

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL SITTING AT  
CHENNAI**

**IA No. /2021**

**in  
Appeal No. 50/2021**

**Shammy A Shahib : Petitioner/Appellant**  
**Vs**  
**The Environmental Engineer and others : Respondents/ Respondents**

**PETITION FILED UNDER SECTION 19 OF THE NATIONAL GREEN  
TRIBUNAL ACT, 2010**

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**PRAVEEN.K.JOY(P-337)**  
**SANEEJ E.S (S-2961)**  
**UNNIKRISHNAN M.P (U-156)**  
**SAMYUKTHA M.K.(S-3074)**  
**ABHILASH N. (A-1845)**  
**ESHRATH M R (E-91)**  
**BEENA JOSEPH (B-546)**  
**SREELEKHA P (K-000988/19)**  
**DEEPU RAJAGOPAL (K-001444/19)**

**ADVOCATES,**  
**Joy and Joy Associates**  
**Empire Building,**  
**Ernakulam, Kerala-682018**  
**Ph : 9846014753**  
**Email-advpraveenkjoy@icloud.com**

**Counsel for the appellant**

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BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL SITTING AT  
CHENNAI

IA No. /2021

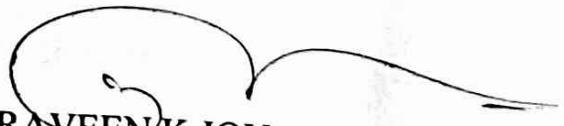
in  
Appeal No. 50/2021

Shammy A Shahib : Petitioner/Appellant  
Vs  
The Environmental Engineer and others : Respondents/ Respondents

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Dated this the 3<sup>rd</sup> day of August, 2021.

  
PRAVEEN K JOY  
Counsel for the petitioner

|

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL SITTING AT  
CHENNAI**

IA No.                      /2021

in

Appeal No. 50/2021

Shammy A Shahib

:            Petitioner/Appellant

Vs

The Environmental Engineer and other

:            Respondents/ Respondents

**AFFIDAVIT**

I, Shammy A Shahib, aged 46, S/o Ahamed, Palackal House, Cheruvandur, Ettumanoor P.O., Kottayam-686631, do hereby solemnly affirm state as follows:

1. I am the appellant in the appeal. I know the facts of the case. I am competent to swear this affidavit.
  
2. It is submitted that Annexure 1 to Annexure 24 was produced along with Appeal and thereafter Annexure-25 to Annexure-29 was produced subsequently. The amendment IA is also allowed. Now the additional documents are produced for reference of this Hon'ble Court. All the judgment of Hon'ble High Court of Kerala is produced for kind reference.
  
3. It is submitted that already sketch is produced before this Hon'ble Appellate Tribunal. Now as per the consent to establish and consent to operate issued by the Pollution Control Board, the distance is stated as 51 meter. The distance has to be taken from the machinery to the nearby building. The consent the distance is taken from the machinery only. The consent was issued in the year 2017. The subsequent modification of the nearby residence is reflected before the Appellate Tribunal No. 9/2019, wherein the distance is stated as 49 meter. Now the official of the Pollution Control Board has recently measured not to from machinery, but from compound wall. The distance has to be taken from machinery and it is only 51 meters as reflected to the sketch in the original consent issued by the Pollution Control Board.



4. The copy of the judgment in WPC 8172/2020 dated 18.03.2020 produced marked as Annexure-A29. The copy of the judgment in WPC 28689/2019 dated 27.11.2019 produced marked as Annexure-A30. The copy of the judgment in WPC 13038/2019 dated 10.06.2019 produced marked as Annexure-A31. The copy of the judgment in WA 2095/2019 dated 14.11.2019 produced marked as Annexure-A32. The copy of the judgment in WPC 10223/2020 dated 25.05.2020 produced marked as Annexure-A33. The copy of the judgment in WPC 20042/2020 dated 07.10.2020 produced marked as Annexure-A34. The copy of the judgment in WPC 11198/2021 dated 16.07.2021 produced marked as Annexure-A35. The Hon'ble Tribunal may be pleased to accept the above documents in the interest of justice.

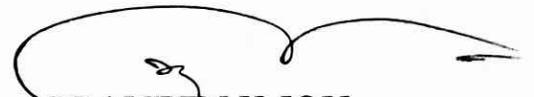
All the facts stated above are true and correct.

Dated this the 3<sup>rd</sup> day of August, 2021.



Deponent

Solemnly affirmed and signed before me by the above said deponent on this the 3<sup>rd</sup> day of August, 2021 in my office.



PRAVEEN K JOY

Counsel for the petitioner

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 18TH DAY OF MARCH 2020 / 28TH PHALGUNA, 1941

WP(C).No.8172 OF 2020(V)

PETITIONER:

SHAMMY A SHAHIB  
AGED 46, S/O.AHAMED,  
PALACKAL HOUSE, CHERUVANDUR, ETTUMANOOR.P.O,  
KOTTAYAM-686631

BY ADVS.  
SRI.PRAVEEN K. JOY  
SRI.E.S.SANEEJ  
SRI.M.P.UNNIKRISHNAN  
SMT.M.K.SAMYUKTHA  
SRI.N.ABHILASH  
SMT.M.R.ESHRATH BAI  
SMT.BEENA JOSEPH  
SMT.SREELEKHA. P  
SHRI.DEEPU RAJAGOPAL

RESPONDENTS:

- 1 ETTUMANOOR MUNICIPALITY  
REP BY ITS SECRETARY, ETTUMANOOR-686631
- 2 SECRETARY  
ETTUMANOOR MUNICIPALITY, ETTUMANOOR-686631
- 3 THE HEALTH INISPECTOR,  
ETTUMANOOR MUNICIPALITY, ETTUMANOOR-686631
- 4 DISTRICT MEDICAL OFFICER,  
KOTTAYAM-686002
- 5 KOTTAYAM DISTRICT SINGLE WINDOW CLEARANCE BOARD,  
KOTTAYAM-686001, REP BY ITS CONVENOR

BY ADVS.  
R1-3 BY SRI.SIBY CHENAPPADY, SC, ETTUMANOOR  
MUNICIPALITY  
SRI.JESTIN MATHEW, GOVT.PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
18.03.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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WP (C) No. 8172 OF 2020 (V)

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**ALEXANDER THOMAS, J.**

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W.P.(C)No.8172 of 2020  
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Dated this the 18<sup>th</sup> day of March, 2020

**JUDGMENT.**

The case set up in this Writ Petition (Civil) is as follows:-

The petitioner herein is the owner of plywood industry under the name and style M/s. Palackal Timbers for undertaking wood veneer and plywood manufacturing. The predecessor of the property also had the building in the property. It is submitted that the petitioner applied before the Khadi and Village Industries Commission, after completion of building in 2008 and later in 2009 the project proposal was forwarded and sanctioned. It is submitted that the District Single Window Clearance Board has granted the sanction and permission to the petitioner for the unit. The petitioner has all consent from all statutory authorities. It is submitted that Consent to Operate for Palackal Industries is being granted by Pollution Control Board on 16.02.2012 and thereafter renewals were granted on 21.05.2015 and subsequently renewed by Consent No. PCB/KTM/ICO/R2/4073/2017. It is submitted that consent to operate is also issued for Palackal Timbers. The



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WP (C) ,No. 8172 OF 2020 (V)

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consent is valid upto 2022. It is submitted that No Objection certificate is issued by Fire & Rescue Services Department. It is also stated in Ext.P-8 that the unit permission is for using 110HP motor. Now the Fire department has renewed the NOC from 16.05.2019 till 15.05.2020. It is valid upto 15.05.2020. It is submitted that there is Forest NOC issued for both the units. The Forest license is valid upto 06.09.2023. It is held in 2016(1) KLT 601 (Shanmugham Vs. Vandazhy Grama Panchayath), that it is always open for the Single Window Board to direct to grant permit. The validity of the same is already upheld in the dictum in 2016(1) KLT 601. The license for the petitioner was granted by Single Window. It is submitted that the petitioner is functioning two units in building No.XII-18-C and XIX-304-B of Ettumanoor Municipality. One unit is named as Palackal Industries and other is named Palackal Timbers. Two units are functioning with separate licenses. Even in the earlier Ext.P-23 licence the 110HP is noted. It is submitted that by Ext.P-29 the District Industries Centre has also given sanction for Power Load of 110HP on 08.03.2016. It is submitted that the petitioner has submitted application for renewal of license on 15.02.2020, together with all documents and after inspection, the license was renewed and fee



was collected. It is submitted that the petitioner got the D&O Trade License fee paid. Thus the licence fee for the year 2020-21 is paid. Now the 2<sup>nd</sup> respondent has issued fresh notice as per Ext.P-32 on 11.03.2020. The entire proceedings under Ext.P-32 notice is totally illegal, arbitrary and against law. It is submitted that even after approval from the authorities and renewal of license with 110HP, and subsequent renewal of licenses, the present harassment is illegal. Now going by Section 448, it could be seen it is applicable for "fresh installation or construction". The unit is functioning for the last several years and license was renewed several times. Hence the present notice is only to harass the petitioner. It is submitted that the unit is there for the last more than a decade. The unit was functioning and the statutory authorities has issued license and renewed license. The present issuance of notice is totally illegal and arbitrary.

