

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE V.G.ARUN

MONDAY, THE 10TH DAY OF APRIL 2023 / 20TH CHAITHRA, 1945

WP (C) NO. 23932 OF 2021

PETITIONER/S:

BOSCO LOUIS
AGED 36 YEARS
S/O. K. A. LOUIS, KARUNAN NIVAS, VIDAkkUZHA,
THAIKKATTUKARA P. O., N.A.D. GATE, KALAMASSERY,
ERNAKULAM - 683106.

BY ADV BOSCO LOUIS (Party-In-Person)

RESPONDENT/S:

- 1 THE STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT, LOCAL SELF
GOVERNMENT DEPARTMENT, TRIVANDRUM - 695 001.
- 2 THE SECRETARY, KALAMASSERY MUNICIPALITY
BPO, CHNAGAPUZHA NAGAR, THIRUNILATH HOUSING COLONY,
SOUTH KALAMASSERY, KALAMASSERY, ERNAKULAM, PIN - 682
033.
- 3 LULU INTERNATIONAL SHOPPING MALL PVT. LIMITED
REPRESENTED BY ITS DIRECTOR, 34/1000 NH 47, EDAPPALLY,
ERNAKULAM, PIN - 682 024.
- 4 STATION HOUSING OFFICER
KALAMASSERY POLICE STATION, ERNAKULAM.

BY ADVS.
SHRI.M.K.ABOOBACKER, SC KALAMASSERY MUNCI
P.MARTIN JOSE
P.PRIJITH
THOMAS P.KURUVILLA
R.GITESH
AJAY BEN JOSE
ANNA LINDA V.J
S.HARIKRISHNAN
HANI P.NAIR
KEZIAH MIRUM GEORGE
S.SREEKUMAR (SR.)

OTHER PRESENT:

SPL.GP LSGD K.R.DEEPA; SR.ADV.MUKUL ROHATGI FOR R3.

W.P.(C) No. 23932 & 29749 of 2021

2

AMICUS CURAIE ADV.ALEX M. SCARIA; SR.ADV. P.K.SURESH
KUMAR; ADV. M.P.SHAMEEM AHAMMED ;ADV. NEBIL NIZAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
19.09.2022, ALONG WITH WP(C).29749/2021, THE COURT ON
10.04.2023, DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE V.G. ARUN

MONDAY, THE 10TH DAY OF APRIL 2023 / 20TH CHAITHRA, 1945

WP (C) NO. 29749 OF 2021

PETITIONER/S:

PAULY VADAKKAN,
AGED 50 YEARS
S/O. JOSEPH VADAKKAN, VADAKKAN HOUSE, ANNAMANADA P.O.,
THRISSUR DISTRICT, EKRALA-680 741.

BY ADV JOMY K. JOSE

RESPONDENT/S:

- 1 LULU INTERNATIONAL SHOPPING MALL PVT. LTD.,
REPRESENTED BY ITS DIRECTOR, 34/1000, NH-47, EDAPPALLY,
ERNAKULAM-682 034.
- 2 STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT, LOCAL SELF
GOVERNMENT DEPARTMENT, THIRUVANANTHAPURAM-695 001.
- 3 THE SECRETARY, KALAMASSERY MUNICIPALITY,
BPO CHANGAMPUZHA NAGAR, THIRUNILATH HOUSING COLONY,
SOUTH KALAMASSERY, KALAMASSERY, ERNAKULAM-682 033.
- 4 KALAMASSERY MUNICIPALITY,
REPRESENTED BY ITS SECRETARY, BPO CHANGAMPUZHA NAGAR,
THIRUNILATH HOUSING COLONY, KALAMASSERY, ERNAKULAM-682
033.
- 5 DIRECTOR OF URBAN AFFAIRS,
SWARAJ BHAVAN, NANTHANCODE, KOWDIAR P.O.,
THIRUVANANTHAPURAM-695 003.
- 6 ADDL R6 SHOPPING CENTRE ASSOCIATION OF INDIA
SECRETARIAT:- 3/116, PINTOO HOUSE MAROL, CO-OPERATIVE
INDUSTRIAL ESTATE, MAROL, ANDHERI (EAST), MUMBAI-
400059, REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER.
ADDITIONAL R6 IMPEADED AS PER THE ORDER DATED
28.01.2022 IN I.A. 01/2022 IN WP (C) 29749/2021.

