

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE N. NAGARESH

THURSDAY, THE 30TH DAY OF MARCH 2023 / 9TH CHAITHRA, 1945

WP(C) NO. 7181 OF 2023

PETITIONERS:

- 1 PRIYESH B KARTHA, AGED 44 YEARS
S/O. BALAKRISHNAN KARTHA, THAMARASSERY HOUSE,
WEST VENGOLA P.O, PERUMBAVOOR., PIN - 683556
- 2 ANEESH P A, AGED 53 YEARS
PUTHANPEEDIKAYIL, PARAPPURAM, PERUMBAVOOR P.O,
PERUMBAVOOR, ERNAKULAM, KERALA, PIN - 683542
- 3 SANOOP DHUVAN, AGED 35 YEARS
PARAPPATTU HOUSE, BOC CANAL ROAD, PERUMBAVOOR,
ERNAKULAM, KERALA, PIN - 683542
- 4 MOHAMED KUNJU T M, AGED 65 YEARS
THAZHASERY HOUSE, PERUMBAVOOR P.O.,
ERNAKULAM, PIN - 683542
- 5 ABDUL RAHMAN ANSARI, AGED 53 YEARS
KARAKKAL, THANDEKKAD, PONJASSERY, VENGOLA,
ERNAKULAM - 683547
- 6 GEORGE C J, AGED 62 YEARS
CHAKKIATH, AZHAKAM P.O., MOOKKANNOOR,
ERNAKULAM, PIN - 683577
- 7 AJEESH P A , AGED 37 YEARS
PUTHEECKAPARAMBIL HOUSE, ERAMALLOOR,
ERNAKULAM, KERALA, PIN - 686691
- 8 SREEKUMAR, AGED 55 YEARS
LAKSHMIPURAM, BROADWAY, PERUMBAVOOR,
ERNAKULAM, KERALA, PIN - 683542

BY ADVS.

A. BALAGOPALAN

PRABHU MURALI KRISHNAN

M.S. IMTHIYAZ AHAMMED

P. SEENA

M.N. MANMADAN

A. RAJAGOPALAN

RESPONDENTS :

- 1 THE DEPUTY SUPERINTENDENT OF POLICE
OFFICE OF THE DEPUTY SUPERINTENDENT OF POLICE,
KUZHIPALLIKKAVU ROAD, PERUMBAVOOR - 683542
- 2 THE CIRCLE INSPECTOR OF POLICE
PERUMBAVOOR POLICE STATION, PERUMBAVOOR P.O.
ERNAKULAM, PIN - 683542
- 3 THE PERUMBAVOOR MUNICIPALITY
MUNICIPALITY OFFICE,
PERUMBAVOOR P.O, ERNAKULAM, PIN - 683542
REPRESENTED BY ITS SECRETARY.

BY ADVS.

SRI.K T THOMAS

SRI.MATHEW B KURIAN(K/381/1991)

SRI.E.C. BINEESH, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 30.03.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

CR

JUDGMENT

Dated this the 30th day of March, 2023

The petitioners, who are licensees of Shop Rooms in Yathri Nivas Shopping Complex owned by the Perumbavoor Municipality, have approached this Court seeking to direct respondents 1 and 2 to afford adequate and effective police protection to the petitioners by preventing convening of public meetings, Dharnas and other functions in the parking space of the Yathri Nivas Shopping Complex. The petitioners have also sought for a direction to the 3rd respondent-Municipality to prohibit parking of autorickshaws in the parking space.

2. The petitioners state that there is a vacant space lying between the Yathri Nivas Shopping Complex and Aluva-Munnar Road, owned by the 3rd respondent-Municipality. The space is provided for parking of vehicles of the licensees of

Shops and their customers. There is no other parking space for the building.

3. According to the petitioners, various political parties, associations and religious sects have started to use the aforementioned parking space for holding public meetings, Dharnas, etc. Such meetings are sometimes without any permission from any authorities. Conduct of meetings has become a routine affair now and it adversely affects the business establishments in the building.

4. A suit O.S. No.37 of 2021 in the Munisiff's Court, Perumbavoor was filed seeking for a decree of permanent prohibitory injunction, restraining the respondents from granting sanction or permission or otherwise allowing any person to hold public meetings, conventions, Dharnas, etc., in the parking space. A Decree has already been passed. In spite of that, the open area is being used for conducting Dharnas and meetings and autorickshaws are also parked illegally in that area resulting in grave inconvenience to the

petitioners and their customers.

5. Standing Counsel entered appearance on behalf of the 3rd respondent-Municipality filing a Statement. The 3rd respondent submitted that a Municipal Bus Terminal is situated in front of the Shopping Complex. The vehicles of the licensees and customers are parked in the area in front of the Shopping Complex. The Municipality has not granted permission for conducting any meeting in the parking area. Meetings are permitted only near Subhash Maidan Open Stadium on payment of rent. The 3rd respondent further submitted that there is no authorised/notified autorickshaw stand near the Shopping Complex. The Engineering Wing of the Municipality has initiated action on Ext.P8 representation, contended the Standing Counsel for the 3rd respondent.

6. Government Pleader entered appearance on behalf of respondents 1 and 2 and submitted that persons who have conducted the meetings have not been made respondents in the writ petition. Therefore, there is non-joinder of necessary

parties.

7. I have heard the learned counsel for the petitioners, the learned Government Pleader representing respondents 1 and 2 and the learned Standing Counsel representing the 3rd respondent.