2. It is in the light of the above factual averments and contentions that the petitioner has filed instant Writ Petition (Civil) with the following prayers:-

- i) *To call fro the records leading to issuance of Ext.P-32 and to set aside the same, in the interest of justice.*
- ii) *To issue writ order or direction in the nature of mandamus directing respondents 1 and*



2 to stop all proceedings against the unit of the petitioner, since the unit is already functioning and not a new unit to be established or installed under Section 448 of the Municipality Act, in the interest of justice.

iii) To issue writ order or direction in the nature of mandamus directing the respondent No.2 to take up the Ext.P-15 stay order of the appellate authority and to withdraw all proceedings under Ext.P-32 and P-20 and to implement the Ext.P-15 order, in the interest of justice.

iv) To issue writ order or direction in the nature of mandamus directing the 2<sup>nd</sup> respondent to withdraw all proceedings, in view of the directions issued under Ext.P-18 and Ext.P-19 judgments, in the interest of justice.

v) To grant such other reliefs as may be deemed fit and proper, including to continue the functioning of the unit based on the statutory licenses and sanction, in the interest of justice;"

3. Heard Sri.Praveen K. Joy, learned counsel appearing for the petitioner, Sri.Siby Chenappady, learned Standing Counsel for the respondents 1 to 3 and Sri.Jestin Mathew, learned Government Pleader appearing for respondents 4 and 5.

4. Sri.Praveen K. Joy, learned counsel for the petitioner has made submissions in tune with pleadings in writ petition and has strongly urged that this Court may interfere in the matter and that the issuance of impugned Exhibit-P32, though stated as a show cause notice, is illegal and amounts to arbitrary harassment to the petitioner.



8.

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5. Per contra, Sri.Siby Chenappady, learned Standing Counsel appearing for respondents 1 to 3 would submit that Exhibit-P32 is only a show cause notice and that on submission of petitioner's objections thereto the merits of the same would be considered and that the 2<sup>nd</sup> respondent-Secretary of the Ettumanoor Municipality will only act in accordance with law and that the application of the petitioner that the respondents-Ettumanoor Municipal authorities would unnecessarily harass the petitioner, etc. is not tenable, etc. Exhibit-P32 show cause notice dated 11.03.2020 has given on page 78 to the paper book of the said writ petition, which reads as follows:-

"എറ്റുമാനൂർ നഗരസഭ കാര്യലയം  
 എറ്റുമാനൂർ പി.ഒ ഓട്ടയം  
 0481 2535565 [etmrmunicipality@gmail.com](mailto:etmrmunicipality@gmail.com)

എച്ച്2 -2174/2020  
 11/03/2020

തീയതി :

**അട്ടിപ്പത്രം**

വിഷയം: എറ്റുമാനൂർ നഗരസഭ - ആയുധ വിഭാഗം പലക്കൽ ടി.ബി.എസ്.എന്ന സ്ഥാപനത്തിന് നൽകിയ ഭവനം അനുബന്ധമായി നൽകിയ ഭവനം സംബന്ധിച്ച്

സ്ഥാനം: തക്കളം 15.02.2020 തീയതിയിലെ എച്ച്2 -2175/2020, എച്ച്2 -2174/2020 നമ്പർ ഭവനം അനുബന്ധങ്ങൾ

സ്ഥാന അപേക്ഷ പ്രകാരം ടി.ബി.എസ്. ഭവനം പരിധിയിൽ തക്കളം 12/18 സി, 19/304 ബി നമ്പർ കെട്ടിടങ്ങളിലായി ക്ലൈംബിംഗ് മേശകൾ തിരിച്ചറിയുന്നതിനായി ഭവനം അനുബന്ധമായി നൽകിയ കേരള മുനിസിപ്പൽ ആക്ട് 448 പ്രകാരം 5 HP യിൽ കമ്പിയുന്ന സ്ഥാപനങ്ങൾക്ക് യന്ത്രസ്ഥാപിത സർട്ടിഫിക്കറ്റ് കമ്പനികൾക്ക് നൽകിയിട്ടുള്ളതല്ലെന്ന് ഇവർക്ക് നൽകിയ ഭവനം അനുബന്ധങ്ങൾ അല്ലാത്ത കമ്പനികൾക്ക് നൽകിയ ഭവനം അപേക്ഷകൾ പരിഗണിക്കാൻ നിർദ്ദേശിച്ചിട്ടുള്ളതായി ഇതിനാൽ അറിയിക്കുന്നു



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A29/7

Sd/-  
ബഹദൂർ  
എസ്.കെ.എസ്.എസ്.

സീക്കർത്തവ്  
ശ്രീ. ഷമി എസ്.പി.എസ്  
പാലക്കാട്  
ചെറുവള്ളി

6. Since petitioner has been directed to show cause to the matters raised in Exhibit-P32, the petitioner may file his written objections in the matter thereto, before the 2<sup>nd</sup> respondent-Secretary of the Ettumanoor Municipality along with certified copy of this judgment. Thereafter, the 2<sup>nd</sup> respondent-Secretary of the Ettumanoor Municipality will take-up the matters in relation to Exhibit-P32 and the written objections/written submissions given by the petitioner thereto, as above directed, and after affording a reasonable opportunity of hearing to the petitioner through the authorized representative or counsel, if any, will pass orders in the matter, in accordance with law, within a reasonable time. While doing so, the 2<sup>nd</sup> respondent will take into account the directions already issued by this Court in matters as in Exhibit-P18 judgment and Exhibit-P19 order, etc. and also should consider very seriously the specific contention of the petitioner that as the petitioner has already be given license and renewal of the license by the respondent Ettumanoor Municipality for the



last four years, the present insistence in Exhibit-P32 that petitioner has to secure the establishment permit in terms of Section 448 of the Kerala Municipality Act, 1994, is unnecessary and creates hardships and harassment on the petitioner, etc. In that regard if, as a matter of fact, the respondent Ettumanoor Municipality has not granted the establishment permit to the functioning of the petitioner's unit in terms of Section 448 of the Kerala Municipality Act, 1994, then without standing on any hyper technicalities the 2<sup>nd</sup> respondent-Secretary of Ettumanoor Municipality should permit the petitioner to file a separate application for the grant of such permit and the same should be considered and granted, if it is otherwise in order and the fact that the petitioner was granted license and its renewal in the last four years by none other than the respondent Ettumanoor Municipality should be seriously taken note of so that petitioner is not unnecessarily driven to this Court for further litigate proceedings on an issue like this. If, as a matter of fact, the respondent Municipality has not cared to initially insist that the petitioner should have secured the establishment permit in terms of Section 448 of the Kerala Municipalities Act, 1994, and had proceeded to grant license to the functioning of the petitioner's



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WP (C) .No. 8172 OF 2020 (V)

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unit in terms of Section 447 of the Kerala Municipalities Act, 1994, then *prima facie*, this Court would opine that the blame should be more on the part of the officials of the respondent Ettumanoor Municipality and such omission on the part of the respondent Municipality shall not be put on the head of the petitioner and to again make him run from pillar to post. It is hoped and expected that the 2<sup>nd</sup> respondent-Secretary of the Ettumanoor Municipality would take a realistic, pragmatic, fair and just stand in the matter so that matters of this nature is dealt with without any unnecessary difficulties and harassment on the entrepreneur. Therefore, it is also ordered that in case the 2<sup>nd</sup> respondent-Secretary of the Ettumanoor Municipality is of the considered view that petitioner should also formally secure establishment permit in terms of Section 448 of the Kerala Municipalities Act, 1994, then, petitioner may be required to submit necessary application in that regard, which should, initially be considered by the Municipal Councilor of the respondent-Ettumanoor Municipality, after affording reasonable opportunity of being heard to the petitioner and then decision thereon should be taken without much delay. In such a scenario, the 2<sup>nd</sup> respondent-Secretary of the Ettumanoor Municipality may pass orders on the



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A.29/10

matters in relation to the written objections to be submitted by the petitioner as against Exhibit-P32 show cause notice, only after aforementioned exercises in the matter of establishment permit is duly completed. It is ordered that both the Municipal Council as well as the 2<sup>nd</sup> respondent-Secretary of Ettumanoor Municipality should take a fair and pragmatic stand in this case and should not insist on unnecessary hyper technicalities so that unnecessary litigation could be avoided. Further it is seen that petitioner has already submitted the fees as per Exhibit-P31 receipt dated 22.02.2020 for the grant of renewal of trade license for the year 2020-2021. Further it is ordered that in case petitioner has duly submitted application for renewal of the trade license for the year 2020-2021, and has also paid the fee as per Exhibit-P31 receipt dated 22.02.2020, and no action has been taken thereon by the 2<sup>nd</sup> respondent-Secretary of Ettumanoor Municipality within a period of 15 days thereafter, then the contention of the petitioner that it is deemed to have secured the renewal of the license in terms of the mandate of Section 447(6) of the Kerala Municipality Act, 1994 on expiry of the 15 days' limit therefrom should also be duly taken into account by the 2<sup>nd</sup> respondent-Secretary of Ettumanoor Municipality and orders on the said application for



the grant of renewal of license for the year 2020-2021, as evident from Exhibit-P31, etc. should also be duly rendered by the 2<sup>nd</sup> respondent-Secretary of Ettumanoor Municipality, without much delay. Until then, it is ordered that the petitioner should be permitted to operate his unit in terms of Exhibit-P19 judgment, unless there are any other serious legal impediments in that regard.

With these observations and directions, the above Writ Petition (Civil) will stand finally disposed of.

