

# VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

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THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN

MONDAY, THE 30<sup>TH</sup> DAY OF JANUARY 2023 / 10TH MAGHA,

1944

WP(C) NO. 28740 OF 2016

PETITIONERS:

- 1 KOTTAYAM MUNICIPALITY  
REPRESENTED BY ITS SECRETARY (IN-CHARGE),  
KOTTAYAM MUNICIPALITY,  
KOTTAYAM - 686 001.
- 2 SECRETARY (IN-CHARGE)  
KOTTAYAM MUNICIPALITY,  
KOTTAYAM - 686 001.

BY ADVS.

SRI. S.RANJIT - SC, KOTTAYAM MUNICIPALITY  
SRI. AJIT JOY, SC, KOTTAYAM MUNICIPALITY  
SRI. SIBY CHENAPPADY, SC, KOTTAYAM  
MUNICIPALITY  
SRI. N. RAGHURAJ

RESPONDENTS:

- 1 THE CHAIRPERSON  
THE KERALA STATE HUMAN RIGHTS COMMISSION  
TURBO PLUS TOWERS, PMG JUNCTION,  
VIKAS BHAVAN P. O,  
THIRUVANANTHAPURAM - 695 033.
- 2 THE SECRETARY  
THE KERALA STATE HUMAN RIGHTS COMMISSION  
TURBO PLUS TOWERS, PMG JUNCTION,  
VIKAS BHAVAN P. O,  
THIRUVANANTHAPURAM - 695 033.
- 3 BENJAMIN JOSEPH  
KOTTAYAM DISTRICT CONVENOR, KERALA STATE  
VAZHIYORA KACHAVADA CO-ORDINATION SAMITHY,  
CHIRATHARA HOUSE,  
MOOLAVATTOM P. O,  
KOTTAYAM - 686 013.
- 4 K.R.G WARRIER  
NARAYANAMANGALAM HOUSE,  
ERINJAL P. O, KOTTAYAM - 686 004.

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- 5     THANMAM T.A.  
       MADAPPATTU HOUSE,  
       KARAPUZHA P. O, KOTTYAM, PIN - 686 003.
- 6     STATE OF KERALA  
       REPRESENTED BY SECRETARY TO GOVERNMENT  
       DEPARTMENT OF STATE COMMISSION,  
       GOVERNMENT SECRETARIAT,  
       THIRUVANANTHAPURAM - 695 001.

BY ADVS.  
M.S.AMAL DHARSAN  
SRI.K.ANAND (SR.)  
KALEESWARAM RAJ  
KUM.A.ARUNA  
THUSHARA JAMES - SR. GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 30.01.2023, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:

"C.R"

**JUDGMENT**

Dated this the 30<sup>th</sup> day of January, 2023

**MURALI PURUSHOTHAMAN, J.**

A Local Self Government Institution and its Secretary have approached this Court challenging Ext.P7 order of the Kerala State Human Rights Commission (hereinafter referred to as, 'Human Rights Commission') directing payment of compensation of Rs.50,000/- to the 3<sup>rd</sup> respondent, a street vendor for summarily evicting him and taking away the articles kept for sale.

2. The 3<sup>rd</sup> respondent, who claims to be a vendor of clothes and garments on the side of Modern Hotel, off the pavement at K.K. road, Kottayam since 08.07.1984, approached the Human Rights Commission by Ext. P4 complaint alleging that, on 14.05.2015, at around 12.15 P.M, a sanitation worker from the Municipality asked him to

remove a waste kit placed near his vending place and when told that he has not kept the waste kit there, the worker abused him and later, when he left the vending place to buy medicine, about 15 employees of the Municipality came in a garbage collection vehicle and took away all the clothes kept by him for sale. He contended that his source of livelihood has been affected and he is not in a position to repay the loans and he sustained a loss of Rs.2,34,000/- and has to be compensated by the Municipality.

3. The Municipality filed a report before the Human Rights Commission stating that the 3<sup>rd</sup> respondent was summarily evicted pursuant to Ext.P1 order dated 14.05.2015 and in exercise of powers under Section 367 (3) of the Kerala Municipality Act, 1994 since there were reports regarding obstruction to vehicular and pedestrian traffic in K.K road and M.L road due to street

vending and the 3<sup>rd</sup> respondent was occupying  $\frac{3}{4}$  portion of the pavement and was littering the area causing blockage of the drain.