- 7 ADDL R7. M/S. HI-LITE REALTORS (INDIA) LLP,
BUSINESS PARK, HI-LIFE CITY, G-1003, THONDAYAD BYPASS,
G.A.COLLEGE, KOZHIKODE DISTRICT, KERALA- 673014.
ADDITIONAL R7 IMPEADED AS PER THE ORDER DATED
21.02.2022 IN I.A.2/2022 IN WP(C) 29749/2021.
- 8 ADDL. R8. ABAD BUILDERS PVT. LTD.,
REPRESENTED BY ITS MANAGING DIRECTOR, DR. NAJEEB
ZACKERIA, NO.86, 8TH FLOOR, NUCLEUS MALL & OFFICE,
N.H.85 (KUNDANNOOR - PETTA ROAD), MARADU P.O., KOZHI-
682 304 ADDITIONAL R8 IMPEADED AS PER THE ORDERS DATED
21.02.2022 IN I.A. 3/2022 IN WP(C) 29749/2021.

BY ADVS.
S.SREEKUMAR (SR.)
P.K.SURESH KUMAR (SR.)
NEBIL NIZAR
P.MARTIN JOSE
P.PRIJITH
THOMAS P.KURUVILLA
R.GITESH
MANJUNATH MENON
AJAY BEN JOSE
SACHIN JACOB AMBAT
HANI P.NAIR
ANNA LINDA V.J
HARIKRISHNAN S.
K.P.SUDHEER
ANJALI MENON

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 19.09.2022, ALONG WITH WP(C).23932/2021, THE COURT ON
10.04.2023, DELIVERED THE FOLLOWING:

V.G. ARUN, J.

W.P.(C) No. 23932 & 29749 of 2021

Dated this the 10th day of April, 2023

JUDGMENT

These writ petitions are filed by two disgruntled citizens, aggrieved by the demand and collection of fee for parking their vehicles in the parking space in Lulu Mall, a shopping mall constructed by the Lulu International Shopping Mall Private Limited (the Company, for short) at Edappally in Ernakulam. The prayers, which are almost similar in both writ petitions, are as under;

W.P.(C) No. 23932 of 2021

- i. Issue a writ of mandamus or any other appropriate writ, order or direction commanding the respondents 1 and 2 produce the application for sanction of Lulu mall, sanctioned plan, with minutes etc.
- ii. Issue an appropriate writ of prohibition, order or direction to the 1st and 2nd respondent to restrain the 3rd respondent

from collecting any money from the public towards the parking fee.

iii. Issue a writ of mandamus or any other appropriate writ, order or direction commanding the respondents 3, to return the illegally collected Rs20/- from the petitioner.

iv. issue a writ of mandamus or any other appropriated writ, order or direction commanding the 4th respondent to drop all the further proceedings against the petitioner.

v. issue a writ mandamus or any other appropriate writ, order or direction commanding the 1st respondent to conduct an enquiry to find the number of similar illegal collections across the state to take punitive actions against this kind of rampant violations of law to make money. hoodwinking the government.

vi. any other writ or order to respondents for any other relief that this Hon'ble Court feels deemed fit to pass as deemed fit in the above circumstance of the case, including the cost of the writ petition.

