

'CR'

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

MONDAY, THE 11<sup>TH</sup> DAY OF JULY 2022 / 20TH ASHADHA, 1944

WP(C) NO. 22937 OF 2021

PETITIONER/S:

- 1 DHANYA C  
AGED 39 YEARS  
W/O.BIJU RAMACHANDRAN, DEVAGANDHARAM,  
PERUMPAZHUTHOOR, NEYATTINKARA.
- 2 BIJU RAMACHANDRAN,  
AGED 46 YEARS  
DEVAGANDHARAM, PERUMPAZHUTHOOR, NEYATTINKARA.  
BY ADV L.RAJESH NARAYAN

RESPONDENT/S:

- 1 STATE OF KERALA  
REP. BY SECRETARY, LOCAL SELF GOVERNMENT  
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM-  
695001.
- 2 DISTRICT COLLECTOR,  
THIRUVANANTHAPURAM, 2ND FLOOR CIVIL STATION  
BUILDING, CIVIL STATION ROAD, THIRUVANANTHAPURAM,  
KERALA-695043.
- 3 SECRETARY  
NEYATTINKARA MUNICIPALITY, MUNICIPAL OFFICE, TB  
JUNCTION-HOSPITAL JCT RD, ALUMMOODU,  
NEYATTINKARA-695121.
- 4 NEYATTINKARA MUNICIPALITY  
MUNICIPAL OFFICE, TB JUNCTION-HOSPITAL JCT RD,  
ALUMMOODU, NEYATTINKARA-695121, REP. BY ITS  
SECRETARY.
- 5 HEALTH INSPECTOR,  
NEYATTINKARA MUNICIPALITY, MUNICIPAL OFFICE, TB  
JUNCTION-HOSPITAL JCT RD, ALUMMOODU,  
NEYATTINKARA-695121.
- 6 ROY C.K,  
S/O.KRISHNAN.K, ROY BHAVAN, THOONGAMPARA, KANDALA  
P.O., THIRUVANANTHAPURAM-695512.

7 STATION HOUSE OFFICER  
NEYYATTINKARA POLICE STATION, NEYYATTINKARA,  
KATTAKADA RD, ALUMMOODU, NEYYATTINKARA-695121.  
BY ADVS.  
ADVOCATE GENERAL OFFICE KERALA  
ABRAHAM K GEORGE

**OTHER PRESENT:**

SMT.VIDYA KURIAKOSE, GP, SRI.R.T.PRADEEP, SC,  
SMT.SINDHU SANTHALINGAM, R6

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 01.07.2022, ALONG WITH WP(C).16195/2022, THE COURT ON  
11.07.2022 DELIVERED THE FOLLOWING:

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

**PRESENT**

**THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN**

**MONDAY, THE 11<sup>TH</sup> DAY OF JULY 2022 / 20<sup>TH</sup> ASHADHA, 1944**

**WP(C) NO. 16195 OF 2022**

**PETITIONER/S:**

ROY C.K.,  
AGED 39 YEARS  
S/O. KRISHNAN K., ROY BHAVAN THOONGAMPARA, KANDALA  
P.O., THIRUVANANTHAPURAM-695512.  
BY ADVS.  
SINDHU SANTHALINGAM  
A.D.SHAJAN

**RESPONDENT/S:**

- 1 STATE OF KERALA,  
REPRESENTED BY SECRETARY TO GOVERNMENT, M LOCAL  
SELF GOVERNMENT DEPARTMENT, GOVERNMENT  
SECRETARIAT, THIRUVANANTHAPURAM-695001.
- 2 THE DISTRICT COLLECTOR,  
2ND FLOOR, CIVIL STATION BUILDING, CIVIL STATION  
ROAD, THIRUVANANTHAPURAM DISTRICT-695043.
- 3 THE SECRETARY,  
NEYYATTINKARA MUNICIPALITY, MUNICIPAL OFFICE. T.B.  
JUNCTION, HOSPITAL JUNCTION ROAD, ALUMMOODU,  
NEYYATTINKARA-695121.
- 4 NEYYATTINKARA MUNICIPALITY,  
MUNICIPAL OFFICE, T.B. JUNCTION HOSPITAL JUNCTION  
ROAD, ALUMMOODU, NEYYATTINKARA-695121.
- 5 HEALTH SUPERVISOR,  
NEYYATTINKARA MUNICIPALITY, MUNICIPAL OFFICE, T.B.  
JUNCTION HOSPITAL JUNCTION ROAD, ALUMMOODU,  
NEYYATTINKARA-695121.
- 6 KERALA STATE POLLUTION CONTROL BOARD,  
PLAMOODU, PATTOM P.O., THIRUVANANTHAPURAM  
DISTRICT-695014.

