

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 1ST DAY OF JULY 2022 / 10TH ASHADHA, 1944

WP(C) NO. 3603 OF 2016

PETITIONER:

M/S. HOLMARC OPTO MECHATRONICS (P) LTD
7/633, KAKKATTUCHIRA, FRINDSVALLY, TRIKKAKKARA.P.O., KAKKANAD,
COCHIN - 15, R/BY ITS MANAGING DIRECTOR JOLLY CYRIAC.

BY ADVS.SRIJOBY CYRIAC
SRI.SANJAY THAMPI

RESPONDENTS:

- 1 THE SECRETARY, KALAMASSERY MUNICIPALITY,
KALAMASSERY, ERNAKULAM - 682 033.
- 2 THE GENERAL MANAGER
DISTRICT INDUSTRIAL CENTRE, KAKKANAD, ERNAKULAM - 682 030.
- 3 THE STATE OF KERALA
REP. BY ITS SECRETARY, DEPARTMENT OF INDUSTRIES,
THIRUVANANTHAPURAM - 695 001.
- 4 THE KALAMASSERY MUNICIPALITY, KALAMASSERY,
ERNAKULAM - 682033, REP. BY ITS SECRETARY

R2 AND R3 – SRI.K.P.HARISH, SENIOR GOVERNMENT PLEADER
R1 AND R4 - SRI.M.K.ABOOBACKER, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01.07.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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JUDGMENT

Dated this the 1st day of July 2022

Petitioner is a private limited company and it owns a manufacturing industrial unit in an Industrial Development Area declared by the State Government namely, Kalamassery Industrial Development Area (HMT Industrial Estate, Kalamassery). According to the petitioner, the company has secured all statutory permissions and licenses from the Secretary of the Kalamassery Municipality/the first respondent and the General Manager, District Industries Centre/the third respondent. It is further submitted that by the end of October 2013, the petitioner company constructed a new factory building having an extent of 724.97 sq.metres in accordance with law. The grievance highlighted by the petitioner is in respect of an action taken by the Secretary of the Municipality as per Exts.P10 and P11. Ext.P10 is an order passed by the Secretary dated 4.1.2016 levying the property tax of Rs.4,79,573/- for the period 2013-14 to 2015-16. Ext.P11 is a statutory demand raised on 4.1.2016 to recover the tax. It is thus basically challenging the legality and correctness of the levy and demand, the writ petition is filed.

2. The paramount contention advanced by the petitioner is that as per Section 450(i) of the Kerala Municipality Act, 1994 as well as Section 6 of the Kerala Industrial Single Window Clearance Act 1999, all industrial undertakings established or proposed to be established in industrial areas declared by Government are exempted from obtaining building permit from Local Self Government Institutions, Town Planning Department and other authorities. It is also the case of the petitioner that even prior to the above enactments, the Government of Kerala as per Ext.P8 order had exempted such industrial units from obtaining clearances from local bodies. That apart the State of Kerala has clarified the same as per Ext.P9 circular. The sum and substance of the contention of the petitioner is that the said legal aspects pointed out by the petitioner would make it clear that the petitioner, who is functioning in the notified industrial estate is exempted from obtaining building permit to establish or to construct a factory building or any other building in the industrial area. However, it is submitted by the learned counsel for the petitioner that the Secretary of the Kalamassery Municipality has illegally and incorrectly classified petitioner's factory building as an unauthorized building for the purpose of levying municipal property tax and issued the demand notices.

3. The State Government has filed a detailed counter affidavit basically supporting the contentions advanced by the petitioner and has also pointed out the benefits enjoyed by an establishment like the petitioner on the basis of various Government Orders. Among other contentions, it is submitted that land to an extent of 10.65 cents comprised in Sy.No.1037/10 (Re.Sy.No.121/2, Block-6) of Thrikkakkara North Village, Ernakulam District along with B7 shed thereon was allotted in Hire purchase basis in favour of M/S Homarc slides and control (P) Ltd. subject to the conditions stipulated in G.O. (MS)No.294/06/RD dated 07.10.2006 of Revenue (A) department (Ext.P1). An extent of 13 cents in Sy.No.121/2, Part in block No.6 of Thrikkakara in contiguous to its assigned land was also allotted in hire purchase basis to them for expanding its existing activity as per proceedings No.B2/1436/07 dated 26.11.2007 the GM, DIC, EKM (Ext.P2). Also an extent of 7 cents of vacant land, near to the unit comprised in Sy.No.121/2 part in Thrikkakara North Village in HMT AIE, Kalamassery was allotted on hire purchase basis as per proceedings No.B2/1436/09 dated 17.1.2011 of the GM, DIC, EKM. Hence total extent of land allotted to M/S Holmarc Slides & Controls (P) Ltd. was 30.0625 cents including 10.625 cents of assigned land. It is also submitted that the petitioner has

