

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE C.K.ABDUL REHIM**

**WEDNESDAY, THE 30TH NOVEMBER 2011 / 9TH AGRAHAYANA 1933**

**WP(C).No. 27594 of 2009(T)**  
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**PETITIONER(S):**  
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- 1. SURENDRAN, AGED 47 YRS, S/O. MADHAVAN NAIR,  
KONNATT HOUSE, ALATHUR, MALA.**
- 2. SARALA DEVI,  
KONNATTU HOUSE, ALATHUR, MALA.**
- 3. CICILY MATHEW,  
PARACKAL HOUSE, KEEZHADOOR DESOM,  
ALATHUR VILLAGE, MALA.**

**BY ADV. SRI.T.RAJASEKHARAN NAIR**

**RESPONDENT(S):**  
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- 1. THE ANAMANADA GRAMA PANCHAYATH,  
REPRESENTED BY ITS SECRETARY, ALATHUR,  
KEEZHADOOR, THRISSUR DISTRICT.**
- 2. THE ENVIRONMENTAL ENGINEER,  
KERALA STATE POLLUTION CONTROL BOARD, DISTRICT  
OFFICE, THRISSUR, SAKTHI NAGAR, POOKUNNAM.**
- 3. THE HEALTH INSPECTOR,  
PRIMARY HEALTH CENTRE, MAMBRA, MELADOOR, THRISSUR.**
- 4. VARGHESE,  
KEEZHADOOR DESOM, ALATHUR VILLAGE,  
MUKUNDAPURAM TALUK - 691 585.**
- 5. SONY,  
KEEZHADOOR DESOM, ALATHUR VILLAGE,  
MUKUNDAPURAM TALUK - 691 585.**

**R1 BY ADV.SRI.FRANCO T.C.**

**R2 BY ADV. SRI. M.K.CHANDRAMOHAN DAS, SC, KSPCBOARD**

**R3 BY GOVERNMENT PLEADER SMT. ROSE MICHAEL**

**R4 & R5 BY ADV. SRI.A.F.SEBASTIAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 30/11/2011 ALONG WITH WPC NO. 13956 OF 2011 AND  
CONNECTED CASES, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:**

**Kss**

**WPC.NO.27594/2009 T**

**APPENDIX**

**PETITIONER'S EXHIBITS:**

**P1: COPY OF THE COMPLAINANT SUBMITTED BY THE LOCAL PEOPLE ALONG WITH THE PETITIONER BEFORE THE 1ST RESPONDENT.**

**P2: COPY OF THE COMPLAINANT SUBMITTED BY THE PETITIONERS AND THE LOCAL PEOPLE BEFORE THE 3RD RESPONDENT.**

**P3: COPY OF THE ENQUIRY REPORT ALONG WITH DECISION OF THE PANCHAYATH.**

**P4: COPY OF THE COMPLAINT SUBMITTED BY THE PETITIONERS BEFORE THE 3RD RESPONDENT.**

**P5: COPY OF THE RECEIPT ISSUED BY THE 3RD RESPONDENT AGAINST THE COMPLAINT OF THE PETITIONERS.**

**P6: COPY OF THE ONE OF THE NEWS ITEMS WHICH CAME IN MALAYALAM MANORAMA ON 14/06/2009.**

**RESPONDENT'S ANNEXURES:**

**R1(A): COPY OF THE SHOW CAUSE NOTICE DTD. 17/02/2010 ISSUED BY 1ST RESPONDENT TO THE 5TH RESPONDENT.**

**R1(B): COPY OF THE REPLY DTD. 19/02/2010 SENT BY 5TH RESPONDENT TO THE 1ST RESPONDENT.**

**R1(C): COPY OF THE ORDER PASSED IN M.C.NO.340/2011 ISSUED BY THE REVENUE DIVISIONAL OFFICER DTD. 3/08/2011.**

**R2(A): COPY OF THE LETTER NO.PCB/TSR/LK/68/09 DTD. 18/11/2009.**

**R4(1): COPY OF THE CERTIFICATE DTD. 24/07/2007 ISSUED BY THE 1ST RESPONDENT STATING THAT I HAVE SUBMITTED AN APPLICATION FOR LICENSE IS PRODUCED HEREWITH.**