- 7 THE DEPUTY SUPERINTENDENT OF POLICE,  
OFFICE OF THE DEPUTY SUPERINTENDENT OF POLICE,  
NEYYATTINKARA-695121.
- 8 DHANYA C.,  
AGED 39 YEARS  
W/O. BIJU RAMACHANDRAN, DEVAGANDHARAM,  
PERUMPAZHUTHOOR, NEYYATTINKARA, THIRUVANANTHAPURAM  
DISTRICT-695121.
- 9 BIJU RAMACHANDRAN,  
AGED 46 YEARS  
DEVAGANDHARAM, PERUMPAZHUTHOOR, NEYYATTINKARA,  
THIRUVANANTHAPURAM DISTRICT-695121.  
BY ADVS.  
SHRI.R.T.PRADEEP, SC, R3 TO R5  
SRI.L.RAJESH NARAYAN, R8 AND R9  
SRI.T.NAVEEN, SC-R6  
SMT.VIDYA KURIAKOSE GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 01.07.2022, ALONG WITH WP(C).22937/2021,  
THE COURT ON 11.07.2022 DELIVERED THE FOLLOWING:

' CR '

**P.V.KUNHIKRISHNAN, J.**

=====

**W.P.(C).Nos.22937 of 2021 & 16195 of 2022**

-----

**Dated this the 11<sup>th</sup> day of July, 2022**

### **JUDGMENT**

The main point to be decided in these writ petitions is whether a licence is necessary as per the Kerala Places of Public Resort Act, 1963 (for short, Act 1963) for starting and functioning a gymnasium. It is conceded by both sides in these cases that several gymnasiums are working in our state without getting licence as per the Act 1963. Gymnasium have become a holy places like temples, mosques, churches etc for the young and the older people alike in the current world. Going to the gym is taken as a credit by men and women of all age groups. That is a good signal for achieving a healthy world. But the atmosphere in a Gymnasium should be attractive, and it should function legally after obtaining all the statutory licences.

2. The above two writ petitions are connected and therefore I am disposing these writ petitions by a common

judgment. I will narrate the facts in W.P.(C). No.22937 of 2021. The petitioners are aggrieved by the functioning of a fitness centre with the name and style 'High Power Multi Gym and Fitness Centre' without obtaining a licence from the 4<sup>th</sup> respondent Neyyattinkara Municipality. According to the petitioners, the gym has been functioning without licence; moreover, the construction of the building in which it is situated is unauthorised. The petitioners submitted an application under the Right to Information Act 2005 before the Municipality, and the 4<sup>th</sup> respondent informed that there is no licence issued to the 6<sup>th</sup> respondent for conducting the 'High Power Multi Gym and Fitness Centre.' Ext.P1 is the information received dated 29.09.2021. According to the petitioners, they are facing various difficulties because of this gym. It creates a problem for a peaceful stay at their residence. The gym starts functioning from 5 am to 9 am and 4 pm to 9.30 pm. At the time of functioning the gym, music is played loud, and the petitioners are not in a position to stay at their house because of the horrible noise from the gym. It is also the case of the petitioners that the customers of the gym used to lean on the walls and peep into the house of the petitioners. The petitioners