4. The Human Rights Commission visited the premises of the Municipality and recorded that only one box and a few items could be seen and no details of the items seized were recorded in the mahazar.

5. In Ext.P7 order, the Human Rights Commission observed that though several persons were vending at the side of the road, only the 3<sup>rd</sup> respondent was evicted and it is evident that the 3<sup>rd</sup> respondent was evicted at the behest of the owner of the hotel near the place where the 3<sup>rd</sup> respondent is vending. The Commission found that the action of the Municipality in picking and choosing the 3<sup>rd</sup> respondent for the purpose of eviction is discriminatory. The Commission also found that the eviction of the 3<sup>rd</sup> respondent without notice from

the place where he is doing business for a quarter century is inhumane and is in violation of natural justice, his human rights and right to life and the directions of the Honb'le Supreme Court and the Government Policies. Taking note of the entire facts and circumstances of the case, the loss of income, infringement of human rights and right to life and mental agony suffered by the 3<sup>rd</sup> respondent, the Human Rights Commission directed the Municipality to pay an amount of Rs.50,000/- as compensation to him and further directed to provide facility to him to re-allocate, once place is available.

6. Ext.P7 order is challenged by the petitioners contending that there is no violation of human rights and the 1<sup>st</sup> respondent lacks jurisdiction to entertain the complaint of the 3<sup>rd</sup> respondent. It is further contended that the Municipality can summarily evict the encroachers under Sections 367 (3) and 372 of the Kerala

Municipality Act, 1994 and the officers of the Municipality have performed the said duty in implementation of Ext.P1 order issued by the Secretary and execution of lawful orders cannot be treated as violation of any rights, less human rights. It is also contended that the Human Rights Commission cannot order payment of compensation and can make only recommendation to the Authority under Section 18 of the Protection of Human Rights Act, 1993. Accordingly, the petitioners pray for direction to quash Ext.P7 and to declare that the 1<sup>st</sup> respondent has no jurisdiction to direct the petitioners to pay compensation.

7. A counter affidavit is filed by the 3<sup>rd</sup> respondent wherein it is stated that he is entitled for protection from eviction under the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 and is entitled for re-allocation under the Act and that the action of the petitioners

in evicting him without notice and by destroying articles amounts to great injustice and violation of human rights and the 1<sup>st</sup> respondent has jurisdiction to entertain the complaint and to order compensation. It is further contended that, having subject to the jurisdiction of the 1<sup>st</sup> respondent and having not raised the issue of maintainability of the complaint before the 1<sup>st</sup> respondent at the first instance, the petitioners are estopped from raising any objection as to the maintainability of the complaint and the jurisdiction of the 1<sup>st</sup> respondent in awarding compensation.

8. Heard Sri.Ajith Joy, the learned Standing Counsel for the petitioners, Smt.Thushara James, the learned counsel for respondents 1 and 2, Sri.Kaleeswaram Raj, the learned counsel for the 3<sup>rd</sup> respondent and Sri. K.P.Harish, the learned Senior Government Pleader for the 6<sup>th</sup> respondent.



9. The Human Rights Commission found that the 3<sup>rd</sup> respondent has been doing garment business on the side of K.K Road for over a quarter century and he alone was evicted by the employees of the Municipality though others were also doing street vending at the same place. The Human Rights Commission further found that the eviction was without notice and the 3<sup>rd</sup> respondent was not given time to remove his articles and the same is in violation of the principles of natural justice, infringement of rights relating to life and equality. The Commission also observed that the eviction was at the behest of the owner of the Hotel near the place where the 3<sup>rd</sup> respondent was vending. From the pleadings before the Human Rights Commission, it is seen that there was an altercation between a sanitation worker of the Municipality and the 3<sup>rd</sup> respondent before the articles were removed in garbage collection vehicle. The Commission found

that there was no proper mahazar with regard to the articles seized from the 3<sup>rd</sup> respondent.