submitted application on 18.02.2009 for getting approval for a building proposed to be constructed in the 13 cents of land comprised in Sy.No.121/2 part in Block No.6 of Thrikkakara North Village with an area of 413 Sq.m. After having some physical verification, the respondent has directed the unit to produce a revised plan incorporating the actual utilization of the proposed build up area. Accordingly, the unit has resubmitted a revised plan with total build up area of 724.97 Sq.m. to construct as per the plan submitted. Later, on 27.9.2011 by considering their application, the submitted building plan has been approved as per Ext.P3 & P4. As per G.O.(Rt)No.591/94/ID dated 05/07/1994 of Industries Dept. and Section 6 of Kerala Industrial Single Window Clearance Boards and Industrial Township Area Development Act 1999 an Industrial Development Area, shall be exempted from obtaining clearances from the concerned local bodies. As per G.O.(MS)No.327/63/Ind dated 09.04.1963 of Industries (C) Dept, Government have ordered that after the acquisition of the said 900 acres of land for establishing Machine Tool Factory in central sector sanction was also accorded for making the area available to the Hindustan Machine Tools Ltd. (HMT), Bangalore, for free of cost. As per G.O.(MS)No.505/64/Ind. dated 31.07.1964 of Industries (G) Dept., Government have ordered that after the acquisition of the said 900

acres of land for establishing Machine Tool Factory, it shall be treated as Development Area as contemplated in ruled 2(d) of the Rules for the assignment of Government lands in Development areas for industrial purpose” appended to G.O.(P)No.220/Rev dated 30.3.1964 and assigned on registry to the HMT Ltd., Bangalore. Since the lands is declared as Development Area as per GO(MS)No.505/64/Ind dated 31.07.1964, the units which are established in DA/DP/MIE are exempted from obtaining licences/clearances from the concerned local bodies. As per GO(RT)No.591/94/ID dated 05/07/94, it is clear that the units established in DA/DP/MIE shall be exempted from obtaining licences/clearances from concerned local bodies, but all industrial units shall have to obtain the same from the concerned, GM, DIC and as per GO(MS)169/69/ID dated 5.4.1969 pay any taxes, cess and other charges payable in respect of the said property to state or Central Government, corporation of any other legally constituted body in due time. It is also submitted that when the petitioner has approached the office of the second respondent for intervening in the matter and requested to issue necessary direction to the Kalamassery Municipality to treat the construction as legal and to issue direction to accept the property tax, as per Ext.P14, the office has given necessary direction to the Kalamassery Municipality to consider

the matter as per the prevailing rules. As per GO(Rt)No.591/94/ID dated 5.07.1994 and Section 6 of Kerala Industrial Single Window Clearance Boards and Industrial Townships Area Development Act, 1999, all industrial undertaking being established or proposed to be established in industrial areas shall be exempted from obtaining any type of permits from Municipalities or Grama Panchayat etc. for construction of building for starting an industrial undertaking. Hence Ext.P10 & Ext.P11 notices issued by the 1st respondent are illegal and therefore liable to be set aside. The classification of the petitioner's building as unauthorised building and demand notice issued by the Kalamassery Municipality as per Ext.P10 and Ext.P11 is ultra vires and illegal as per the above mentioned Government Orders and the provision of existing law. The HMT Ancillary Industrial Estate is situated in the 900 Acres of land assigned to the HMT Ltd as per GO(MS)No.327/63/IND dated 09/04/1963 and which is later declared as Industrial area as per GO(MS)No.505/64/IND dated 31/07/1964. All industrial undertakings in HMT Ancillary Industrial Estate are exempted from obtaining from local bodies permission to construct a factory building or to install machineries therein. So the classification of the petitioner's building as unauthorised is illegal.

4. Even Though the Secretary of the Municipality has not filed any counter affidavit or statement, learned counsel for the Municipality has advanced various arguments including that the State Government or the District Industries Centre are not intimating the exemptions given to the industrial establishments by the State Government.

5. I have heard learned counsel for the petitioner Sri.Joby Cyriac learned Standing Counsel for the Municipality and the Secretary Sri.M.K.Aboobacker and learned Senior Government Pleader for the State and its officials Sri.K.P.Harish and perused the pleadings and material on record.