submitted Ext.P2 complaint before the 3<sup>rd</sup> respondent, Secretary of the Municipality, but nothing transpired till date. Thereafter the petitioners submitted complaint to different authorities, as evident by Exts.P3, P4, and P5. In furtherance of Ext.P2 complaint, the petitioners called for a hearing and Exts.P6 is the hearing notice. But nothing has taken place thereafter. Ext.P7 and P8 are the other complaints submitted by the petitioners. Ext.P9 is yet another complaint submitted before the 3<sup>rd</sup> respondent requesting not to issue a licence to the 6<sup>th</sup> respondent and to close down the unauthorised functioning of the gym. It is also the case of the petitioners that the construction of the building is also in violation of the permit and the approved plan. Ext.P10 is the building permit and Ext.P11 is the occupancy certificate. The petitioners submitted Ext.P12 complaint to the 3<sup>rd</sup> respondent pointing out these violations. Ext.P13 is the completion plan. According to the petitioners, a perusal of Ext P13 with photographs will reveal that the construction effected is in violation of the approved plan. It is the further case of the petitioners that there is no set back provided as per the statutory requirements. In such circumstances, this writ petition is filed with the following prayers:

- i. Issue a writ in the nature of mandamus or any other appropriate order of direction commanding the respondents 3 to 5 to forthwith initiate action to stop the functioning of the fitness centre by name 'HI-POWER MULTI GYM AND FITNESS CENTRE', being conducted by the 6<sup>th</sup> respondent in the building No. No.8/687-1.
- ii. Issue a writ in the nature of mandamus or any other appropriate order or direction commanding the respondents 3 to 5 forthwith initiate action on Ext.P9 complaint.
- iii. Issue a writ in the nature of mandamus or any other appropriate order of direction commanding the respondents 3 and 4 not to issue license to the 6<sup>th</sup> respondent for the conduct of gym in the building No.8/687 - 1 and also to hear the petitioner prior to consideration of the application for license if any submitted by the 6<sup>th</sup> respondent.
- iv. Issue a writ in the nature of mandamus or any other appropriate order of direction commanding the respondents 3 and 4 to ensure that the construction effected by the 6<sup>th</sup> respondent is in accordance with the sanctioned permit and also in consonance with R.24 of the Kerala Municipality Building Rules, 1999.
- v. Issue a writ in the nature of mandamus or any other appropriate order or direction commanding the 7<sup>th</sup> respondent to ensure that the 6<sup>th</sup> respondent does not create any nuisance, disturbance to the life of the petitioners and their family members and ensure that



appropriate action is taken to abate any such nuisance.

- vi. Issue any such other writ, appropriate order or direction as this Hon'ble Court may deem fit and proper considering the facts and circumstances of the case.

*(SIC)*

3. A counter-affidavit is filed by the 6<sup>th</sup> respondent disputing the averments in the writ petition. The 6<sup>th</sup> respondent submitted that Ext.R6(a) is the building permit issued by the authorities and Ext.R6(b) is the tax receipt issued by the Neyyattinkara Municipality. It is also stated that the unauthorised extension was removed and the Municipality has granted licence to the 6<sup>th</sup> respondent. Ext.R6(c) is the licence. It is also the case of the 6<sup>th</sup> respondent that the petitioners are doing business in Arishtam without complying with the statutory requirements. Exts.R6(d), R6(e) and R6(f) are the complaints submitted by the 6<sup>th</sup> respondent against the petitioners. A reply affidavit is filed by the petitioners in which it is stated that the functioning of the gym is without getting licence as per the Act 1963. It is also stated that on account of the disturbance, the petitioners are forced to leave their house at 5 am everyday and return home only by 9.30 pm.

4. When this writ petition came up for consideration on 25.02.2022, this Court passed the following order:

"The writ petition has been filed by the petitioners being aggrieved by the functioning of a Gymnasium in the building next to the petitioner's residential building, which according to the petitioner is causing serious nuisance.

2. When the writ petition came up for orders on 23.02.2022, the counsel for the petitioner pointed out that it is not sufficient if the 6th respondent has obtained a licence for conducting the trade. There is also a requirement under the Kerala Places of Public Resort Act, 1963 as amended by Act 16 of 2000 to obtain a licence under Section 7 of the Act. It is pointed out that the above Act applies to Gymnasiums as well, where music is played.