8. The grievance of the petitioners is that the area in front of the Shopping Complex, where the petitioners are conducting business on the basis of valid lease/licence agreement, is being consistently misused for holding public Dharnas, meetings, etc., causing grave inconvenience to the petitioners, their customers and the general public. Unauthorised autorickshaw stand is also functioning in the area, contend the petitioners.

9. The vacant area lying in between the Yathri Nivas Shopping Complex and the Aluva-Munnar Road is one vested with the 3rd respondent-Municipality. The area being in front of a Shopping Complex owned by a Local Self Government Institution, it is a public area where general public have

access. In that limited sense, it is a public space. Public areas are generally used to shape communities in neighbourhoods. Public spaces contribute to a flourishing society promoting social interaction and social discourse. They promote inclusiveness of diversity among the people. They create a social space for everyone in the society.

10. Exercise of many of the fundamental rights by citizens like freedom of expression, right to assemble, right to travel, etc., depend on the availability of physical public space. Absence of public space may hinder exercise of many human rights. Human Rights activists across the world often argue in favour of Right to Public Space. Constitution of India also recognised the importance of public spaces. Article 15 states that persons who are citizens of India must have equal access to public places like Shops, public restaurants, hotels and places of public entertainment.

11. The issue involved in this writ petition would then revolve around the question whether an open space in front of

a Shopping Complex, in this case owned by the Municipality, would be a public place or public space. The Statement filed by the 3rd respondent-Municipality would clearly indicate that the open space is intended for parking the vehicles of the licensees and customers. Though every citizen has a right to access to the Shops in the building, the open space is intended for parking of the vehicles of the customers only. Therefore, such spaces can have a status of semi-public space only. No organisation or group of citizens can claim a right to organise Dharna or public meeting in such places, without the permission of the Municipality.

12. There is yet another issue in using the open space in front of the Shopping Complex. Under Rule 5(6)(1)(b) of the Kerala Municipal Building Rules, 2019, the District Town Planner or the Chief Town Planner, while approving usage of plot or lay out of building, has to consider whether parking arrangements are adequately provided. Rule 17 of the Rules, 2019 makes it the duty and responsibility of the

owner/developer to furnish details of parking spaces and area earmarked. After construction of a building, the parking area earmarked for the building cannot be used for any other purpose unauthorisedly. Such parking spaces cannot be converted as autorickshaw stand or taxi stand either.

13. Admittedly, the building and the parking space belong to the 3rd respondent-Municipality. The Municipality has taken a specific stand that no organisation has been granted permission for conducting any meeting in the parking area. There is no authorised autorickshaw parking in the said area, submits the 3rd respondent.

14. In view of the facts as stated above, I am of the opinion that in a parking area earmarked for a commercial building, Dharnas, meetings, etc., cannot be conducted without the consent or permit of the owner of the building. Unauthorised autorickshaw parking also cannot be permitted in such parking areas.

Therefore, the writ petition is disposed of directing respondents 1 and 2 to ensure that no meetings, Dharnas, etc., are taken place in the parking place in front of the building rented out to the petitioners, without due sanction or permit of the 3rd respondent-Municipality. No unauthorised autorickshaw parking shall also be permitted in the parking area of the Shopping Complex.

Sd/-
N.NAGARESH
JUDGE

spk

APPENDIX OF WP(C) 7181/2023

PETITIONER EXHIBITS

- Exhibit P1** THE TRUE COPY OF THE LICENSE AGREEMENT DATED 15.09.2022 EXECUTED BETWEEN THE PETITIONER AND THE 3RD RESPONDENT
- Exhibit P2** TRUE COPY OF THE RECEIPT BEARING NO. 01-122020108885 DATED 15.11.2022
- Exhibit P3** THE TRUE COPY OF THE JUDGMENT PASSED BY THE MUNSIF'S COURT PERUMBAVOOR IN O.S. NO. 37 OF 2001 DATED 24.07.2003
- Exhibit P4** THE TRUE COPY OF THE COMPLAINT SUBMITTED BY THE PETITIONER ALONG WITH ANOTHER LICENSEE DATED 17.11.2022
- Exhibit P5** THE TRUE COPY OF THE RECEIPT ISSUED BY THE OFFICE OF THE 1ST RESPONDENT DATED 17.11.2022 NUMBERING EXHIBIT P4 COMPLAINT AS PETITION NO. 173596/2022
- Exhibit P6** THE TRUE COPY OF THE COMPLAINT SUBMITTED BY THE ASSOCIATION OF LICENSEES OF YATHRI NIVAS SHOPPING COMPLEX TO THE 1ST RESPONDENT DATED 07.12.2022.
- Exhibit P7** THE TRUE COPY OF THE RECEIPT ISSUED BY THE OFFICE OF THE 1ST RESPONDENT DATED 07.12.2022 NUMBERING EXHIBIT P6 COMPLAINT AS PETITION NO.182925/2022
- Exhibit P8** THE TRUE COPY OF THE COMPLAINT SUBMITTED BY THE ASSOCIATION OF LICENSEES OF YATHRI NIVAS SHOPPING COMPLEX TO THE 3RD RESPONDENT
- Exhibit P9** THE TRUE COPY OF THE RECEIPT ISSUED BY THE OFFICE OF THE 3RD RESPONDENT DATED 07.12.2022

RESPONDENT'S/S EXHIBITS : NIL