10. Section 367 of the Kerala Municipality Act, 1994 deals with removal of encroachments and reads as follows:-

“367. REMOVAL OF ENCROACHMENTS.— (1) The Secretary may, by notice, require the owner or occupier of any premises to remove or alter any projection. Encroachment or obstruction other than a door, gate, bar or ground floor window situated against or in front of such premises and in or over any street.

(2) Where the owner or occupier of the premises proves that any such projection, encroachment or obstruction has existed for a period sufficient under the law of limitation to give any person a prescriptive title thereto or that it was erected or may with the permission or licence of any authority duly empowered in that behalf, and that the period, if any, for which the permission or licence, is valid has not expired, the Municipality shall make reasonable compensation to every person who suffers damage by the removal or alteration of the same.

(3) Where the Secretary is satisfied that any road or public street including footpath, if any, thereof

belonging to the Municipality or vested in it or otherwise is encroached upon by any person in any form, either temporarily or permanently so as to cause obstruction or hindrance or inconvenience to traffic and users of the street, the Secretary may summarily evict such encroachments and may seize and dispose of any belonging or article that may be found on such road or street and no person shall be entitled to claim compensation for any action taken by the Secretary in this behalf.”

*(emphasis supplied)*

11. Section 372 of the Kerala Municipality Act, 1994 reads as follows:

“372. SECRETARY MAY WITHOUT NOTICE REMOVE ENCROACHMENT.— Notwithstanding anything contained in this Act, the Secretary may, without notice, cause to be removed- (a) Any wall, fence, rail, step, booth, or other structure or fixture which is erected or set up in contravention of the provisions of section 369;

(b) Any stall, chair, bench, box, ladder, bale, or any other thing whatsoever, placed or deposited in contravention of section 370;

(c) Any article, whatsoever, hawked or exposed for sale in any public place or in any public street in contravention of section 371 and any vehicle, package, box, board, shelf or any other thing in or on which such article placed or kept for the purpose of

sale.”

While Section 367 (1) of the Municipality Act provides for notice for removal of encroachment in or over any street (which includes a footway going by the definition of 'public street' under Section 2 (34) (b)), sub-section (3) thereof empowers the Secretary to summarily evict encroachments on any road or public street, including footpath where the Secretary is satisfied that such road or public street including footpath is encroached upon by any person in any form, either temporarily or permanently so as to cause obstruction or hindrance or inconvenience to traffic and users of the street. Summary eviction of encroachment from public street or footpath can be done, if the Secretary is 'satisfied' that 'encroachment causes obstruction or hindrance or inconvenience to traffic and users of the street'. A reading of Section 367 (3) shows that the power

vested in the Secretary to summarily evict encroachments is discretionary and shall be exercised judicially and reasonably. The power of summary eviction shall be exercised by the Secretary in cases of urgency which brooks no delay. In other cases, the Secretary may, by notice, require removal of encroachment. In the light of the fact the 3<sup>rd</sup> respondent had been engaged in vending at the place for long, notice should have been issued to the 3<sup>rd</sup> respondent before eviction, so that he could have offered his explanation or could have taken away the articles kept for sale.

12. The 3<sup>rd</sup> respondent alone was evicted by the Municipality though others were also doing street vending at the same place. The Municipality cannot follow pick and choose policy and there cannot be any discrimination in the matter of eviction of street vendors. The action of the Municipality has infringed the fundamental right to equality guaranteed to the

3<sup>rd</sup> respondent under Article 14 of the Constitution of India.

13. The right of the 3<sup>rd</sup> respondent to carry on vending on street guaranteed by the Constitution is subject to the restrictions imposed by the Kerala Municipality Act, 1994. However, we find that the power of removal of encroachers vested in the Secretary under the Municipality Act is not exercised judicially and reasonably. The 3<sup>rd</sup> respondent's right to livelihood has been deprived otherwise than in accordance with a just and fair procedure established by law. Consequently, it follows that the Municipality has infringed the fundamental rights of the 3<sup>rd</sup> respondent under Article 21 of the Constitution.

14. Section 2(d) of the Protection of Human Rights Act, 1993 defines "Human Rights" to mean the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or

embodied in the International Covenants and enforceable by courts in India. We have found that the action of the Municipality and its officers in evicting the 3<sup>rd</sup> respondent has infringed his rights relating to life and equality guaranteed by the Constitution. Violation of rights relating to life and equality guaranteed by the Constitution amounts to violation of human rights.