Sd/-

**ALEXANDER THOMAS,  
JUDGE**

Skk



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A 29/12  
EX - 12

**APPENDIX**

**PETITIONER'S EXHIBITS:**

- EXHIBIT P1 THE TRUE COPY OF THE BUILDING PERMIT DATED 04.10.05 OF ETTUMANOOR GRAMA PANCHAYATH
- EXHIBIT P2 THE TRUE COPY OF THE DEVELOPMENT PERMIT DATED 04.10.05 OF ETTUMANOOR GRAMA PANCHAYATH
- EXHIBIT P3 THE TRUE COPY OF THE RECEIPT DATED 4.10.15 OF ETTUMANOOR GRAMA PANCHAYATH
- EXHIBIT P4 THE TRUE COPY OF THE SANCTION LETTER DATED 3.3.09 OF KHADI AND VILLAGE INDUSTRIES COMMISSION
- EXHIBIT P5 THE TRUE COPY OF THE ORDER DATED 24.07.2018 OF THE 5TH RESPONDENT
- EXHIBIT P6 THE TRUE PHOTOCOPY OF THE CONSENT NO PCB/KTM/ICO/R2/4073/2017 ISSUED BY THE POLLUTION CONTROL BOARD DATED 16.11.2017
- EXHIBIT P7 THE TRUE PHOTOCOPY OF THE CONSENT NO.PCB/KTM/ICO/4583/2017 ISSUED BY THE POLLUTION CONTROL BOARD DATED 20.12.2017
- EXHIBIT P8 THE TRUE PHOTOCOPY OF THE NO OBJECTION CERTIFICATE ISSUED BY THE ASSISTANT DIVISIONAL OFFICE, FIRE AND RESCUE SERVICES, KOTTAYAM DATED 25.04.2018
- EXHIBIT P9 THE TRUE COPY OF THE ORDER NO.T2/7466/2017/ F AND B DATED 04.10.2017 DIRECTOR OF FACTORIES AND BOILERS AT TRIVADNRUM
- EXHIBIT P10 THE TRUE COPY OF THE NOC OF FIRE AND RESCUE STATION, KOTTAYAM DATED 16.05.2019
- EXHIBIT P11 THE TRUE COPY OF THE LICENSES DATED 03.11.2016 OF FOREST DEPARTMENT FOR



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A.29/13

- PALACKAL INDUSTRIES ISSUED BY  
DIVISIONAL FOREST OFFICER, KOTTAYAM
- EXHIBIT P12 THE TRUE COPY OF THE LICENSES DATED  
28.09.2018 OF FOREST DEPARTMENT FOR  
PALACKAL TIMBERS ISSUED BY  
DIVISIONAL FOREST OFFICER, KOTTAYAM
- EXHIBIT P13 THE TRUE COPY OF THE ORDER DATED  
12.07.2017 OF DISTRICT MEDICAL  
OFFICER.
- EXHIBIT P14 THE TRUE COPY OF THE JUDGMENT IN  
WP(C) 6874/2019 DATED 15.03.2019
- EXHIBIT P15 THE TRUE COPY OF THE ORDER DATED  
18.10.2019 IN IA 22/2019 IN APPEAL  
9/2019 OF AIR APPELLATE AUTHORITY
- EXHIBIT P16 THE TRUE COPY OF THE JUDGMENT IN WA  
2095/2019 DATED 14.11.2019
- EXHIBIT P17 THE TRUE COPY OF THE INTERIM ORDER  
DATED 22.11.19 IN WPC 28689/2019
- EXHIBIT P18 THE TRUE COPY OF THE JUDGMENT IN WPC  
28689/2019 DATED 27.11.2019
- EXHIBIT P19 THE TRUE COPY OF THE JUDGMENT IN WPC  
32220/2019 DATED 27.11.2019
- EXHIBIT P20 THE TRUE COPY OF THE NOTICE DATED  
14.02.2020 OF THE 2ND RESPONDENT
- EXHIBIT P21 THE TRUE COPY OF THE REPLY DATED  
04.03.2020
- EXHIBIT P22 THE TRUE COPY OF LICENCE ISSUED BY  
THE ETTUMANOOR PANCHAYATH DATED  
20.05.2015
- EXHIBIT P23 THE TRUE COPY OF THE LICENCE ISSUED  
BY THE ETTUMANOOR MUNICIPALITY DATED  
08.09.2017
- EXHIBIT P24 THE TRUE COPY OF THE LICENSE DATED  
01.04.2017
- EXHIBIT P25 THE TRUE COPY OF THE INDUSTRIAL  
LICENCE ISSUED BY THE ETTUMANOOR  
MUNICIPALITY DATED 12.04.18



16-2

A 29/14

- EXHIBIT P26 THE TRUE COPY OF THE INDUSTRIAL  
LINCECE ISSUED BY THE ETTUMANOOR  
MUNICIPALITY DATED 12.04.2018
- EXHIBIT P27 THE TRUE COPY OF THE RECEIPT ISSUED  
BY THE ETTUMANOOR MUNICIPALITY DATED  
28.03.2019
- EXHIBIT P28 THE TRUE COPY OF THE RECEIPT ISSUED  
BY THE ETTUMANOOR MUNICIPALITY DATED  
28.03.2019
- EXHIBIT P29 THE TRUE COPY OF THE SANCTION OF  
DISTRICT INDUSTRIES CENTRE FOR POWER  
LOAD OF 110HP DATED 08.03.2016
- EXHIBIT P30 THE TRUE COPY OF THE LICENSE FEE  
RECEIPT FOR PALACKAL TIMBERS FOR D  
AND O TRADER LICENSE NO.0031368 DATED  
22.02.2020 FOR BUILDING WITH  
NO.19/304-B
- EXHIBIT P31 THE TRUE COPY OF THE LICENSE FEE  
RECEIPT FOR PALACKAL INDUSTRIES FOR D  
AND O TRADER LICENSE NO.0031369 DATED  
22.02.2020 FOR BUILDING WITH  
NO.12/18-B
- EXHIBIT P32 THE TRUE COPY OF THE NOTICE DATED  
11.03.2020 OF THE 2ND RESPONDENT

This is the true copy of the  
document marked as exhibit  
In the above W.P.C.

*[Signature]*  
Advocate

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Annex A 30

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

WEDNESDAY, THE 27TH DAY OF NOVEMBER 2019 / 6TH AGRAHAYANA, 1941

WP(C).No.28689 OF 2019(I)

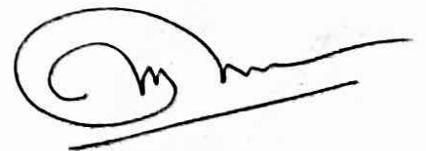
PETITIONER:

SHAMMY A SHAHIB,  
AGED 45 YEARS  
S/O AHAMED, PALACKAL HOUSE, CHERUVANDUR, ETTUMANNOOR  
P.O.KOTTAYAM-686 631.

BY ADVS.  
SRI.PRAVEEN K. JOY  
SRI.E.S.SANEEJ  
SRI.M.P.UNNIKRISHNAN  
SMT.M.K.SAMYUKTHA  
SRI.N.ABHILASH  
SMT.M.R.ESHRATH BAI  
SMT.BEENA JOSEPH  
SMT.SREELEKHA. P  
SHRI.DEEPU RAJAGOPAL

RESPONDENTS:

- 1 THE DISTRICT COLLECTOR  
KOTTAYAM-686 002.
- 2 SUB COLLECTOR,  
KOTTAYAM-686 002.
- 3 THE SECRETARY,  
ETTUMANNOOR MUNICIPALITY, ETTUMANNOOR-686 631.
- 4 DISTRICT MEDICAL OFFICER,  
KOTTAYAM-686 002.
- 5 KOTTAYAM DISTRICT SINGLE WINDOW CLEARANCE BOARD,  
KOTTAYAM-686 001, REP BY ITS CONVENOR. .
- 6 AGRICULTURAL OFFICER,  
ETTUMANNOOR, KOTTAYAM-686 002.
- 7 KERALA STATE POLLUTION CONTROL BOARD,  
KOTTAYAM-686 001, REP BY ENVIRONMENTAL ENGINEER.
- 8 VILLAGE OFFICER,  
PEROOR VILLAGE, KOTTAYAM-686 637



18  
A30/2  
WP(C).No.28689 OF 2019

2

9 P.C.CHACKO,  
AGED 63 YEARS  
S/O CHACKO, CHALAPPALIL HOUSE, PEROOR, KOTTAYAM-686  
370.

R3 BY SRI.SIBY CHENAPPADY, SC, ETTUMANOOR  
MUNICIPALITY  
R9 BY ADV. SRI.ALEX.M.SCARIA

OTHER PRESENT:

GP K.J.MANURAJ;SC, PCB T.NAVEEN;SC MUNICIPALITY  
SIBY CHENAPPADY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
27.11.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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**JUDGMENT**

(Dated this the 27th day of November, 2019)

The petitioner has approached this Court impugning Ext.P30 Stop Memo issued by the 3<sup>rd</sup> respondent- Municipality, as per which, the operations of the Unit has been directed to be stopped; and he asserts that the order could not have been issued when the Air Appellate Authority, Thiruvananthapuram, had already issued Ext.P29 interim order in Appeal 9 of 2019 filed by him against the closure order issued by the Kerala State Pollution Control Board.

2. The petitioner says that in view of Ext.P29 order, no interdiction to his operations could have been ordered by the Panchayat or even by the Pollution Control Board and therefore, that Ext.P30 Stop Memo is incompetent and hence liable to be set aside by this Court. He, therefore, prays that Ext.P30 be set aside and



the respondent be directed to allow him to continue with his operations without any interdiction.