**R4(2): COPY OF THE TITLE DEEDS OF THE TWO ACRE OF LAND WHERE THE COW FARM FUNCTIONS IS PRODUCED HEREWITH.**

**/TRUE COPY/**

**P.A.TO JUDGE**

**Kss**

**C.K.ABDUL REHIM, J.**

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W.P.(C) Nos.27594/2009, 13956/2011,  
18175/2011 and 25406/2011  
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Dated this the 30<sup>th</sup> day of November, 2011

**J U D G M E N T**  
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The subject matter involved in all these 4 writ petitions relates to conduct of a 'Dairy Farm' by respondents 4 and 5 in W.P(C).27594/2009, within the limits of Annamanada Grama Panchayat. W.P(C).No.27594/2009 is filed by 3 persons allegedly residing nearby to the dairy farm seeking, directions against the Panchayat to initiate immediate steps to stop functioning of the dairy farm and also to stop the business of storing and selling cattle feed waste conducted by respondents 4 & 5(hereinafter referred to as owners of the farm). Inter alia, direction is also sought for against the Kerala State Pollution Control Board (KSPCB) to initiate legal actions against illegal and unauthorised conduct of the dairy farm.

2. Averments in W.P(C).No.27594/2009 is to the effect that, on the basis of Ext.P1 and P2 mass petitions submitted before the Panchayat by people residing in the locality, the Panchayat conducted an enquiry and took a decision on 30.7.2009 to impose stringent conditions on the owners of the farm in order to abate the alleged nuisance and pollution problem and to prevent the apprehended health hazard caused.

But the dairy farm is conducted without complying any such conditions, is the allegation. During pendency of the said writ petition, this court sought opinion of the KSPCB. Along with the counter affidavit filed by them, a copy of the notice issued to the owners of the farm, dt. 18.11.2009, is produced. It is evident that various conditions were stipulated to the owners of the farm. It is stated that at the time of inspection conducted by the KSPCB, waste tapioca pulp and corn waste were seen stored in the premises and it was understood that those materials used as cattle feed in the farm is brought from various places outside Kerala. It has also been sold in retail to small scale farmers. It is stated that the tapioca waste was seen kept in open air in wet conditions in sacks and the 'leachate' from these sacks were flowing to open pit. It is noticed that foul smell is emanating from the stored waste. It is stated that instructions were given to the proprietor of the farm to provide adequate waste water treatment facility and to provide proper house keeping. It is also evident from Ext.P3 that the Panchayat had issued specific directions to take adequate measures to abate all possibilities of nuisance and to stop storing of cattle feed waste and its trade.

3. In the counter affidavit filed by the owners of the farm it is stated that the farm in question was started in the year 2006 with a strength of 10 cows on the basis of financial assistance by

way of Bank loan. It is further stated that eventhough licence was applied for from the Panchayat, they have not granted licence nor rejected the application. Hence it is contended that there is deemed licence as per the provisions of the Panchayat Raj Act. Ext.R4(1) certificate is produced in order to show that an application for licence was submitted. According to owners of the farm, it is situated in a property having an extent of 2 Acres, and is conducted under the strict supervision of the Dairy Development Department of the State Government. All allegations regarding the problems of pollution are raised on extraneous considerations with ulterior motives to wreak vengeance out of personal disputes, is the contention.

4. W.P(C).No.13956/11 is filed by owners of the farm seeking to quash Ext.P3 stop memo issued by the Grama Panchayat directing immediate close down of the dairy farm. Inter alia, prayer is made to direct the Panchayat to take a decision after affording an opportunity of hearing to the petitioner. From Ext.P3 stop memo issued by the Grama Panchayat it is evident that the reason for stoppage is that the owners have failed to comply with the directions issued by the Health Inspector, PHC, Mampra on 14.3.2011. Further it is stated that the dairy farm is being conducted without obtaining licence from the Grama Panchayat. According to the petitioner, (owners

of the farm) they submitted Ext.P4 reply to the stop memo, but the same was not considered. It is contended that the stop memo was issued without affording any proper opportunity to the petitioners.