W.P.(C) No.29749 of 2021

i) to declare that the parking fee collected from the petitioner as per Ext.P3 is illegal.

ii) direct the 1st respondent to refund the parking fee collected from the petitioner illegally.

iii) to declare that the 1st respondent has no right to collect parking fee from their customers without any license by committing fraud on statute.

iv) to direct the respondents 2, 3 and 4 to take appropriate steps to recover the parking fee collected by the 1st respondent illegally so far from the inauguration of the 1st respondent mall in the year 2010.

2. I heard the petitioner in W.P.(C) No. 23932 of 2021, who appeared in person, Adv. Alex M. Scaria, learned Amicus Curiae, Adv. Jomy K. Jose for the petitioner in W.P.(C) No. 29749 of 2021 and Sr. Advs. Mukul Rohatgi, S. Sreekumar and P.K. Suresh Kumar, along with Advs. M.K. Aboobacker, M.P. Shammem Ahamed and Nebil Nizar, for the respondents.

3. The essential facts are as under;

The Lulu Mall, one among the largest shopping malls in the country, has a retail space of 68,000 sq.mts. The mall is situated within Kalamassery Municipal area and a portion of its land lies within the limits of Kochi Municipal Corporation. The parking space for the Mall, provided in the basement of the

building, covers an area of about 40316.01 sq. mts and can accommodate 1083 vehicles, as is statutorily required. Apart from providing requisite parking space in the basement, the company has constructed a multilevel car parking facility in the appurtenant land, situated within the limits of the Kochi Corporation. Thus, as against the requirement of 1083 parking slots, 4387 parking slots are available within the precincts of the Mall. Out of the 4387 parking slots, 1865 slots are earmarked for four wheelers and 2522 slots, for two wheelers. The Company has provided security staff and has installed CCTV cameras for ensuring the safety and security of the vehicles parked within the premises and is collecting fees for the space and the services provided.

4. According to the petitioners, the parking space has to be provided mandatorily in view of the stipulation in Rule 20 of the Kerala Municipality Building Rules. Hence, no fees can be collected for utilising the space. The very purpose of providing mandatory parking space, which is to ensure that people visiting the mall do not park their vehicles on the roadside, will

be defeated if exorbitant parking fees is permitted to be collected. Alternatively it is contended that, by collecting parking fees from vehicle owners, the company has converted the parking space into a cart-stand, the conduct of which requires a licence under Section 475 of the Kerala Municipality Act.

5. On behalf of the respondents, particularly the company, the maintainability of the writ petition is challenged on the ground that the petitioner's remedy, if any, is to approach the Consumer Forum in view of the prayer for refund of the parking fees collected from them. On merits, it is contended that there is no prohibition in the statute or rules restraining charging of parking fees and on the other hand, Sub-rule (9) of Rule 29 of the Kerala Municipality Building Rules, 2019 provides for letting out parking space. In the absence of statutory prohibition against collection of parking fees, and as property tax has to be paid for the area also, the space was decided to be utilised economically by collecting fees from the vehicle owners. Any intervention with the said

activity would amount to violation of the owner's fundamental right guaranteed under Article 19(1)(g), as also the constitutional right under Article 300(A). It is contended that the parking fee is collected on the strength of the licence issued under Section 447 of the Kerala Municipality Act (the Act, for short). The Kalamassery Municipality having chosen to issue licence under Sec. 447, the contention that the company should obtain licence under Section 475 cannot be countenanced. Even otherwise, a mentioning of a wrong provision will not vitiate the licence.

6. Despite the objection as to maintainability, I proceed to decide the writ petition on merits, being conscious of the gregarious, aggressive and insatiable demand for parking space. As observed by the Supreme Court in **M.C. Mehta v. Union of India and Others** (Order dated 02.09.2019 in W.P. (C) No. 13029 of 1985), modern conveniences bring their own problems. One of the most important contributions of the industrial age is motor transport, which brought with it many problems, one among them being the perennial problem of

'parking'.