6. Respective counsel have advanced their arguments in accordance with the contentions recorded above. The sole question to be considered is whether the Municipality is entitled to levy property tax against the petitioner. Before going to the provisions of law, it would be worthwhile to refer to Ext.P8 order passed by the State Government dated 5.7.1994 exempting the industrial establishments from obtaining licenses of the local bodies functioning within the industrial area declared by the Government. The order clearly specifies that the industrial units located in the Industrial Estates/Development Area/Mini Industrial Estate/a consolidated list of which are appended to the order,

shall be exempted from obtaining clearances from local bodies as per notifications dated 6.8.92 and 6.5.92. The appendix annexed to Ext.P8 Government Order would clearly show that in Ernakulam District Kalamassery Industrial Estate is declared as an industrial estate by the State Government. Going by the Government Order, it is clear that even prior to the introduction of the Kerala Municipality Act, 1994 with effect from 30th May of 1994, the Government have exempted industrial establishments from obtaining clearances from local bodies. Anyhow, Section 450 of Act 1994 is an enabling provision granting exemption to the industrial establishments functioning within the notified industrial area. From the provisions of Section 448 of Act 1994 it is clear that license is required for the construction of industry, factory or other workplace and to use steam power or any other power therein or to install other machineries.

7. Section 450 of Act 1994 reads thus:

450. Exemption.— Notwithstanding anything contained in Section 448 no permission of the Municipality shall be required for the installation of the following machinery or manufacturing units or Industrial units, as the case may be, namely:—

- (a) Electrical and non-electrical appliances and machinery intended to be used for domestic or personal purposes;
- (b) Electrical and non-electrical appliances installed for

agricultural purposes;

(c) Static transformer stations, condenser stations and rectifier stations which will not require regular attention;

(d) portable drilling machines and portable machines used for construction purposes like concrete mixers;

(e) a mechanical device installed at workshop or workplace attached to educational institution or for scientific purposes

(f) mechanical devices introduced by the Kerala State Electricity Board for generation and transmission of electricity;

(g) installations of the Kerala Water Authority for Water Supply and sewerage;

(h) Industrial units, certified by the Industries Department of the Government or by the Kerala State Pollution Control Board as non-polluting industry and with machinery having capacity of less than five horse power;

(i) Industrial units in the area declared by the Government or the Government controlled agency as an Industrial Estate, Industrial Development Area, Industrial Development Plot, Industrial Growth Centre, Export Processing Zone or Industrial Park:

(j) Industrial units certified by the Kerala State Pollution Control Board as Green and White Category.

Provided that the owner of any industrial unit specified under item (h) and (i) shall register the unit in the Municipality by remitting the prescribed fee.

8. I notice that as per Act 14/2018 Section 450 is amended by incorporating Entry (j) by including industrial units certified by the Kerala State Pollution Control Board as Green and White category and made other consequential amendments also to deal with the requirements contained under Section 450.

9. On a proper appreciation of the said provision, it is clear that the establishments in any notified industrial area enjoy a statutory exemption from securing clearances from the local bodies. So also, the Kerala Industrial Single Window Clearance Board and Industrial Township Area Development Act, 1999 was introduced on and with effect from the year 1999. Section 6 of said Act, 1999 is relevant to the context, which reads thus:

“6. Exemption from licenses etc. - Notwithstanding anything contained in any law for the time being in force all industrial undertakings being established or proposed to be established in industrial area shall be exempted from obtaining permits from Municipalities or Grama Panchayats, Town Planning Department or Development Authorities for construction of buildings for starting an industrial undertaking.”

10. Therefore, on a conjoint reading of Ext.P8 Government order, the provisions of law deliberated above and the submissions made by the State in its counter affidavit, it is clear that the Panchayat was not right in levying property tax against the petitioner as per Ext.P10 and demanding the same as per Ext.P11 and other consequential notices. Taking into account the said legal and factual aspects, I am of the undoubted opinion that when a statute exempts or grant benefits to industrial establishments located within the notified industrial areas, the local body is precluded from taking any action on the basis of the

provisions of law applicable to other industrial establishments. I am also of the view that exemption is granted by the statute as well as the Government in order to promote industries within the State and to facilitate an easy mechanism for an industrialist to start the establishments without being saddled by the intricacies contained under various statutes, by resorting to the single window clearance methodology provided under Act 1999. However, learned counsel for the Municipality submitted that the Government Orders as well as the starting of the industrial units in the industrial estates are not informed by the respective statutory authority to the Municipality, which is only creating the situation like the present one and therefore, there may be a direction to the State Government and the District Industries Centre to inform the Municipality whenever an industrial establishment is started. In my considered opinion, when a notification/order is published by the Government in the gazette and when provisions are made under different statutes, all are presumed to know the law and therefore, there is no much force in the said contention advanced. Anyhow, since such a contention is advanced by the Municipality, it is for the State Government and its officials to consider as to whether any intimation is to be given to the local bodies in regard to the discussed aspects.