5. The Grama Panchayat had filed counter affidavit in W.P (C).No.13956/11 contending that, on receipt of various mass petitions from the nearby residents, the matter was referred for opinion of the Health authorities of the State Government. Ext.R1 (c) is the copy of the report forwarded by the Health Inspector to the Medical Officer in charge of the Primary Health Centre, Mampra. So many inadequacies with respect to appropriate precautions to prevent pollution problems have been pointed out therein. It is also mentioned that a notice was issued by the Medical Officer to the owners of the farm requiring to comply with certain specific conditions. According to the Panchayat, on 16.7.2011 the matter was again considered on the basis of a report submitted by a Sub Committee appointed to conduct local inspection. A very detailed report as per Ext.R1(f) has been submitted by the Sub Committee pointing out very serious laches on the part of the owners in taking adequate preventive measures to control nuisance. It is evident that after considering report of the Sub Committee, the Panchayat Committee had resolved to direct stoppage of functioning of the dairy farm. From Ext.P7 produced in the said writ petition it is also evident that the KSPCB

had issued a letter dt.19.8.2011 directing the owners to take certain specific measures in order to consider granting of consent under the provisions of the Water (Prevention and Control of Pollution ) Act, 1981.

6. It is noticed that when the above said writ petition, W.P (C).13956/11, came up for admission this court granted an interim order directing the 1<sup>st</sup> respondent to maintain status quo, which is seen extended periodically thereafter.

7. WP(C).No.18175/11 is another writ petition filed by the owners of the dairy farm with the following prayers:

- i) call for the records relating to the erection of the board prohibiting the passage of vehicles weighing more than five tones through the Panchayat road connecting "Meladoor junction" with "Eravathoor".
- ii) issue a writ of quo-warrento, certiorari or any other appropriate writ and quash the resolutions if any passed by 1<sup>st</sup> respondent to prohibit the passage of vehicles weighing more than five tones through the Panchayat road connecting "Meladoor junction" with "Eravathoor" or  
Declare that the prohibition of passage of vehicles weighing more than five tones through the Panchayat road connecting 'Meladoor junction' with Eravathoor is illegal or invalid.
- iii) Direct the 1<sup>st</sup> and 3<sup>rd</sup> respondents to take appropriate steps to facilitate the passage of the lorries that brings cattle feed to the dairy farm run by the petitioner.
- iv) Grant such other reliefs which this Hon'ble Court thinks fit in the facts and circumstances of this case.

Grievance of the petitioner is that the Panchayat had put up Ext.P3 Board restraining traffic through the road in question with respect to vehicles having more than 5 Tonnes weight, only to see that the owners are prevented from bringing fodder to the dairy

farm. According to the petitioners, such a restriction was imposed only as an indirect method to get over the interim order issued by this court to maintain status quo, and to see that the dairy farm in question is stopped functioning in some how or other manner. But it is pertinent to note that the petitioner has not produced or challenged any resolution of the Panchayat which led to putting up of Ext.P3 Board on the entry of the road leading to the dairy farm.

8. WP(C).No.25406/11 is also filed by the owners of the dairy farm challenging to quash Exts.P3 and P4 orders passed by the Sub Divisional Magistrate, Thrissur in a proceedings initiated under Section 133 of the Cr.P.C. It is evident that the owners of the farm who are counter petitioners in that proceedings have submitted application before the Sub Divisional Magistrate for conducting an inspection through experts, in order to ascertain veracity of the allegations made by the complainants regarding causing of public nuisance. But the Sub Divisional Magistrate opined that, if the petitioner, against whom a conditional order under section 133 is issued, has entered appearance and shown cause against such order, the Magistrate has to take evidence in the matter as if it is a summons case. Therefore the Sub Divisional Magistrate observed that the petition filed by the counter petitioners for site inspection by experts at this juncture is to be dismissed.

9. While considering merits of the disputed issues, it is pertinent to note that the owners of the farm are not having any licence obtained from the Grama Panchayat as contemplated under section 232 of the Kerala Panchayat Raj Act 1994. Learned counsel for the owners of the farm contended that they are not bound to take any such licence since the activity is not one coming within the scope of dangerous and offensive trade or factories. He placed reliance on schedule 1 of the Kerala Panchayat Raj (Issue of Licence to Dangerous Trades and Factories) Rules 1996. Under Rule 3 the description of 'dangerous and offensive trade' should be specified by the State Government in the I<sup>st</sup> schedule appended to the Rules. On a perusal of the schedule, I notice that item 132 therein is 'milk- milk products' storing and sale. I also take note of serial No.81 in the schedule which is 'manure- pesticides' storing preparing, packing and selling. Again item No.91 in the schedule is 'tapioca' storing or making other products and selling'. Further item No.83 is 'preparation and sale of substances producing harmful or offensive smell, fumes, dust or sound'. From the facts and circumstances narrated it is revealed that the owners are keeping a good number of cows and buffaloes in the farm in question for the purpose of collecting milk and selling the same. It is also evident that the cow dung, being a manure, is stored in the dairy

