE NOTICE DATED1705/10. RESPONDENT(S)' EXHIBITS: ----- NIL. /TRUE COPY/ P.A.TO JUDGE RVS. K. VINOD CHANDRAN, J.

----- W.P(C). No.34315 of 2008  
----- Dated this the 28th day of July, 2015.

JUDGMENT

The petitioner was aggrieved with Ext.P24, which re-allotted an industrial plot to the 4th respondent, which plot was in fact taken over by the 4th respondent and allotted to the petitioner herein. Admittedly, an industrial plot under the 3rd respondent was originally allotted to the 4th respondent on 10.06.1991.

2. The 4th respondent had initially started a match box industry in the said plot, that too in the year 1994 and then later got sanction for converting it to a plywood industry. However the 4th respondent abandoned the plot and despite various communications issued to the 4th respondent, he could not be traced out. In any event, on 11.01.2004, the 3rd respondent conducted an enquiry and found that the plot is not being used and that the industry is lying closed down. Hence, a notice was W.P(C). No.34315 of 2008 2 issued on 13.02.2004 and since there was no response from the 4th respondent, the property was taken over on 17.01.2005 and it was transferred to one another person, the petitioner herein.

3. The petitioner is said to have made considerable investments in the plot also. However, later on by Ext.P23, the 4th respondent's writ petition was disposed of,

directing consideration of the representation of the 4th respondent. Pursuant to the orders in Ext.P23, Ext.P24 has been passed. On the basis of Ext.P24, the 3rd respondent issued Ext.P25, handing over the plot again to the 4th respondent. The petitioner before this Court contended that there is considerable investment made by the petitioner in the plot. There was also a status quo order with respect to the property as on 21.11.2008, which is in force till date.

4. There is no appearance for the petitioner. The learned counsel for the 4th respondent has filed a counter statement on the ground that the 4th respondent is not in station. The 4th respondent obviously is not in station even now. This Court is W.P(C). No.34315 of 2008 3 unable to sustain Ext.P24 order, since there is no consideration of the issue, but for an observation that the 4th respondent has paid the entire money for the plot. It is to be noticed that, it is not for investment purposes that the plot is allotted. The plot allotted comes within a specific industrial area and it is with an intention to promote industries that the Government makes allotment of such plots. Evidently, despite the plot having been handed over in the year 1991, the petitioner had not conducted an industry in the plot for long. Even going by Ext.P24, the industry is said to have been commenced long after the allotment of the plant in 1994. In 2004, when the plot was inspected by the 3rd respondent, there was no industry carried on therein. The 3rd respondent has also found that the petitioner was untraceable and was not in station and communications could not be served on the 4th respondent.

5. The rather bland finding that the petitioner had paid the entire consideration for the industrial plot is not at all relevant. The plot remained unused for long and no industry was carried on W.P(C). No.34315 of 2008 4 therein. The petitioner was also untraceable all these years. Even now it is not clear as to whether the petitioner intends to start an industry in the plot. Even in the statement filed on 28.07.2015, on behalf of the respondent, there is no whisper as to what he intends to do in the industrial plot, but for asserting that the petitioner has not invested any money in the plot. In such circumstances, Ext.P24 would stand set aside for total non-application of mind and as a consequence, Ext.P25 too would be set aside. The issue shall be reconsidered after getting a report on the ground realities from 3rd respondent. If either of the parties do not evince any interest in continuing the

project, there cannot be a mechanical order in favour of the other. The objective should be to ensure that the industrial plot is put to use for the purpose intended by the State. Hence the writ petition is allowed, directing the respondent to taken a decision in the matter after issuing notice to the petitioner and the 4th respondent within a period of three months from the date of receipt of a copy of this W.P(C). No.34315 of 2008 5 judgment and examining the feasibility of the project of the petitioner and the 4th respondent. The writ petition is allowed, leaving the parties to suffer their respective costs. Sd/- K. VINOD CHANDRAN, JUDGE sp

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