3. Sri.Alex.M.Scaria -learned Counsel appearing for respondent No.9 submits that there are long standing complaints and grievances against the activities being carried on by the petitioner, particularly because it causes horrendous and irreparable prejudice and pollution to all the residents of the locality including his client. He says that it is, therefore, that the Panchayat had issued Ext.P30 Stop Memo noticing these factors and consequently, that it be not set aside by this Court.

4. Sri.Siby Chenapady-learned Standing Counsel for the Ettumanoor Municipality, submits that Ext.P30 had been issued based on Ext.P23 judgment of this Court, wherein the Unit of the petitioner had been directed to be closed down, but he concedes that the said judgment was taken



up in Appeal before a learned Division Bench of this Court in Writ Appeal No.32315/2019, which was however, it closed, finishing the Appeal to have become infructuous on account of Ext.P29 interim order issued by the Tribunal, thereby to mean that the directions in Ext.P23 are no longer relevant. He says, therefore, that the Municipality is willing to abide by any directions of this Court, but pointed out that they have now issued another order dated 22/11/2019, stopping the operation of the Unit of the petitioner in view of the interim order of this Court, dated 31/10/2019. He, therefore, prays that this writ petition be dismissed.

5. The learned standing Counsel for the Pollution Control Board- Shri.T.Naveen, submitted that it is true that the petitioner has already obtained Ext.P29 interim order from the Tribunal and prayed that the said Tribunal be directed to dispose of the Appeal at the earliest, since it is only thereafter can a final decision with



22

A30/6

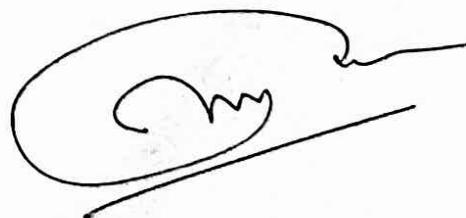
WP(C).No.28689 OF 2019

6

respect to the operation of the Unit of the petitioner be taken affirmatively. He prays that this writ petition be ordered on such terms.

6. When I Consider the afore submissions, it is without doubt that, as matters now stand, all the legal and factual issues involved are under the consideration of the Air Appellate Authority, Thiruvananthapuram, in Appeal No. 9 of 2019. It is also evident that the said Tribunal has issued Ext.P29 order, as per which, the closure order of the Pollution Control Board issued against the petitioner has been stayed; and therefore, am of the view that it will be impermissible and improper for this Court to intervene, in any manner, in these issues when such processes are still pending, since anything that this Court may say will have the effect of, directly or indirectly, interfering with it.

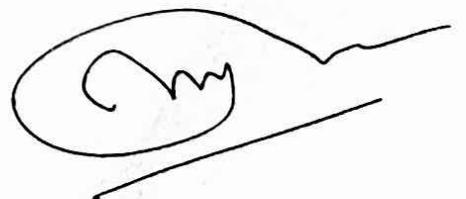
I am, for the afore, of the firm view that the Air Appellate Tribunal must take up the Appeal No. 9 of 2019 and dispose it of at the



earliest, particularly because respondent No.9 and other residents of the locality appear to be having very serious grievances against the operation of the activities of the petitioner's Unit.

Resultantly, I order this writ petition and direct the Air Appellate Authority, Thiruvananthapuram to take up an Appeal No. 9 of 2019, stated to be still pending before them and to finally dispose of the same, after affording reasonable opportunity of being heard to both sides and after following due procedure, as expeditiously as is possible, but not later than one month from the date of receipt of a copy of this judgment.

Needless to say, until the afore exercise is completed, all action pursuant to Ext.P27 order of the RDO will stand deferred and will be taken forward only after the orders are issued by the Appellate Tribunal and in conformity with the same.

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It further goes without saying that nothing contained in this judgment will impede the rights of the RDO or such other Authorities to act as per the provisions of the Kerala Conservation of Paddy Land and Wetland Act, if it is found that the petitioner has, in any manner, violated the provisions of the same and I also leave liberty to the petitioner to invoke the said Authority for such purpose.

sd/-

DEVAN RAMACHANDRAN

JUDGE

AJM



APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1 THE TRUE COPY OF THE BUILDING PERMIT DATED 4.10.2005 OF ETTUMANOOR GRAMA PANCHAYATH
- EXHIBIT P2 THE TRUE COPY OF THE DEVELOPMENT PERMIT DATED 4.10.2005 OF ETTUMANOOR GRAMA PANCHAYATH
- EXHIBIT P3 THE TRUE COPY OF THE RECEIPT DATED 4.10.2005 OF ETTUMANOOR GRAMA PANCHAYATH
- EXHIBIT P4 THE TRUE COPY OF THE SANCTION LETTER DATED 3.03.2009 OF KHADI AND VILLAGE INDUSTRIES COMMISSION
- EXHIBIT P5 THE TRUE PHOTOCOPY OF THE CONSENT NO PCB/KTM/ICO/R2/4073/2017 ISSUED BY THE POLLUTION CONTROL BOARD DATED 16.11.2017
- EXHIBIT P6 THE TRUE PHOTOCOPY OF THE CONSENT NO PCB/KTM/ICO/4583/2017 ISSUED BY THE POLLUTION CONTROL BOARD DATED 24.11.2017
- EXHIBIT P7 THE TRUE COPY OF THE LICENSE ISSUED BY THE ETTUMANOOR PANCHAYATH DATED 20.05.2015
- EXHIBIT P8 THE TRUE COPY OF THE LICENSE ISSUED BY THE ETTUMANOOR MUNICIPALITY DATED 1.04.2017
- EXHIBIT P9 THE TRUE COPY OF THE INDUSTRIAL LICENCE ISSUED BY THE ETTUMANOOR MUNICIPALITY DATED 12.04.2018
- EXHIBIT P10 THE INDUSTRIAL LICENCE ISSUED BY THE ETTUMANOOR MUNICIPALITY DATED 12.04.2018
- EXHIBIT P11 THE TRUE COPY OF THE RECEIPT ISSUED BY THE ETTUMANOOR MUNICIPALITY DATED 28.03.2019
- EXHIBIT P12 THE TRUE COPY OF THE RECEIPT ISSUED BY



- THE ETTUMANOOR MUNICIPALITY DATED  
28.03.2019
- EXHIBIT P13 THE TRUE COPY OF THE ORDER DATED  
24.7.2018 OF THE 5TH RESPONDENT
- EXHIBIT P14 THE TRUE PHOTOCOPY OF THE NO OBJECTION  
CERTIFICATE ISSUED BY THE ASSISTANT  
DIVISIONAL OFFICER ,FIRE AND RESCUE  
SERVICE,KOTTAYAM DATED 25.04.2018
- EXHIBIT P15 THE TRUE COPY OF THE DIRECTOR OF  
FACTORIES AND BOILERS AT TRIVANDRUM  
HAS ISSUED ORDER NO T2/7466/2017/F AND  
B DATED 4.10.2017
- EXHIBIT P16 THE TRUE COPY OF THE LICENSES DATED  
3.11.2016 OF FOREST DEPARTMENT FOR  
PALACKAL INDUSTRIES ISSUED BY  
DIVISIONAL FOREST OFFICERS KOTTAYAM
- EXHIBIT P17 THE TRUE COPY OF THE LICENSES DATED  
28.09.2018 OF FOREST DEPARTMENT FOR  
PALACKAL TIMBERS ISSUED BY DIVISIONAL  
FOREST OFFICER, KOTTAYAM
- EXHIBIT P18 THE TRUE COPY OF THE ORDER DATED  
12.7.2017 OF DISTRICT MEDICAL OFFICER.
- EXHIBIT P19 THE TRUE COPY OF THE ORDER DATED  
7.11.2018 IN IA 1449/18 IN OS 175/18  
OF MUNSIFF COURT, ETTUMANOOR.
- EXHIBIT P20 THE TRUE COPY OF THE COMMUNICATION OF  
KERALA STATE POLLUTION CONTROL BOARD  
DATED 27.12.2018
- EXHIBIT P21 THE TRUE COPY OF THE APPLICATION DATED  
23.8.2017
- EXHIBIT P22 THE TRUE COPY OF THE NOTICE
- EXHIBIT P23 THE TRUE COPY OF THE JUDGMENT IN WPC  
13038/19
- EXHIBIT P24 THE TRUE COPY OF THE JUDGMENT DATED  
23.7.2019 IN WPC 18002/19
- EXHIBIT P25 THE TRUE COPY OF THE APPEAL 9/2019  
BEFORE THE APPELLATE AUTHORITY OF AIR  
(PREVENTION AND CONTROL OF POLLUTION  
ACT )DATED 6.6.2019



- EXHIBIT P26 THE TRUE COPY OF THE STAY PETITION AS  
IA NO 22/19 IN APPEAL 9/2019 BEFORE  
THE APPELLATE AUTHORITY OF AIR  
(PREVENTION AND CONTROL OF POLLUTION  
ACT ) DATED 6.6.2019
- EXHIBIT P27 THE TRUE COPY OF THE ORDER DATED  
17.8.2019 OF THE 2ND RESPONDENT
- EXHIBIT P28 THE TRUE COPY OF THE OBJECTION OF THE  
PETITIONER DATED 31.8.2019 BEFORE THE  
2ND RESPONDENT
- EXHIBIT P29 THE TRUE COPY OF THE INTERIM ORDER OF  
STAY IA NO 22/19 IN APPEAL 9/2019 BY  
THE APPELLATE AUTHORITY OF AIR  
TRIVANDRUM ON 18.10.2019
- EXHIBIT P30 THE TRUE COPY OF THE STOP MEMO DATED  
10.6.2019 OF THE 3RD RESPONDENT

RESPONDENTS' EXHIBITS:

- EXHIBIT R9 (A) A TRUE COPY OF THE COUNTER AFFIDAVIT  
WITH ALL DOCUMENTS FILED IN EXHIBIT-  
P26
- EXHIBIT R9 (B) COUNTER AFFIDAVIT FILED BY THE  
POLLUTION CONTROL BOARD IN APPEAL  
9/2019.