3. The counsel for 3<sup>rd</sup> and 4<sup>th</sup> respondents had requested for time to get instructions on the above aspect and when the case is taken up, the counsel for respondents 3 to 5 submitted that requirement of licence under the Kerala Places of Public Resort Act, 1963 went unnoticed at the time of granting the trade licence to the 6th respondent and since the trade licence is liable to be renewed before the end of March, the question regarding grant of licence under the Kerala Places of Public Resort Act, 1963 will also be considered by the 6th respondent while considering the renewal of trade licence, for which the 6th respondent may have to apply.

4. In the above circumstances, there will be a

direction to respondents 3 to 5 to consider and pass orders on the application for renewal of the trade licence that may be submitted by the 6th respondent, after hearing the petitioner and the 6<sup>th</sup> respondent and also after ensuring that necessary licenses are obtained under the Kerala Places of Public Resort Act, 1963 also.”

5. Thereafter the matter again came up for consideration on 05.04.2022 and on that day, this Court passed the following order:

“See order dated 25.2.2022. When the case is taken up today, it is submitted that the 6<sup>th</sup> respondent has submitted an application for renewal of the licence under the Municipalities Act and has also submitted an application for licence under the Kerala Places of Public Resort Act, 1963.

2. The learned counsel for the 4<sup>th</sup> respondent submits that more time is required for completing the formalities for grant of licence or for rejection. It is submitted that the process is likely to be over by 25.4.2022.

3. Learned counsel for the petitioners submits that as at present 6<sup>th</sup> respondent is continuing the operations without licence either under the Municipalities Act or under the Kerala Places of Public Resort Act, 1963, and as such, they should be restrained from functioning.

4. The learned Standing Counsel for the Municipality submits that, the 6th respondent has already been instructed not to use musical instruments while running the gym. In such circumstances, there will be an interim order directing the 6th respondent not to use musical

instruments, for the present. Only on completion of formalities of renewal and grant of licence under the Kerala Places of Public Resort Act, 1963, and on getting the necessary licence, they may continue to use musical instruments, subject to the conditions stated in the licence.”

6. Thereafter the Health Supervisor working in the 4<sup>th</sup> respondent Municipality rejected the application for licence submitted by the 6<sup>th</sup> respondent under the Act 1963. The same is produced as Ext.R6(g) by the 6<sup>th</sup> respondent. Challenging Ext.R6(g) order of the Health Supervisor, W.P.(C). No.16195 of 2022 is filed. Ext.P8 is the impugned order in W.P.(C). No.16195 of 2022. The prayers in W.P.(C). No.16195 of 2022 are as follows:

- i. Call for the records leading to the issuance of Exhibit.P8 order and quash the same by issuing a writ of certiorari or any other appropriate writ, order or direction.
- ii. Issue a writ of mandamus or any other appropriate writ, order or direction commanding the 4<sup>th</sup> respondent to permit the petitioner to operate the gym in accordance with law.
- iii. Issue a writ of mandamus or any other appropriate writ, order or direction commanding the 4<sup>th</sup> respondent to consider the application for license under Kerala Place of Public Resorts Act and under the

Municipalities Act and allow the petitioner to operate the gymnasium until disposal of the same.

- iv. Grant such other and further orders which this Hon'ble Court deems fit in the facts and circumstances of the case.

*(SIC)*

7. Pending W.P.(C). No.16195 of 2022, the Municipality was pleased to cancel Ext.P8 in W.P.(C). No.16195 of 2022 [Ext.R6(g) in W.P.(C). No.22937 of 2021]. Annexure R3(a) is the order cancelling Ext.P8. Ext.P8 [Annexure R3(g)] was cancelled because the Panchayat felt that the Health Supervisor is not authorised to pass such orders as per the Rules. After Annexure R3(g), no further orders were passed on the application submitted by the 6<sup>th</sup> respondent for getting a licence as per the Act 1963 because of the pendency of these writ petitions.

8. The short point to be decided in these cases is whether a licence is necessary as per the Act, 1963 to conduct a Gymnasium.

9. Heard the counsel for the petitioners in these writ petitions and also the counsel appearing for the Municipality. I also heard the learned Government Pleader.