15. It is contended by the petitioners that the Human Rights Commission cannot order payment of compensation and can make only recommendation to the Authority under Section 18 of the Protection of Human Rights Act, 1993. Section 18(a) (i) provides that where the inquiry discloses the commission of violation of human rights or negligence in the prevention of violation of human rights or abatement thereof by a public servant, it may recommend to the concerned Government or authority to make payment of compensation or

damages to the complainant as the Commission may consider necessary. A Division Bench of this Court in **State of Kerala and another v. Human Rights Commission and others** [2015 (1) KHC 391: 2015 (1) KLT 239] held that, when the Human Rights Commission recommends to the concerned Government or Authority to make payment of compensation or damages, it is with the intend to make payment by the said authority. This Court held as follows:-

“15. When the Commission has specific power under S.18(a)(i) that it may recommend to the concerned Government or authority to make payment of compensation or damages, we cannot accept the submission of the learned Government Pleader that the Commission under S.18(a)(i) cannot direct payment of compensation. When the Commission recommends to the concerned Government or Authority to make payment of compensation or damages, it is with the intend to make payment by the said authority. The use of the word “recommend” in S.18(a)(i) does not take away the effectiveness or competency of the order for issuing direction for payment of compensation.



We thus do not accept the submission that there is lack of jurisdiction for the Commission in directing payment of compensation.”

In the light of the said decision, we hold that the Human Rights Commission has jurisdiction to direct payment of compensation to the 3<sup>rd</sup> respondent for violation of his human rights. We do not find any illegality or irregularity or lack of jurisdiction in Ext. P7 order passed by the Human Rights Commission. The writ petition fails and is, accordingly, dismissed. The petitioners are granted two months' time from today to make payment of the amount ordered in Ext. P7.

sd/-

**S .MANIKUMAR  
CHIEF JUSTICE**

sd/-

**MURALI PURUSHOTHAMAN  
JUDGE**

spc/

APPENDIX

PETITIONERS EXHIBITS:-

- EXHIBIT P1 TRUE COPY OF THE ORDER DATED 14-05-2015 BEARING NUMBER H2-14795/15.
- EXHIBIT P2 TRUE COPY OF THE COMPLAINT DATED 14-05-2015 SUBMITTED BY SATHEESH KUMAR, SANITATION WORKER, KOTTYAAM MUNICIPALITY.
- EXHIBIT P3 TRUE COPY OF HE LETTER BEARING NUMBER H1-9586(VOLI) DATED 18-05-2015 SENT BY THE 2ND PETITIONER.
- EXHIBIT P4 TRUE COPUY OF THE COMPLAINT DATED 16-06-2015 BEARING NUMBER HRMP NO.6070/15/KTM FILED BEFORE THE 1ST RESPONDENT.
- EXHIBIT P5 TRUE COPY OF THE REPORT SUBMITTED BY THE 2ND PETITIONER BEFORE THE 1ST RESPONDENT.
- EXHIBIT P6 TRUE COPY OF THE REPLY FILED BY THE 3RD RESPONDENT.
- EXHIBIT P7 TRUE COPY O HE DECISION OF THE 1ST RESPONDENT DATED 16-03-2016.
- EXHIBIT P1 (A) TURE ENGLISH TRANSLATION OF EXHIBIT P1.
- EXHIBIT P2 (A) TRUE ENGLISH TRANSLATION OF EXHIBIT P2.
- EXHIBIT P3 (A) TURE ENGLISH TRANSLATION OF EXHIBIT P3.
- EXHIBIT P5 (A) TURE ENGLISH TRANSLATION OF EXHIBIT P5.
- EXHIBIT P6 (A) TURE ENGLISH TRANSLATION OF EXHIBIT P6.
- EXHIBIT P7 (A) TURE ENGLISH TRANSLATION OF EXHIBIT P7.
- EXHIBIT P4 (A) TRUE ENGLISH TRANSLATION OF EXHIBIT P4.

RESPONDENTS EXHIBITS:-

- EXHIBIT R3 (A) TRUE COPY OF THE ID CARD ISSUED BY THE MUNICIPALITY FOR STREET VENDING.