7. In order to consider and answer the contentions urged on merits, it is essential to understand the statutory scheme;

The Kerala Building Rules, 1984 was introduced in exercise of the power under Section 381 of the Municipality Act, which empowers the Government to make Rules for regulating or restricting building construction. The 1984 Rules was replaced by the Kerala Municipality Building Rules, 1999 and later with the Kerala Municipality Building Rules, 2019. For the purpose of this case we will focus on the relevant provisions of the Kerala Municipality Building Rules, 1999(the Rules, for short). Rule 2(ba) defines 'parking space' as an area enclosed or unenclosed, sufficient in size to park vehicles, together with a driveway connecting the parking space with a street or alley and permitting ingress and egress of vehicles. Rule 7(9)(D) makes it mandatory for an applicant for building permit to provide the parking plan, clearly showing the parking spaces, driveways and manoeuvring spaces. The duties and

responsibilities of the owner of a building enumerated under Sub-rule (7d)(viii)(c) of Rule 20, require the owner to include the number of parking and loading and unloading spaces and area earmarked for such spaces as part of all advertisements through website, pertaining to the building and/or land development. The occupancy of buildings is governed by the usage of plot and classification of buildings comes under Rule 30. Accordingly, mercantile/commercial buildings are classified as Group F. The parking, loading and unloading spaces of different classes of buildings is stipulated in Table 5.2 of Rule 34.

8. The question whether parking fees can be collected by the owner was considered by this Court in **Charly v KTDC** [2001(1) KLT 178]. After detailed consideration of the relevant provisions it was held that, although as per Rule 20 provision has to be made for parking space, nothing in the rules prohibit the charging of fees for parking. In **Nagar Panchayat, Kurwai and Another v. Mahesh Kumar Singhal and Others** [(2013) 12 SCC 342) the Apex Court held that the

general principle that nobody has a fundamental right to use the land belonging to another, without the latter's permission or paying for it, if demanded, vests the Nagar Panchayat with the power to impose parking fee for parking vehicles in the bus stand owned and maintained it.

9. This court had occasion to consider the question whether parking fees can be collected without a licence, in a writ petition challenging the proceedings initiated by the Palakkad Municipality for stopping the collection of parking fees from vehicles parked within the parking space provided in theatres, without licence. Repelling the challenge, this Court held that parking fees can be collected only under a licence issued as per Section 475 of the Municipality Act. That judgment was affirmed by the Division Bench in **K.A.Sobha v. Palakkad Municipality** (judgment in W.A. No. 251 of 2015). Later, in **Mughal Foundation Mall v. The Secretary, Kodungallur Municipality** (judgment in W.P.(C) 15176 of 2017), a learned single Judge rejected the contention of the Municipality that parking space provided in a multi storied

commercial complex is a service to be offered by the building owner, free of cost. It was observed that the building owner could provide parking free of cost, but can also opt to levy fees from the vehicles parked in the complex and in such an event, the activity, which is commercial in nature, has to be licenced.

10. This court is also of the definite view that it is the prerogative of the building owner to decide whether parking fee is to be levied from the customers, parking their vehicles for utilising the shopping facility and services provided in the building. If the building owner decides to levy fees, such activity can be carried out only under a licence issued by the local authority. Hence, I respectfully disagree with the contrary opinion expressed by the Division Bench of the Gujarat High Court in **Ruchi Malls Pvt. Ltd. v. State of Gujarat (2021 KHC 2706)** and the Single Bench of the Andhra Pradesh High Court in **Madan Mohan and Ors v. Municipal Corporation of Hyderabad and Anr.** (AIR 2003 AP 393).