10. When these writ petitions came up for consideration earlier, this Court specifically asked the Government Pleader to find out whether the Act 1963 is in force and whether a licence is necessary as per this Act for conducting Gymnasium. The Government Pleader produced letter No.RD1/47/2022/LSGD dated 25.06.2022, in which it is clearly stated that the licence is necessary to conduct a Gymnasium as per The Kerala Places of Public Resort Act, 1963. It will be better to extract the above letter, which is actually addressed to the Advocate General.

*"From*

*Additional Chief Secretary to Government*

*To*

*Advocate General, Ernakulam*

*Sir,*

*Sub: LSGD-WP(C) No.22937 of 2021(N), filed by  
Dhanya.C Instructions -Forwarding of -reg*

*Ref: 1. WP(C) No.22937 of 2021(N) filed by Dhanya.C  
before the Hon'ble High Court of Kerala.*

*2. Interim Order dated 01/06/2022 by Hon'ble High  
Court of Kerala.*

*3. Government letter of even no, dated 20/06/2022.*

*Attention is invited to the order under reference(2), wherein  
it was directed to inform whether a licence is necessary to  
conduct a gymnasium as per the Kerala Places of Public  
Resort Act, 1963.*

*In reply, it is informed that a licence is necessary to conduct a gymnasium as per the Kerala Places of Public Resort Act, 1963. I am to request you to appraise the above facts before the Hon'ble Court."*

11. Even though the Government Pleader, based on the instructions from the Additional Chief Secretary to the Government, submitted that a licence is necessary to conduct a Gymnasium as per The Kerala Places of Public Resort Act, 1963 and the petitioner in WP(C) No.16195 of 2022 already submitted an application for licence as per the Act, 1963, the Standing Counsel for the Municipality took a strange contention that The Kerala Places of Public Resort Act, 1963 is not applicable after the Kerala Municipality Act, 1994 came into force. The Government as well as the petitioner in WP(C) No.16195 of 2022 have no such case. Even the Municipality, in their pleadings, has no case that The Kerala Places of Public Resort Act, 1963 is not applicable to Gymnasium. The vires of the Act is not challenged by the petitioner in WP(c) No.16195 of 2022. But the counsel appearing for the Municipality vehemently argued that after The Municipality Act, 1994 came into force, The Kerala Places of Public Resort Act, 1963 stands repealed. I'm afraid I have to disagree with the same. First of all, there is no such case to the Municipality or to the

petitioner in WP(C) No.16195 of 2022. Moreover, the Government submitted a report before this Court in which it is stated that for conducting a Gymnasium, the licence is necessary as per The Kerala Places of Public Resort Act, 1963. The Municipality is bound by the directions issued by the Government. Section 58 of The Kerala Municipality Act 1994 deals with the power of the Government to issue directions to Municipality. In such circumstances, according to me, the contention of the Counsel for the Municipality, which has no backing of his own client's contention need not be considered. The duty of the lawyer is to take care of the interest of his client and to tell him the exact laws and provisions of the particular case and what are the remedies. He should not hurt the interest of his client by any of his acts and omissions. The stand taken by the counsel of the Municipality will be against section 58 of the Municipality Act. Even after this Court repeatedly alerted the lawyer that he is arguing against the interest of his client, the lawyer stick to his argument. Only God can save these types of lawyers. I leave it there.

12. Now, I will consider the relevant provisions in the Act 1963. Section 2(b) of the Kerala Places of Public Resort Act, 1963



will give an answer about the applicability of the said Act to Gymnasiums. Section 2(b) of the Act 1963 is extracted hereunder:

**2 Definitions:-** (a) xxxxxxxx

*(b) "place of public resort or entertainment" shall mean any place, enclosure, building, tent, booth or other erection whether permanent or temporary, where music singing, dancing or any diversion or game or the means of carrying on the same is provided, and to which public are admitted either on payment of money or with the intention that money may be collected from those admitted, otherwise than for bonafide charitable or religious purpose, and shall include a race-course, circus, theatre, music hall, billiard room, bagatelle room, **gy** and fencing school."*  
*(underline and emphasis supplied)*

