

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

Tuesday, the 31st day of October 2023 / 9th Karthika, 1945

WP(C) NO. 42160 OF 2022 (T)

PETITIONER:

SANTHOSH KUMAR R.S., AGED 61 YEARS, S/O.ROBINSON, SANTHOSH BHAVAN,
KANJIRAMKUZHI VEEDU, MARYAPURAM P.O., THIRUVANANTHAPURAM
DISTRICT-695 122

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY ADDITIONAL CHIEF SECRETARY, LOCAL SELF GOVERNMENT INSTITUTIONS, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.
2. ATHIYANNOOR GRAMA PANCHAYATH, ATHIYANNOOR P.O., THIRUVANANTHAPURAM-695 123 REPRESENTED BY ITS SECRETARY
3. STATION HOUSE OFFICER, NEYYATTINKARA POLICE STATION, NEYYATTINKARA P.O., THIRUVANANTHAPURAM-695 121.

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to direct the 2nd and 3rd respondents to remove forthwith all illegal installation of flex/notice boards in and around petitioner's shoproom as evident through Exhibit P3 photographs, upholding the spirit and essence of the directions issued by this Honourable Court as per Exhibit P4 order pending final disposal of this Writ Petition (Civil).

This writ petition again coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and this Court's orders dated 11-10-2023 and upon hearing the arguments of SRI.S.NIKHIL SANKAR Advocate for the petitioner and of Addl Advocate General - Sri. Ashok Cheriyan, instructed by Sri. Shyam Prasanath, Government Pleader for R1 and R3 and of SRI.HARISH VASUDEVAN, AMICUS CURIAE, the Court passed the following:

DEVAN RAMACHANDRAN, J.

WP(C) NoS.22750/2018,25784/2018, 42574/2018, 27642/2021
& 42160/2022

Dated this the 31st day of October, 2023.

O R D E R

Smt.Sarada Muraleedharan - Additional Chief Secretary, has appeared today also in person and this Court had a very valuable interaction with her.

2. Smt.Sarada Muraleedharan mentioned about the steps taken by various departments of the Government in controlling solid waste and its disposal; and she very interestingly added that, as per the Kerala Municipality (Erection of Arches and Setting up of Advertisement Boards in Public Streets and in Public Places) Rules, 1999, ("Rules" for short) the penalty that can be imposed against each unauthorised board, or such structures, on any public spaces and

streets is Rs.5,000/-; and that this has been ordered to impose on everyone of it.

3. Sri.Harish Vasudevan - learned Amicus Curiae, also affirmed that the "Rules" permit imposition of penalty; and added that, in fact, this Court had, as early as in the order dated 12.12.2022, authorised the collection of such penalty but rued that no effective action has been taken by any Authority. He explained that this could be because of the fear thrust in the Officers, by the powers that be, in acting as per their statutory obligations.

4. The learned Additional Advocate General Sri.Ashok M.Chерian, instructed by Sri.Shyam Prasanth - learned Government Pleader, submitted that Government has been acting in complete adherence with the orders of this Court; and that, it will continue to do so because, what is

being projected is a matter of public importance.

5. Though I propose to write in greater detail in the judgment which I will deliver in due course, it is not merely the aspect of disposal of public waste which alone is important, when we deal with a perspective as impelled in this case; but also the angle of "Visual Pollution", which is something to be taken grave note of by the civilized world. It is the right of a citizen to have pleasing environment and any action by perpetrators to defy this for selfish and vested reasons, certainly is an offence which must attract sufficient penalties.

6. This Court has already constituted Committees at various levels to tackle the menace of these illegal structures; and it is

reported that several thousands of boards have thus been removed recently.

7. However, one fails to understand why the penalty was not imposed on each of the unauthorised Board as per the "Rules", particularly if that being done, the State could have benefited by crores of rupees. The failure/refusal of the Committees constituted by this Court to do so surely has led to loss of public revenue, for which, they are also equally culpable. But perhaps, they were not aware of this and therefore, this Court reserves further comments at this time.

8. Taking note of the deliberations at the Bar and the submissions made by Smt.Sarada Muraleedharan, I am certain that the Committees now constituted by this Court must start imposing maximum penalty under the "Rules" against every board. For this, those who have

created/erected it and every other individual involved, will have to be found out and identified, leading to FIRs being registered against them.

9. When our State is going through stated financial constraints - which is evident from various other cases that come to the notice of this Court - one fails to understand how this source of revenue can be given up, particularly when thousands of boards have been removed on regular basis; and going by the statistics furnished in this case from its inception, the number of boards already removed would perhaps be running into several lakhs.

I, therefore, direct the Committees constituted by this Court; and which are governed by the consequent order of the Government, bearing No.GO(Rt)3075/2022/LSGD dated 12.12.2022, to immediately remove every

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board installed in violation of the orders of this Court from across the State, imposing the maximum penalty of Rs.5,000/- per board on each of them, in addition to the expenses for its removal and initiation of prosecution. Even though this Court had given sufficient leeway and time for removal of the boards by the persons who installed them, the factum of them still continuing on the streets would clearly show lack of respect for law by these persons. Normally, therefore, they do not require to be given any lenitude but, because this Court is now passing an affirmative order as afore, I direct the Committees to start action in terms of above directions after a period of seven days from today, so as to enable every person who has installed the boards illegally to remove them voluntarily and on their own volition, so as to

avert the rigor of penalty and prosecution, if they are so interested.

The Secretary, Local Self Government Department is directed to inform the Committee constituted by this Court, as also the Secretaries of the various Local Self Government Institutions of this order, through an appropriate circular to be issued in these days.

Post on 22.11.2023 at 1.45 P.M and I request the learned Additional Chief Secretary to be present online on that day also, subject to her convenience, for an overview on the progress that may have been achieved by them.

Sd/-

DEVAN RAMACHANDRAN

JUDGE

SAS