11. The next question is whether the licence for

collecting parking fees should be under Section 475 or whether a licence issued under Section 447 can be utilised for the purpose. In this regard it is essential to note that Section 447 prohibits the use of places within a Municipal area for the conduct of industries, factories, trades, workplaces and other services, which directly or indirectly affect public interest such as environment, public safety and public health or causes inconvenience to the public. In terms of Section 447, the Government has issued the Kerala Municipality (Issue of Licence to Dangerous and Offensive Trades and Factories) Licensing Rules, 2011. The trades and businesses for which licence is to be obtained under the Rules is enumerated in Schedule I of the Rules. The Schedule to the Rules, as amended by G.O.(P). No. 62/2020/Local Self Government dated 30.10.2020, lists pay and park area as an activity requiring licence. A perusal of Ext. R2(b) licence dated 09.07.2021 reveals that the list of services for which licence is granted include pay and park also. This obviously is for the reason that pay and park is included as an activity for which

licence can be granted under Section 447 after the amendment to the Schedule in 2020. The statutory scheme having thus undergone a change, licence under Sec. 475 cannot be insisted for collection of licence fees from persons using the parking area. For reaching this conclusion, I also take note of Rule 29(9) of the KMBR, 2019 which is to the effect that the minimum mandatory open space around any building, as well as the mandatory parking space to be provided as per the rules, can be sold or let out to persons using the building.

12. The above reasoning will not apply to multilevel parking facilities, which are stand alone buildings utilised only for parking of vehicles. In the case at hand, even though the vehicles parked in the multilevel parking facility set up by the company are spillovers from the basement parking area of the Mall, collection of fees from the vehicles parking is a commercial activity and in that view of the matter, the company is conducting a cart-stand. As such, the can only be done under a licence issued in terms of Section 475 of the Act.

In this regard it is essential to note that 'multilevel parking facility' falls within the meaning of 'parking building' under Sec. 2(bx) of the 2019 Rules and is classified as a Group F (Mercantile or Commercial) building as per Rule 25 of the 2019 Rules.

13. In view of the above finding, I am not delving into the alternative contention put forth by one of the Senior Counsel that, insofar as Sections 473 and 475 relating to private cart-stands do not find a place in the 2011, Rules, the licence issued to Lulu Mall should be treated as one issued under Section 460 of the Act.

14. The above discussion leads to the conclusion that collection of fees from the vehicles parking in the 1083 parking slots in the basement of Lulu Mall is legal, but collection of fees from vehicles parking in the multilevel parking facility, without obtaining a licence under Section 475 of the Kerala Municipality Act, is illegal. If the company intends to utilise the multilevel parking facility near the shopping mall and collect

parking fees from persons using the facility, that can be done only under a licence issued in terms of Section 475 of the Act.

I place on record my appreciation for the valuable assistance rendered by the learned Amicus Curiae.

Ordered accordingly.

Sd/-

V.G.ARUN

JUDGE

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APPENDIX OF WP (C) 29749/2021

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE RC BOOK OF VEHICLE BEARING REGISTRATION NO.KL 64 J 7738.
- Exhibit P2 TRUE COPY OF THE BILL ISSUED BY LULU HYPERMARKET DIVISION OF LULU INTERNATIONAL SHOPPING MALLS PVT.LTD.
- Exhibit P3 TRUE COPY OF THE PARKING FEE RECEIPT ISSUED BY THE 1ST RESPONDENT DATED 02.12.2021.
- Exhibit.P6 A true copy of the notice issued by the Secretary Kalamassery Municipality to the 1st respondent dated 29-12-2021
- Exhibit.P8 A true copy of the reply issued under Right to Information Act dated 27-1-2022
- Exhibit.P7 A true copy of the Reply issued under Right to Information Act dated 30-12-2021
- Exhibit.P4 A true copy of the communication issued by Secretary Kalamassery municipality dated 31-3-2018
- Exhibit.P5 A true copy of the reply dated 20-12-2021
- Exhibit P6 A true copy of the notice issued by the Secretary Kalamassery Municipality to the 1st respondent dated 29.12.2021.
- Exhibit P7 A true copy of the reply issued under Right to Information Act dated 30.12.2021
- Exhibit P8 A true copy of the reply issued under Right to Information Act dated 27.1.2022.