AJM

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CA TO JUDGE

*This is the true copy of the document  
marked as EXHIBIT-P  
ANNEXURE A2*

*Advocate*  
ADVOCATE

28

Annex - A 31

WP(C).Nos. 12366 of 2019 & 13038 of 2019

2

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

MONDAY, THE 10TH DAY OF JUNE 2019 / 20TH JYAISHTA, 1941

WP(C).No. 13038 of 2019

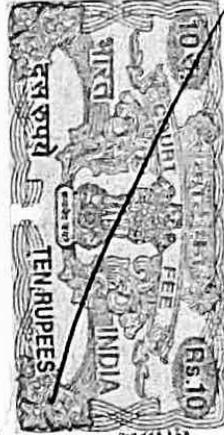
PETITIONER:

K.G.RAJAPPAN,  
AGED 67 YEARS,  
KALLETHANATH (H), ETTUMANOOR P.O,  
KOTTAYAM - 686 562.

BY ADVS.  
SRI.ALEX.M.SCARIA  
SRI.A.J.RIYAS  
SRI.G.BAIJURAJ  
KUM.MINU THANKAPPAN

RESPONDENTS:

- 1 THE DISTRICT COLLECTOR  
KOTTAYAM, CIVIL STATION, KOTTAYAM - 686 002.
- 2 THE KERALA STATE POLLUTION CONTROL BOARD,  
V PUBLISHERS BUILDING, SREENIVASA IYER  
ROAD, KOTTAYAM - 686 001, REPRESENTED BY ITS  
ENVIRONMENTAL ENGINEER.
- 3 THE ENVIRONMENTAL ENGINEER,  
KERALA STATE POLLUTION CONTROL BOARD, V  
PUBLISHERS BUILDING, SREENIVASA IYER ROAD,  
KOTTAYAM - 686 001.
- 4 THE ETTUMANOOR MUNICIPALITY,  
REPRESENTED BY ITS SECRETARY,  
ETTUMANOOR P.O, KOTTAYAM - 686 562.



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A31/2



WP(C).Nos. 12366 of 2019 & 13038 of 2019

3

- 5 THE SECRETARY  
ETTUMANOOR MUNICIPALITY, ETTUMANOOR P.O,  
KOTTAYAM - 686 562.
- 6 THE EXECUTIVE ENGINEER,  
THE KERALA STATE ELECTRICITY BOARD,  
ETTUMANOOR - 686 562.
- 7 THE DISTRICT LABOUR OFFICER  
COLLECTORATE BUILDING, 3RD FLOOR,  
KOTTAYAM - 686 002.
- 8 DISTRICT FIRE AND SAFETY OFFICER,  
OFFICE OF THE DISTRICT FIRE OFFICER, FIRE AND  
RESCUE SERVICES, KOTTAYAM - 686 001.
- 9 THE DISTRICT POLICE CHIEF  
KOTTAYAM - 686 002.
- 10 STATION HOUSE OFFICER,  
ETTUMANOOR POLICE STATION,  
ETTUMANOOR - 686 562
- 11 DIVISIONAL FOREST OFFICER,  
PARAMBUZHA P.O, KOTTAYAM - 686004
- 12 SRI. SHAMMY A. SAHIB,  
S/O. AHAMMED SAHIB, PALACKAL HOUSE,  
CHERUVANDUR, ETTUMANOOR P.O,  
KOTTAYAM - 686 631.

BY ADVS.  
SRI K.P.HARISH- SENIOR GOVERNMENT PLEADER  
SRI.N.SATHEESH  
SRI.PRAVEEN K. JOY  
SRI. T.NAVEEN SC, KERALA STATE POLLUTION  
CONTROL BOARD,

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 10.06.2019, ALONG WITH WP(C).12366/2019, THE COURT  
ON THE SAME DAY DELIVERED THE FOLLOWING:

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A31/3



WP(C).Nos. 12366 of 2019 & 13038 of 2019

4

## **JUDGMENT**

Since common issue is raised in these writ petitions, they are being disposed of by this common judgment.

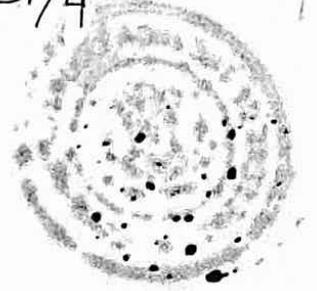
2. **W.P.(c) No.12366/2019:-** The petitioner, who is stated to be the owner of a plywood industry by name M/s.Palackal Timbers, undertaking wood veneer and plywood manufacturing with two units in building No.XII-18-C and XIX-304-B of Ettumanoor Municipality, one under the name Palackal Industries and the other under the name Palackal Timbers, has filed this writ petition under Article 226 of the Constitution of India, seeking a writ of certiorari to quash Ext.P17 show cause notice dated 01.04.2019 issued by the 5<sup>th</sup> respondent Environmental Engineer of the Kerala State Pollution Control Board at Kottayam, whereby he has been asked to show cause within ten days of receipt of that notice, as to why legal proceedings shall not be initiated for

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A31/4



WP(C).Nos. 12366 of 2019 & 13038 of 2019

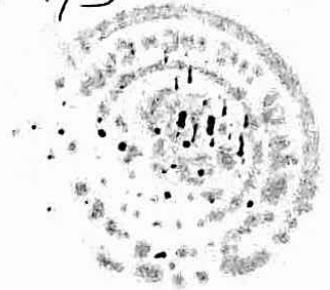
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violating the provisions of the Water (Prevention & Control of Pollution) Act, 1974 and Air (Prevention & Control of Pollution) Act, 1981. The petitioner has also sought for a writ of mandamus of commanding the 4<sup>th</sup> respondent to take up Ext.P18 appeal and consider the same in tune with Ext.P13 recommendation and also under Ext.P1 direction by the District Single Window Board and allow the same and grant opportunity to produce the documents, following the dictum in **Shanmugham v. Vandezhy Grama Panchayat [2016 (1) KLT 601]**; a writ of mandamus commanding the 4<sup>th</sup> respondent to take up the amendment application submitted and also to follow the recommendation, in tune with Ext.P1 to P12, within a time limit to be fixed by this Court; and an order directing to keep in abeyance Ext.P17 notice, till the entire proceedings under Ext.P18 appeal is finalised.

2.1. On 04.06.2019, when this writ petition came

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A31/5



WP(C).Nos. 12366 of 2019 & 13038 of 2019

6

up for consideration, the learned Standing Counsel for the Pollution Control Board submitted that a closure notice dated 31.05.2019 has already been issued to the petitioner by the 5<sup>th</sup> respondent Environmental Engineer, whereby the petitioner has been directed to stop all activities of the units and close down all operations with immediate effect, on receipt of that order. The learned Standing Counsel submitted further that a copy of the said order shall be placed on record along with a memo.

2.2. Today, when this writ petition is taken up for consideration, the learned Standing Counsel for Pollution Control Board has placed on record a copy of closure order dated 31.05.2019 issued by the 5<sup>th</sup> respondent Environmental Engineer.

3. **W.P.(c) No.13038/2019**:- This writ petition is one filed by the additional 6<sup>th</sup> respondent in W.P.(c) No.12366 of 2019 seeking a writ of mandamus commanding respondents 2 and 3 to ensure that the

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A 31/6



WP(C).Nos. 12366 of 2019 & 13038 of 2019

7

12<sup>th</sup> respondent (who is the petitioner in W.P.(C) No.12366 of 2019) is not operating his peeling cum plywood making industry in Exhibit P1 building, otherwise than in accordance with law, and to stop the industry in the light of Exhibit P10 findings; a writ of mandamus commanding the 5<sup>th</sup> respondent Secretary of the Grama Panchayat to take appropriate action to demolish the unauthorised construction of the industrial unit in which peeling and plywood making industry of the 12<sup>th</sup> respondent is functioning; a writ of mandamus commanding the 1<sup>st</sup> respondent to stop the illegal functioning of the plywood making unit of the 12<sup>th</sup> respondent in the building constructed in the land which was converted from Paddy land to garden land in violation of the provisions of law; a writ of mandamus commanding the 7<sup>th</sup> respondent to stop the unauthorised use of electricity, supplied to the industrial unit of the 12<sup>th</sup> respondent for industrial purpose, to the

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A31/7



WP(C).Nos. 12366 of 2019 & 13038 of 2019

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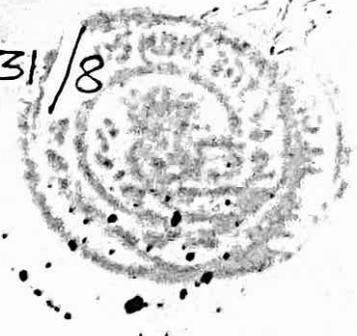
lodging purpose of the employees of the 12<sup>th</sup> respondent in Exhibit P1 building; a writ of mandamus commanding the 8<sup>th</sup> respondent to ensure that the fire safety regulations are complied with in respect of the industrial unit of the 12<sup>th</sup> respondent for industrial purpose, and for the employees of the 12<sup>th</sup> respondent in Exhibit P1 building; a writ of mandamus commanding the 7<sup>th</sup> respondent to ensure that the conditions prescribed in the Labour Welfare legislations are complied with in respect of the labourers allowed to work in the plywood unit of the 12<sup>th</sup> respondent in Exhibit P1 building; and a writ of mandamus commanding the 9<sup>th</sup> and 10<sup>th</sup> respondents to ensure that the migrant labourers appointed in the plywood unit of the 12<sup>th</sup> respondent in Exhibit P1 building are not engaged in any anti-social activity.