Upshot of the above discussion is that the writ petition is allowed and Ext.P10 order levying property tax on the petitioner, Ext.P11 order demanding the same and any other consequential demands to recover the property tax would stand quashed.

Sd/-
SHAJI P. CHALY
JUDGE

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APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1 TRUE COPY OF ORDER GO(MS) NO.294/06/RD DATED 7.10.2006 ISSUED BY THE DEPARTMENT OF REVENUE, STATE OF KERALA, ALLOTING AN EXTENT OF 10.02 CENTS OF LAND SITUATED IN THE HMT INDUSTRIAL ESTATE, KALAMASSERY ALONG WITH A SHED BEARING NO-B7 TO THE PETITIONER.
- EXT.P2 TRUE COPY OF THE PROCEEDINGS NO.B2/1436/07 DATED 26.11.2007 OF THE 2ND RESPONDENT ALLOTING AN EXTENT 13 CENTS TO THE PETITIONER.
- EXT.P3 TRUE COPY OF THE LETTER NO.B2 DATED 28.5.2009 ISSUED BY THE 2ND RESPONDENT PERMITTING THE PETITIONER TO CARRY OUT CONSTRUCTION IN ACCORDANCE WITH THE PLAN SUBMITTED.
- EXT.P4 TRUE COPY OF THE COVERING LETTER NO.A12/1436/01 DATED 27.09.2011 OF THE 2ND RESPONDENT SENT ALONG WITH THE APPROVED BUILDING PLAN.
- EXT.P5 TRUE COPY OF PERMIT NO.94/2012 ISSUED BY THE DIRECTOR OF FACTORIES AND BOILERS VIDE HIS ORDER NO.T3-2844/2012/F & B/R.DIS. DATED 8.5.2012 ALONG WITH ITS COVERING LETTER.
- EXT.P6 TRUE COPY OF THE CERTIFICATE OF STABILITY DATED 9.8.2012 ISSUED TO THE PETITIONER COMPANY BY THE COMPETENT AUTHORITY UNDER THE DEPARTMENT OF FACTORIES AND BOILERS.
- EXT.P7 TRUE COPY OF THE FACTORY LICENCE DATED 2.12.2014 ISSUED BY THE JOINT DIRECTOR OF THE FACTORIES & BOILERS TO THE PETITIONER COMPANY.
- EXT.P7(A) TRUE COPY OF THE LICENCE NO.H/294/2010 - 2011 ISSUED BY THE 1ST RESPONDENT U/S.447 OF MUNICIPALITY ACT FOR THE YEAR 2010-2011 TO THE PETITIONER - COMPANY.
- EXT.P8 TRUE COPY OF THE RELEVANT PORTION OF THE GOVERNMENT ORDER, NO.GO(RT)NO.591/94/ID DATED 5.7.1994 EXEMPTING SOME INDUSTRIAL ESTATE/DEVELOPMENT AREA ETC., INCLUDING THE KALAMASSERY DEVELOPMENT AREA.
- EXT.P9 TRUE COPY OF THE G.O.NO.17853/R.A1/2013/LSG DATED 11.6.2013 ISSUED BY THE 3RD RESPONDENT THROUGH ITS SECRETARY, LSG.
- EXT.P10 TRUE COPY OF THE PROPERTY TAX ASSESSMENT ORDER NO.R1-18112/15 DATED 4.1.2016 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER COMPANY FIXING AN ANNUAL PROPERTY TAX AS RS.1,82,694 + LC WEF.1/10/2013.
- EXT.P11 TRUE COPY OF THE DEMAND NOTICE TO MUNICIPAL PROPERTY TAX NO.R1-18112/15 DATED 4.1.2016 FOR A TOTAL AMOUNT OF RS.479573/- (WITH PENALTY) CLASSIFYING THE FACTORY BUILDING AS 'UNAUTHORISED BUILDING'.
- EXT.P12 TRUE COPY OF THE RECEIPT NO.48740 DATED 12.1.2016 FOR RS.46,756/- ISSUED BY THE 1ST RECEIPT TOWARDS PROPERTY TAX PAID WITH RESPECT TO BUILDING OF THE PETITIONER COMPANY.
- EXT.P13 TRUE COPY OF THE LETTER OF REQUEST DATED 15.1.2016 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
- EXT.P14 TRUE COPY OF THE LETTER NO.A12/1436/2001 DATED 21.1.2016 OF THE 2ND RESPONDENT ISSUED TO 1ST RESPONDENT.

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P.S. TO JUDGE