13. As per Section 2(b), the places of public resort or entertainment shall include a race-course, circus, theatre, music hall, billiard room, bagatelle room, gymnasium and fencing school. Therefore, in the light of Section 2(b) of the Act, 1963 the 'places of public resort or entertainment' shall include a Gymnasium also. As per Section 3 of the Act, 1963 "no enclosed place or building, whether permanent or temporary, having an area of fifty square meters or upwards, shall be used for public resort or entertainment, unless a licence has been previously obtained in the manner hereinafter provided." When any person desires to obtain a licence to use any enclosed place or building as a place of

public resort or entertainment or to construct any enclosure or building for such purpose, he shall send an application to the authority specified in Section 5, setting forth the place or building, its situation, size and description the material of which the enclosure or building is made or proposed to be made, whether it is proposed to be permanent or temporary and the purposes for which it is proposed to be used. This is narrated in Section 4 of the Act, 1963. As per Section 5 of the Act 1963, it is stated that an application under Section 4 shall be made to the Secretary of the Municipality or the Village Panchayat, as the case may be. As per Section 6 of the Act, 1963, upon receipt of any such application the authority to whom it is made shall inspect the place or building in respect of which a licence is required and may call on applicant, by notice in writing to make any alteration or addition in the material or arrangement of the enclosure or building, or in the precautions for the safety of the public to be assembled therein and may refuse to grant licence until the alteration or addition is made.

14. Section 7 deals with the grant of licence. It will be better to extract Section 7 here:

**"7. Grant of licence :-**

*(1) If the authority is satisfied-*

*(a) that the enclosed place or building may safely be used for the purpose of public resort or entertainment proposed;*

*(b) that no objection arising from its situation, ownership, possession or the purpose proposed exists;*

*he shall give the applicant a written licence, signed by him specifying the enclosure or building and the purpose for which it is to be used. Such licence shall be in such form and subject to the payment of such fee and conditions as the Government may from time to time by rule direct.*

*(2) If the authority is not satisfied as aforesaid, he may refuse to grant a licence, recording his reasons for refusal in writing."*

15. Ext.P9 is the note file from the 4<sup>th</sup> respondent Municipality which considered the application submitted by the petitioner in WP(c) No.16195 of 2022 for licence as per the Act 1963. A perusal of Ext.P9 would show that the 4<sup>th</sup> respondent is of the opinion that the application is to be dismissed, if there is any objection from a party. I am not in a position to agree with the note file which is produced as Ext.P9. Sec.7(b) only says that if the authority is satisfied that no objection arising from its situation, ownership, possession or the purpose proposed exists,

the authority shall give the applicant a written licence signed by him specifying the enclosure or building and the purpose for which it is used. This does not mean that if there is an objection, the licence can be rejected. The objection raised should be reasonable and the licensing authority should be satisfied that the objection raised by the objector is genuine. If any objection is raised, the licensing authority should inspect the premises and find out whether the objection is genuine and whether there is any grievance to the objector. Simply because a person submits an objection, there is no automatic rejection of the licence. That is what is done by the Municipality, when we go through Ext.P9 relevant extract of the note file. Once an objection is raised by a party, the licence application cannot be rejected. Simply because in the section it is not clearly stated that the ground of objection should be considered by the licensing authority, the licensing authority cannot reject an application based on an objection, without considering the genuineness of the objection. If such a stand of the Municipality is accepted, anybody can stall the functioning of a gymnasium by simply submitting an objection, without any reason. Each objection is to be considered on its

merits and an inspection of the premises based on the objection raised is necessary from the side of the Municipality. Then only the Municipality can decide whether the objection is sustainable or not. Therefore, the reason in Ext.P9 for rejecting the licence application (of course, the rejection order is recalled, because it is passed by an incompetent officer) is unsustainable. The licensing authority should inspect the premises of the applicants, with notice to the objector and to the person, who submit the licence application and thereafter, decide whether the licence is to be granted or not.

16. When this writ petition came up for consideration, the counsel for the Municipality and the Government Pleader submitted that several gymnasiums are working in the State of Kerala without a licence as per the Act, 1963. As long as the Act, 1963 is in force, the gymnasiums should obtain a licence from the statutory authority. The 1<sup>st</sup> respondent will give necessary instructions to all the Corporations, Municipalities and Panchayats to send a notice to the gymnasiums working in their area of operation if they are functioning without licence as per the Act 1963. Sufficient time should be given to the gymnasiums to get

licence. No gymnasium shall be closed down immediately for the reason that there is no licence as per the Act, 1963 till a reasonable time of three months is granted to them.