RESPONDENTS EXHIBITS

- EXHIBIT R6(A) TRUE COPY OF CERTIFICATE OF INCORPORATION ISSUED BY ASSISTANT REGISTRAR OF COMPANIES, NATIONAL CAPITAL TERRITORY DELHI AND HARYANA DATED 28.05.2008
- EXHIBIT RE(B) TRUE COPY OF THE PRESS NOTE ISSUED BY THIRUVANANTHAPURAM CORPORATION VIDE

NO.R11/90967 DATED 08/12/2021.

EXHIBIT R6 (C) TRUE COPY OF THE ORDER BY CALICUT MUNICIPAL CORPORATION VIDE NO.A36/17291/21 DATED 19.11.2021

EXHIBIT R1 (A) TRUE COPY OF LICENSE UNDER SECTIONS 447 AND 475 OF KERALA MUNICIPALITY ACT OBTAINED BY RESPONDENT NO.1/LULU

EXHIBIT R1 (B) TRUE COPY OF ORDER PASSED BY THIS HON'BLE COURT IN WPC NO.6608 OF 2016 DATED 2.03.2016

EXHIBIT R1 (C) TRUE COPY OF ORDER DATED 20.08.2016 IN I.A.NO.209 OF 2016 IN CC NO.131 OF 2016 OF CONSUMER DISPUTE REDRESSAL FORUM, KOTTAYAM.

APPENDIX OF WP (C) 23932/2021

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE BILL DATED 18.10.2021.
- Exhibit P2 TRUE COPY OF THE LOYALTY PASS ISSUED DATED 18.10.2021.
- Exhibit P3 TRUE COPY OF THE COMPACT DISC CONTAINING THE VISUALS OF NEWS PUBLISHED IN KARMA NEWS DATED 20.10.2021.
- Exhibit P4 TRUE COPY OF THE CD CONTAINING THE SAID STATEMENT.
- Exhibit P5 TRUE COPY OF THE RECEIPT SHOWING THE PAYMENT OF RS.20/- DATED 22.10.2021.
- Exhibit P6 TRUE COPY OF THE REPRESENTATION DATED 27.10.2021.
- Exhibit P7 TRUE COPY OF THE RECEIPT DATED 28.10.2021.

RESPONDENT EXHIBITS

- Exhibit R2(a) PHOTOCOPY OF THE LICENSE ISSUED TO THE 3RD RESPONDENT DATED 09/07/2021.
- Exhibit R3(a) TRUE COPY OF LICENSE ISSUED BY THE KOCHI MUNICIPAL CORPORATION DATED 09.09.2022 FOR THE PAY AND PARK SERVICE OF LULU MALL
- EXHIBIT R3(b) TRUE COPY OF LICSESE ISSUED BY THE KALAMASSERY MUNICIPALITY DATED 09.07.2021 FOR THE PERIOD 28.06.2021 TO 31.03.2022
- Exhibit R3(c) True copy of receipts for payment of property tax to the respective door numbers
- Exhibit R3(d) True copy of Licenses issued to the door numbers with teh proportionate car parking area by the Kalamassery Municipality since the year 2013
- Exhibit R3(e) True copy of receipt for payment of license fees for the door numbers with the corresponding basement/car parking area for the period 2020-2021
- Exhibit R3(f) True Copy of certificate issued by

Kalamassery Municipality dated 11.01.2022

PETITIONER EXHIBITS

Exhibit P13 TRUE COPY OF THE APPLICATION DATED 3/3/2021

Exhibit P14 TRUE COPY OF THE LICENCE ISSUED BY
KALAMASSERY MUNICIPALITY DATED 12/8/2022

Exhibit P15 TRUE COPY OF LETTER DATED 27/5/2022 BY THE
3RD RESPONDENT AN LONG WITH THE LICENCE THE
ISSUED TO THE 3RD RESPONDENT