farm. The enquiry report also revealed that waste of 'tapioca' collected from distillery, which is termed as "Beer Waste" (molasses) was seen stored in the premises of the farm in a large quantities. All these will indicate that the contention of the owners that they are not bound to take licence under the provisions of the Kerala Panchayat Raj Act and under the relevant Rules, is unsustainable. Further aspect to be considered is that, whether consent need be obtained from the KSPCB for operation of the dairy farm under the provisions of the Air Act and Water Act. Counsel appearing on behalf of the owners contended that they have already complied with the conditions stipulated by the KSPCB and they are entitled to get consent under the relevant provisions. Considering the disputed aspects, I am inclined to hold that the dairy farm now being conducted without getting licence and consent as stated above, will amount to an illegal activity which could not be permitted to continue.

10. With respect to the challenges in WP(C). No.18175/11 it is noticed that the petitioner had not challenged any of the resolutions adopted by the Grama Panchayat with respect to restriction imposed on traffic through the road in question. Even if the petitioner had challenged any such resolution, the matter cannot be adjudicated by this court. The provisions under the Kerala Panchayat Raj Act provides remedy of statutory appeal

against such resolutions. Therefore I am of the view that the writ petition WP(C).18175/2011 is not maintainable. However, I make it clear that the owners of the dairy farm, if they are aggrieved by any such decision taken by the Panchayat will be at liberty to challenge such decision by approaching the appropriate appellate authority.

11. WP(C).25406/2011 is a writ petition filed under Article 226 of the Constitution of India challenging an interim order passed by the Sub Divisional Magistrate Court in a proceedings pending before that court under section 133 of the Cr.P.C. I do not think that the writ petition under article 226 can be entertained for adjudication of the challenge against a conditional order passed by the Sub Divisional Magistrate court. However, I make it clear that the counter petitioners in that proceedings (owners of the farm) will be at liberty to challenge such order before any appropriate court in any appropriate proceedings, if such challenge is maintainable under law. It is also left open to them to take all grounds in any such appeal or revision which may be filed against any final order with respect to the rejection of request for conducting inspection through experts.

12. WP(C).Nos.27594/2009 and 13956/2011 relate to the stoppage of functioning of the dairy farm ordered by the Grama Panchayat and other authorities. As already found in the

foregoing paragraphs, the dairy farm is not entitled to be functioned without obtaining licence from the Grama Panchayat as well as requisite consent from the KSPCB, and without licences and permits if any required from any other authorities. considering the fact that this court had permitted continuation of functioning of the farm through interim orders issued in WP(C). 13956/2011 and also considering the fact that the owners of the farm is now functioning with a good number of cattle reared therein, I am of the view that a reasonable time can be provided to the owners to comply with the requisite conditions imposed by the KSPCB and the Grama Panchayat, and to obtain the requisite consents and licences. Needless to say that the concerned authorities should satisfy due compliance of all the conditions after conducting proper inspection before granting the consents and licences. However, considering the entire factual aspects, this court restrain the owners from engaging in storing and sale of 'tapioca waste' (Beer Waste).

13. Accordingly the owners of the dairy farm is granted 3 months time to obtain requisite licences and consents from the Grama Panchayat and the KSPCB. I make it clear that if no requisite consents and licences are obtained within the said time, the owners of the dairy farm will not be entitled to conduct the farm any further. Needless to say that if the appropriate

authorities are taking decision in the matter of consents and licence, any of the parties aggrieved by such decision will be at liberty to take appropriate steps before the competent higher authorities under the relevant statute.

14. It need not be clarified that, within the period of three months as granted above, the Grama Panchayat or the Pollution Control Board shall not initiate any steps to stop functioning of the dairy farm, provided the petitioners stop storing and sale of the Tapioca Waste (Beer Waste).

15. It is also made clear that the petitioners will be at liberty to produce this judgment before the Sub Divisional Magistrate in the proceedings which is pending under section 133 of the Cr.P.C. and to seek appropriate relief.

**C.K.ABDUL REHIM,JUDGE**

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