3.1. On 23.05.2019, when this writ petition came up for admission, the same was ordered to be listed

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A31/8



WP(C).Nos. 12366 of 2019 & 13038 of 2019

9

along with W.P.(C) No.12366 of 2019 filed by the 12<sup>th</sup> respondent.

3.2. The 12<sup>th</sup> respondent has filed I.A. No.2 of 2019 seeking permission to raise the question of maintainability of this writ petition as a preliminary issue. He has filed I.A.No.3 of 2019 seeking an order to accept Exts.R12(a) and R12(b) as a additional documents.

4. Heard the learned counsel for the petitioner in the respective writ petitions, the learned Government Pleader for the official respondents, the learned Standing Counsel for the Pollution Control Board, the learned Standing Counsel for Ettumanoor Municipality in W.P.(C) No.13038 of 2019 and also the respective counsel for party respondents.

5. During the course of arguments, the learned counsel for the petitioner in W.P.(C) No.12366/2019 would point out that the petitioner has already filed

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A31/9



WP(C).Nos. 12366 of 2019 & 13038 of 2019

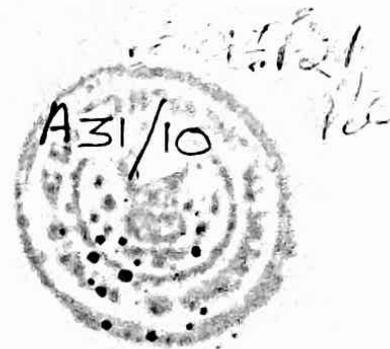
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Appeal No.9 of 2019 before the Appellate Authority under Section 31 of the Air (Prevention & Control of Pollution) Act, 1981, challenging the closure order dated 31.05.2019 issued by the Environmental Engineer of the Kerala State Pollution Control Board. The said appeal is accompanied by I.A.No.22 of 2019 seeking interim relief.

6. The learned counsel for the petitioner in W.P.(c) No.13038 of 2019 would point out that despite the issuance of closure notice dated 31.05.2019, the petitioner in W.P.(C) No.12366 of 2019 is still running the industrial units in question.

7. The learned Standing Counsel for Pollution Control Board would submit that the Environmental Engineer of the Board has already issued a closure notice and that the officials of the Board shall take necessary steps to ensure strict compliance of the closure order dated 31.05.2019, until appropriate

37



WP(C).Nos. 12366 of 2019 & 13038 of 2019

11

interim orders are passed in the appeal filed before the Appellate authority.

8. Having considered the submissions made by the learned counsel on both sides, these writ petitions are disposed of, leaving open the legal and factual contentions raised by both sides and without prejudice to the right of the petitioner in W.P.(C) No.12366 of 2019 to pursue Appeal No.9 of 2019 filed before the Appellate Authority, challenging the closure order dated 31.05.2019 issued by the Environmental Engineer of the Kerala State Pollution Control Board, and also the interlocutory application filed in that appeal.

9. If the petitioner in W.P.(C) No. 12366 of 2019 is running the industrial units, showing scant regard to the closure notice dated 31.05.2019 issued by the Environmental Engineer, it is for the officials of the Kerala State Pollution Control Board and also the Secretary of Ettumanoor Municipality, the 5<sup>th</sup> respondent

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A31/11

WP(C).Nos. 12366 of 2019 & 13038 of 2019

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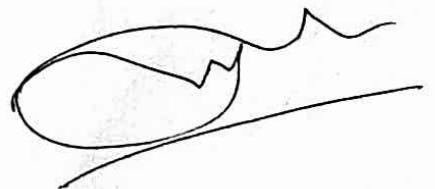
in W.P.(C) No.13038 of 2019, to take necessary steps to ensure strict compliance of that order. It will be open to the 5<sup>th</sup> respondent Secretary of Ettumanoor Municipality to seek Police assistance, if found necessary by invoking the provisions under clause (b) of sub-section (1) of Section 550 of the Kerala Municipality Act.

The legal and factual contentions raised by both sides are left open to be raised before appropriate authority, at appropriate stage.

Sd/-

**ANIL K. NARENDRAN**  
**JUDGE**

bng/11.06.19



39



WP(C).Nos. 12366 of 2019 & 13038 of 2019

APPENDIX OF WP(C) 13038/2019

PETITIONER'S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE PHOTOGRAPHS SHOWING THE VIOLATION OF THE BUILDING WHEREIN THE PLYWOOD MAKING UNIT OF THE 12 TH RESPONDENT FUNCTIONS.
- EXHIBIT P2 TRUE COPY OF THE BUILDING PERMIT DATED 04/10/2005 OBTAINED IN THE NAME OF THE RAJAN VARGHESE, WHO IS SAID TO BE THE PREDECESSOR IN INTEREST OF THE 12TH RESPONDENT.
- EXHIBIT P3 TRUE COPY OF THE SUBMISSION MADE UNDER THE RIGHT TO INFORMATION ACT BEFORE THE 6TH RESPONDENT.
- EXHIBIT P4 TRUE COPY OF THE REPLY TO EXHIBIT P3 APPLICATION
- EXHIBIT P5 TRUE COPY OF THE SUBMISSION MADE UNDER THE RIGHT TO INFORMATION ACT BEFORE THE 7TH RESPONDENT.
- EXHIBIT P6 TRUE COPY OF THE REPLY OF EXHIBIT P5 APPLICATION.
- EXHIBIT P7 TRUE COPY OF THE SUBMISSION MADE UNDER THE RIGHT TO INFORMATION ACT BEFORE THE 8TH RESPONDENT.
- EXHIBIT P8 TRUE COPY OF THE REPLY OF EXHIBIT P7 APPLICATION
- EXHIBIT P9 TRUE COPY OF THE COMMISSION REPORT IN OS 175 OF 2018 ON THE FILES OF THE MUNSIFF'S COURT, ETTUMANOOR.
- EXHIBIT P10 TRUE COPY OF THE REPORT DATED 19/02/2019 PREPARED AFTER HEARING

5-40



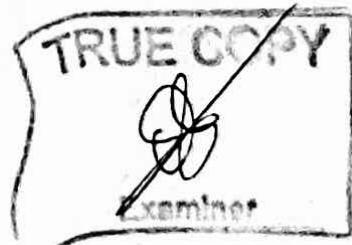
WP(C).Nos. 12366 of 2019 & 13038 of 2019

16

THE ADJACENT LAND OWNERS WHO ARE ALSO RESISTING THE ILLEGAL FUNCTIONING OF THE ABOVE SAID PLYWOOD FACTORY AND BASED ON THE INSPECTION CONDUCTED BY THE SENIOR ENVIRONMENTAL ENGINEER (VIGILANCE AND SURPRISE SQUAD)

RESPONDENTS' EXHIBITS:

- EXHIBIT R12(A) THE TRUE COPY OF ORDER DATED 07.11.2018 IN IA NO.1449/2018 IN OS NO.175/2018 OF MUNSIFFS COURT, ETTUMANOOR
- EXHIBIT R12(B) THE TRUE COPY OF THE CONSENT NO PCB/KTM/ICO/4856/2017 ISSUED BY THE POLLUTION CONTROL BORAD DATED 24.11.2017
- EXHIBIT R2(A) TRUE COPY OF THE CLOSURE ORDER DATED 30.05.2019 ISSUED BY THE PCB TO THE UNIT.



*This is the true copy of the document marked as ~~XXXX~~*

*ANNEXURE A 2 offered in above case* ADVOCATE

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 14TH DAY OF NOVEMBER 2019 / 23RD KARTHIKA, 1941

WA.No.2095 OF 2019

AGAINST THE ORDER/JUDGMENT IN WP(C) 12366/2019(U) OF HIGH COURT  
OF KERALA

APPELLANT/S:

SHAMMY A.SHAHIB,  
AGED 45 YEARS,  
S/O.AHAMED, PALACKAL HOUSE,  
CHERUVANDUR, ETTUMANOOR P.O.,  
KOTTAYAM - 686 631.

BY ADV.SRI.PRAVEEN K.JOY

RESPONDENT/S:

- 1 KOTTAYAM DISTRICT SINGLE WINDOW CLEARANCE BOARD,  
KOTTAYAM - 686 001,  
REP. BY ITS CONVENOR.
- 2 DISTRICT MEDICAL OFFICER,  
KOTTAYAM - 686 002.
- 3 DISTRICT INDUSTRIES CENTRE,  
KOTTAYAM - 686 001,  
REP. BY ITS GENERAL MANAGER
- 4 KERALA STATE POLLUTION CONTROL BOARD,  
TRIVANDRUM - 695 004,  
REPRESENTED BY ITS CHAIRMAN.
- 5 ENVIRONMENT ENGINEER,  
KERALA STATE POLLUTION CONTROL BOARD,  
KOTTAYAM - 686 001.