17. As far as the present case is concerned, this Court as per order dated 5.4.2022 in W.P(c) No.22937 of 2021 allowed the 6<sup>th</sup> respondent to function the Gymnasium without using music instruments till the completion of the formalities for the renewal and grant of licence under the Act, 1963. The above interim order dated 5.4.2022 can be continued till a decision is taken by the Municipality in the application submitted by the 6<sup>th</sup> respondent (petitioner in W.P.(C.) No. 16195/2022) for the licence as per the Act, 1963. The counsel for the petitioner in W.P.(C.) No. 16195/2022 relied the judgment of this Court in **Dr.P.Madhavan v. State of Kerala and others** [1973 KHC 365] to contend that the neighbouring owner has no locus standi to challenge an order passed under Rule 19(3) of The Kerala Places of Public Resort Rules, 1965. That was a case in which the Government order granting exemption to a party in exercise of the powers conferred by proviso to Rule 19(a) of the Kerala Places of Public Resort Rules, 1965 was challenged. In the present case there is an

objection as per Sec.7(b) of the Act, 1963. In such a situation, the objector has got a right of hearing and he has got locus standi to challenge the issuance of licence.

Therefore, these writ petitions are disposed of with the following directions :

1) The application submitted by the petitioner in W.P.(C.) No. 16195/2022 for licence as per The Kerala Places of Public Resort Act, 1963 shall be considered by the 3<sup>rd</sup> and 4<sup>th</sup> respondents in that writ petition, in the light of the observations made in this judgment as expeditiously as possible, at any rate, within one month from the date of receipt of a copy of this judgment.

2) Till final orders are passed in the application for licence submitted by the petitioner in W.P.(C.) No. 16195/2022, the interim order dated 5.4.2022 in W.P.(C.) No. 22937/2021 will continue.

3) Before passing final orders in the application submitted for licence as per the Act, 1963, an opportunity of hearing should be given to the petitioners in W.P.(C.) No. 22937/2021 and W.P.(C.) No. 16195/2022.

4) The 1<sup>st</sup> respondent-State of Kerala will issue a general direction to all the Corporations, Municipalities, and Panchayats to find out whether any gymnasiums are functioning in their area of operation without getting a licence as per The Kerala Places of Public Resort Act, 1963 and if there is no licence to any of them, a notice must be issued to those gymnasiums to get a licence within three months. Till notice is issued to the individual gymnasiums for getting licence as per The Kerala Places of Public Resort Act, 1963, their functioning shall not be disturbed, for a period of three months from the date of receipt of the notice demanding the necessity of getting a licence.

5) Registry will forward a copy of this judgment to the 1<sup>st</sup> respondent forthwith and the 1<sup>st</sup> respondent will issue the general direction as directed above within three weeks from the date of receipt of this judgment.

SD/-  
**P.V.KUNHIKRISHNAN**  
**JUDGE**



**APPENDIX OF WP (C) 16195/2022**

**PETITIONER EXHIBITS**

- Exhibit P1 TRUE COPY OF THE BUILDING PERMIT ISSUED BY THE NEYYATTINKARA MUNICIPALITY TO THE PETITIONER ON 31/10/2019.
- Exhibit P2 TRUE COPY OF THE DEMAND NOTICE ISSUED BY NEYYATTINKARA MUNICIPALITY DATED 06/11/2021.
- Exhibit P3 TRUE COPY OF THE LICENSE ISSUED BY NEYYATTINKARA MUNICIPALITY TO THE PETITIONER FOR THE PERIOD 2021-2022.
- Exhibit P4 TRUE COPY OF THE REPRESENTATION FILED BEFORE THE DIRECTOR GENERAL OF POLICE DATED 01/10/2021.
- Exhibit P5 TRUE COPY OF THE REPRESENTATION FILED BEFORE THE CIRCLE INSPECTOR OF POLICE WITH ACKNOWLEDGEMENT DUE.
- Exhibit P6 TRUE COPY OF THE REPRESENTATION FILED BEFORE THE SECRETARY OF THE NEYYATTINKARA MUNICIPALITY.
- Exhibit P7 TRUE COPY OF THE ORDER DATED 05/04/2022 IN WPC NO.22937/2021 DATED 05/04/2022.
- Exhibit P8 TRUE COPY OF THE ORDER DATED 05/05/2022 OF THE 5TH RESPONDENT.
- Exhibit P9 TRUE COPY OF THE RELEVANT EXTRACT OF THE NOTE FILE FROM THE 4TH RESPONDENT MUNICIPALITY