6 K.G RAJAPPAN,  
AGED 67 YEARS,  
KALLETHANATH HOUSE, ETTUMANOOR P.O.,  
KOTTAYAM - 686 562.

R6 BY ADV. SRI.ALEX.M.SCARIA

R1 TO R3 BY SR.GP.SRI.TEK CHAND  
R4 AND R5 SRI.T.NAVEEN, SC

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 14.11.2019,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A handwritten signature in black ink, consisting of a large, stylized initial 'S' followed by a series of loops and a long horizontal stroke extending to the right.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 14TH DAY OF NOVEMBER 2019 / 23RD KARTHIKA, 1941

WA.No.2315 OF 2019

AGAINST THE ORDER/JUDGMENT IN WP(C) 13038/2019(D) OF HIGH COURT  
OF KERALA

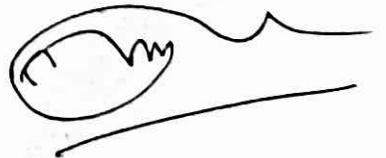
APPELLANT/S:

K.G.RAJAPPAN,  
AGED 67 YEARS,  
KALLETHANATH (H), ETTUMANOOR P.O.,  
KOTTAYAM-686 562.

BY ADVS.  
SRI.ALEX.M.SCARIA  
SRI.G.BAIJURAJ  
SRI.A.J.RIYAS  
KUM.MINU THANKAPPAN

RESPONDENT/S:

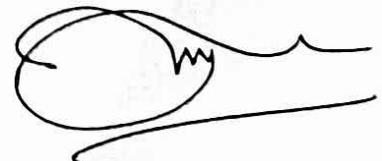
- 1 THE DISTRICT COLLECTOR,  
KOTTAYAM, CIVIL STATION, KOTTAYAM-686 002.
- 2 THE KERALA STATE POLLUTION CONTROL BOARD,  
V PUBLISHERS BUILDING, SREENIVASA IYER ROAD,  
KOTTAYAM-686 001. REPRESENTED BY ITS ENVIRONMENTAL  
ENGINEER.
- 3 THE ENVIRONMENTAL ENGINEER,  
KERALA STATE POLLUTION CONTROL BOARD,  
V PUBLISHERS BUILDING, SREENIVASA IYER ROAD,  
KOTTAYAM-686 001.
- 4 THE ETTUMANOOR MUNICIPALITY,  
REPRESENTED BY ITS SECRETARY,  
ETTUMANOOR P.O., KOTTAYAM-686 562.



- 5 THE SECRETARY,  
ETTUMANOOR MUNICIPALITY, ETTUMANOOR P.O.,  
KOTTAYAM-686 562.
- 6 THE EXECUTIVE ENGINEER,  
THE KERALA STATE ELECTRICITY BOARD,  
ETTUMANOOR-686 562.
- 7 THE DISTRICT LABOUR OFFICER,  
COLLECTORATE BUILDING, 3RD FLOOR, KOTTAYAM-686 002.
- 8 DISTRICT FIRE SAFETY OFFICER,  
OFFICE OF THE DISTRICT FIRE OFFICER,  
FIRE AND RESCUE SERVICES, KOTTAYAM-686 001.
- 9 THE DISTRICT POLICE CHIEF,  
KOTTAYAM-686 002.
- 10 STATION HOUSE OFFICER,  
ETTUMANOOR POLICE STATION, ETTUMANOOR-686 562.
- 11 DIVISIONAL FOREST OFFICER,  
PARAMPUZHA P.O., KOTTAYAM-686 004.
- 12 SHAMMY A.SAHIB,  
AGED 45 YEARS,  
S/O.AHAMMED SAHIB, PALACKAL HOSUE,  
CHERUVANDUR ETTUMANOOR P.O., KOTTAYAM-686 631.

R1, R7, R8, R9, R10 AND R11 BY SR.GP.SRI.TEK CHAND  
R2 AND R3, SRI.T.NAVEEN, SC

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON  
14.11.2019, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:



**JUDGMENT**

**Dated this the 14th day of November 2019**

**S.Manikumar, CJ.**

Heard learned counsel appearing for the appellants and the learned Government Pleader.

2. Both the writ appeals are taken up for disposal. Writ Court directed the appellant in W.A.No.2095 of 2019 to pursue his appeal filed before the Appellate Authority under Section 31 of the Air (Prevention & Control of Pollution) Act, 1981, challenging a closure order passed by the Environmental Engineer of the Kerala State Pollution Control Board.

3. On this day, Mr.Praveen K.Joy, learned counsel for the appellant in W.A.No.2095 of 2019, submitted that by order dated 18.10.2019 the Appellate Authority has stayed the operation of the closure order. Thus, it is evident that the impugned judgment (judgment in W.P.(C).No.12366 of 2019) dated 10.06.2019 before us, has been pursued, and in such circumstances, W.A.No.2095 of 2019 has become infructuous.

4. Consequently, Writ Appeal No.2315 of 2019 has also become infructuous. If the appellant Sri.K.G.Rajappan is aggrieved, he can take recourse to the remedies permitted in law before the appellate authority and obtain a stay.

Accordingly, these writ appeals are dismissed as infructuous.

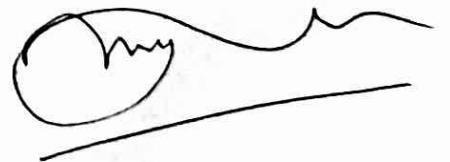
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**S.MANIKUMAR  
CHIEF JUSTICE**

Sd/-

**A.M.SHAFFIQUE  
JUDGE**

DG



**APPENDIX W.A.2095/19**

**PETITIONER'S/S EXHIBITS:**

- ANNEXURE -1            THE TRUE COPY OF THE ORDER DATED  
07.11.2018 IN IA 1149/18 IN OS 175/18  
OF MUNSIF COURT, ETTUMANOOR
- ANNEXURE -2            THE TRUE COPY OF THE JUDGMENT DATED  
23.07.2019 IN WPC 18002/19 AND SAME MAY  
BE MARKED AS
- ANNEXURE -3            THE TRUE COPY OF THE APPEAL 9/2019  
BEFORE THE APPELLATE AUTHORITY OF AIR  
(PREVENTION AND CONTROL OF POLLUTION  
ACT) DATED 06.06.2019
- ANNEXURE -4            THE TRUE COPY OF THE STAY PETITION AS  
IA NO 22/19 IN APPEAL 9/2019 BEFORE THE  
APPELLATE AUTHORITY OF AIR (PREVENTION  
AND CONTROL OF POLLUTION ACT) DATED  
6.6.19

*This is the true copy of the document  
marked as EXHIBIT-P  
ANNEXURE A Offered  
in above case*

  
ADVOCATE

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Annex-A.33

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

MONDAY, THE 25TH DAY OF MAY 2020 / 4TH JYAISHTA, 1942

WP(C).No.10223 OF 2020(C)

PETITIONER/S:

SHAMMY A SHAHIB  
AGED 46 YEARS  
S/O. AHAMED, PALACKAL HOUSE,  
CHERUVANDUR, ETTUMANOOR P O,  
KOTTAYAM-686631.

BY ADV. SRI.PRAVEEN K. JOY

RESPONDENT/S:

- 1 ETTUMANOOR MUNICIPALITY  
REPRESENTED BY ITS SECRETARY,  
ETTUMANOOR-686631,
- 2 SECRETARY  
ETTUMANOOR MUNICIPALITY,  
ETTUMANOOR-686631.
- 3 THE HEALTH INSPECTOR,  
ETTUMANOOR MUNICIPALITY,  
ETTUMANOOR-686631.
- 4 DISTRICT MEDICAL OFFICER,  
KOTTAYAM-686002.
- 5 KOTTAYAM DISTRICT SINGLE WINDOW CLEARANCE BOARD.  
KOTTAYAM-686001,  
REPRESENTED BY ITS CONVENOR.

OTHER PRESENT:

SRI.SIBY CHENAPPADY, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
25.05.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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**ALEXANDER THOMAS, J.****W.P.(C.) No. 10223 of 2020****Dated this the 25<sup>th</sup> day of May, 2020****JUDGMENT**

The case set up in the W.P.(C.) is as follows :

That the petitioner running a plywood industry under the name and style M/s Palackal Timbers for undertaking wood veneer and plywood manufacturing. The predecessor of the property also had the building in the property and the building permit was issued dated 4.10.05 by Ettumanoor Municipality. That Industrial license is renewed by the Municipal Corporation Ettumanoor from time to time. The petitioner has got license for Industrial Machinery, rubber wood, veneer and plywood and he has got separate licenses for both the units. Thus licenses is renewed from time to time. That the petitioner has submitted application for renewal of license on 15.2.2020, together with all documents and after inspection, the license was renewed and fee was collected. Thus the petitioner has got the D&O license.