**RESPONDENT'S EXHIBITS**

:

- ANNEXURE R3 (A) TRUE COPY OF ORDER DATED 21.5.2022 ISSUED BY THE 3RD RESPONDENT

**APPENDIX OF WP (C) 22937/2021**

PETITIONER EXHIBITS

Exhibit P1 TRUE COPY OF THE REPLY DATED 29.09.2021  
NO.H1/E4/15219/21.

Exhibit P2 TRUE COPY OF THE COMPLAINT DATED  
31.08.2021.

Exhibit P3 TRUE COPY OF THE COMPLAINT DATED  
31.08.2021.

Exhibit P4 TRUE COPY OF THE COMPLAINT DATED  
01.09.2021 FILED BY THE CHILDREN OF THE  
PETITIONERS.

Exhibit P5 TRUE COPY OF THE COMPLAINT DATED  
06.09.2021.

Exhibit P6 TRUE COPY OF THE NOTICE DATED 29.09.2021.

Exhibit P7 TRUE COPY OF THE COMPLAINT DATED  
10.09.2021.

Exhibit P8 TRUE COPY OF THE COMPLAINT DATED  
07.10.2021.

Exhibit P9 TRUE COPY OF THE COMPLAINT DATED  
05.10.2021.

Exhibit P10 TRUE COPY OF THE BUILDING PERMIT DATED  
31.10.2019.

Exhibit P11 TRUE COPY OF THE OCCUPANCY CERTIFICATE  
DATED 05.08.2020.

Exhibit P12 TRUE COPY OF THE COMPLAINT DATED  
01.09.2021 WITH PHOTOGRAPHS.

Exhibit P13 TRUE COPY OF THE COMPLETION PLAN.

Exhibit P14 TRUE COPY OF THE KERALA PLACES OF PUBLIC  
RESORT ACT, 1963

Exhibit P15 TRUE COPY OF THE REQUEST BEFORE THE 3RD  
RESPONDENT

Exhibit P16 TRUE COPY OF THE REPLY DATED 3/12/2021

RESPONDENT EXHIBITS

EXT R6(A) A TRUE COPY OF THE BUILDING PERMIT ISSUED  
BY THE NEYYATTINKARA MUNICIPALITY TO THE  
6TH RESPONDENT ON 31.10.2019

EXT.R6(B) A TRUE COPY OF THE TAX RECEIPT ISSUED BY  
NEYYATTINKARA MUNICIPALITY DATED  
6.11.2021

- EXT.R6 (C) A TRUE COPY OF THE LICENSE ISSUED BY NEYYATTINKARA MUNICIPALITY TO THE 6TH RESPONDENT FOR THE PERIOD 2021-2022
- EXT.R6 (D) A TRUE COPY OF THE REPRESENTATION FILED BEFORE THE DIRECTOR GENERAL OF POLICE DATED 1.10.2021
- EXT.R6 (E) A TRUE COPY OF THE REPRESENTATION FILED BEFORE THE CIRCLE INSPECTOR OF POLICE WITH AD
- EXT.R6 (F) A TRUE COPY OF THE REPRESENTATION FILED BEFORE THE SECRETARY OF THE NEYYATTINKARA MUNICIPALITY
- EXT.R6 (G) A TRUE COPY OF THE ORDER NO.H1/17045/2021 DATED 05.05.22 ISSUED BY HEALTH SUPERVISOR OF NEYYATTINKARA MUNICIPALITY TO THE 6TH RESPONDENT.