That the petitioner has all consent from all statutory authorities and consent to operate has been granted by Pollution Control Board and is valid upto 2022. The petitioner received several notices due to frivolous complaints. The petitioner approached this Court several times because of

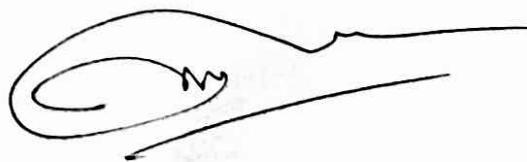


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false complaints and notices. In the meantime Municipality issued notice informing the petitioner to produce the details regarding installation permit for the unit. The petitioner replied to the same. Now going by Sec. 448, it could be seen that it is applicable for "fresh installation or construction". The unit is functioning for the last several years and license was renewed several times, also the said notice was challenged before this Court in W.P.(C.) 8172/2020 and this Court was pleased to pass Ext.P19 judgment. The said Ext.P19 judgment is clear that "even if there is no installation permit granted by the municipality, if the petitioner submits a fresh application to that effect the same has to be considered seriously without driving the petitioner to this Court for unwanted litigation." The judgment was passed on 18.3.2020. However, due to the lockdown declared by the central government the petitioner was unable to collect the judgment in time. However, the judgment was submitted on 15.5.2020 and receipt issued.

That the Municipality has issued a letter during lockdown period. Immediately, mail was sent stating that there is judgment of this Court in W.P.(C.) No.8172/2020 and the same could not be obtained because of lockdown. Now the Health Inspector without any jurisdiction issued another order on 11.5.2020. The present notice is only to harass the petitioner. Now the Municipality has to recall Ext.P21 and Ext.P22 in the interest of justice, since it is issued in violation of principles of natural



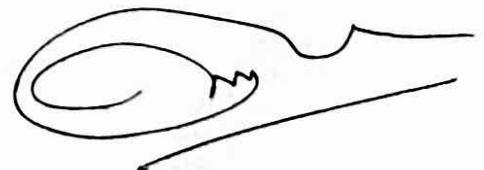
justice and also all the aspects has been considered by this Court in Ext.P19 judgment and that the unit is there for the last more than a decade. The unit was functioning and the statutory authorities has issued license and renewed license. There is no other remedy left with the petitioner other than to approach this Court.

2. It is in the light of these averments and contentions that the petitioner has filed the instant W.P.(C.) with the following prayers :

1. To call for the records leading to issuance of Ext.P21 and ExtP22 and to set aside the same, in the interest of justice.
2. To issue writ order or direction in the nature of mandamus directing respondents 1 and 2 to stop all proceedings against the unit of the petitioner, since the unit is already functioning and not a new unit to be established or installed under Section 448 of the Municipality Act, in the interest of justice.
3. To issue direction to the respondent 1 and 2 to grant deemed license in tune with Ext.P8 and Ext.P9 to the petitioner, in the interest of justice.
4. To issue writ order or direction in the nature of mandamus directing the respondent No.2 to take up the Ext.P19 Judgment and to withdraw all proceedings under Ext.P21 and P22, in the interest of justice.
5. To issue writ order or direction in the nature of mandamus directing the 2<sup>nd</sup> respondent to withdraw all proceedings, in view of the directions issued under Ext.P19 Judgment, in the interest of justice.
6. To grant such other reliefs as may be deemed fir and proper, including to continue the functioning of the unit based on the statutory licenses and sanction, in the interest of justice."

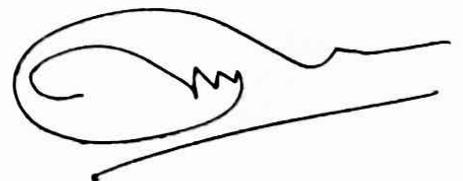
3. This Court has already rendered Ext.P19 judgment dated 18.3.2020 in W.P.(C.) No.8172/2020 in this matter, after hearing the petitioner's counsel and the learned Standing Counsel for the respondent Panchayath. It will be pertinent to refer to Ext.P19 judgment from para No.6 thereof onwards, which reads as follows :

*"Since petitioner has been directed to show cause to the matters raised in Exhibit-P32, the petitioner may file his written objections in the matter thereto, before the 2nd respondent Secretary of the Ettumanoor Municipality along with certified copy of this judgment. Thereafter, the 2nd respondent-Secretary of the Ettumanoor Municipality will take-up the matters in relation to Exhibit-P32 and the written objections/written submissions given by the petitioner thereto, as above directed, and after affording a reasonable opportunity of hearing to the petitioner through the authorized representative or counsel, if any, will pass orders in the matter, in*



accordance with law, within a reasonable time. While doing so, the 2nd respondent will take into account the directions already issued by this Court in matters as in Exhibit-P18 judgment and Exhibit-P19 order, etc. and also should consider very seriously the specific contention of the petitioner that as the petitioner has already been given license and renewal of the license by the respondent Ettumanoor Municipality for the last four years, the present insistence in Exhibit-P32 that petitioner has to secure the establishment permit in terms of Section 448 of the Kerala Municipality Act, 1994, is unnecessary and creates hardships and harassment on the petitioner, etc. In that regard if, as a matter of fact, the respondent Ettumanoor Municipality has not granted the establishment permit to the functioning of the petitioner's unit in terms of Section 448 of the Kerala Municipality Act, 1994, then without standing on any hyper technicalities the 2nd respondent-Secretary of Ettumanoor Municipality should permit the petitioner to file a separate application for the grant of such permit and the same should be considered and granted, if it is otherwise in order and the fact that the petitioner was granted license and its renewal in the last four years by none other than the respondent Ettumanoor Municipality should be seriously taken note of so that petitioner is not unnecessarily driven to this Court for further litigate proceedings on an issue like this. If, as a matter of fact, the respondent Municipality has not cared to initially insist that the petitioner should have secured the establishment permit in terms of Section 448 of the Kerala Municipalities Act, 1994, and had proceeded to grant license to the functioning of the petitioner's unit in terms of Section 447 of the Kerala Municipalities Act, 1994, then prima facie, this Court would opine that the blame should be more on the part of the officials of the respondent Ettumanoor Municipality and such omission on the part of the respondent Municipality shall not be put on the head of the petitioner and to again make him run from pillar to post. It is hoped and expected that the 2nd respondent-Secretary of the Ettumanoor Municipality would take a realistic, pragmatic, fair and just stand in the matter so that matters of this nature is dealt with without any unnecessary difficulties and harassment on the entrepreneur. Therefore, it is also ordered that in case the 2nd respondent-Secretary of the Ettumanoor Municipality is of the considered view that petitioner should also formally secure establishment permit in terms of Section 448 of the Kerala Municipalities Act, 1994, then, petitioner may be required to submit necessary application in that regard, which should, initially be considered by the Municipal Councilor of the respondent Ettumanoor Municipality, after affording reasonable opportunity of being heard to the petitioner and then decision thereon should be taken without much delay. In such a scenario, the 2nd respondent Secretary of the Ettumanoor Municipality may pass orders on the matters in relation to the written objections to be submitted by the petitioner as against Exhibit-P32 show cause notice, only after aforementioned exercises in the matter of establishment permit is duly completed. It is ordered that both the Municipal Council as well as the 2nd respondent-Secretary of Ettumanoor Municipality should take a fair and pragmatic stand in this case and should not insist on unnecessary hyper technicalities so that unnecessary litigation could be avoided. Further it is seen that petitioner has already submitted the fees as per Exhibit-P31 receipt dated 22.02.2020 for the grant of renewal of trade license for the year 2020-2021. Further it is ordered that in case petitioner has duly submitted application for renewal of the trade license for the year 2020-2021, and has also paid the fee as per Exhibit-P31 receipt dated 22.02.2020, and no action has been taken thereon by the 2nd respondent-Secretary of Ettumanoor Municipality within a period of 15 days thereafter, then the contention of the petitioner that it is deemed to have secured the renewal of the license in terms of the mandate of Section 447(6) of the Kerala Municipality Act, 1994 on expiry of the 15 days' limit therefrom should also be duly taken into account by the 2nd respondent-Secretary of Ettumanoor Municipality and orders on the said application for the grant of renewal of license for the year 2020-2021, as evident from Exhibit-P31, etc. should also be duly rendered by the 2nd respondent-Secretary of Ettumanoor Municipality, without much delay. Until then, it is ordered that the petitioner should be permitted to operate his unit in terms of Exhibit-P19 judgment, unless there are any other serious legal impediments in that regard."

4. According to the petitioner, in view of the lock down, the copy



of Ext.P19 judgment dated 18.3.2020 could not be obtained earlier and it was made available to the petitioner by the Registry of this Court only on 14.5.2020. In the meanwhile, the Government has also issued Ext.P20 G.O. that the deadline for renewal of the existing trade licenses for the year 2019-20 viz. 31.3.2020 will stand extended up to 31.10.2020. The petitioner would thus point out that a person who has secured the requisite trade license for the year 2019-20 could thus operate on the basis of the said license up to 31.10.2020. That Ext.P20 G.O. has been issued by the State Government on 7.5.2020 in view of the problems arising out of the locked down imposed on account of the COVID-19 pandemic etc.

5. More crucially, it is pointed out that though Ext.P19 judgment has been rendered by this Court on 18.3.2020 after hearing both sides, the respondent Panchayath without waiting for copy of the judgment has issued Ext.P21 letter directing the petitioner to produce certain documents and to attend a hearing on 11.5.2020, without reference to Ext.P19 judgment and without taking into consideration of the fact that at that time, 'Kottayam' was included in the red zone for the management of the COVID-19 pandemic problems and that therefore, it was virtually impossible for the petitioner to attend the hearing.

6. Thereafter, the Health Inspector of the respondent Panchayath has issued Ext.P22 order dated 11.5.2020 ordering that the application of the petitioner for renewal of the trade license will stand rejected and that



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the petitioner will have to stop the activities of his unit. Ext.P22 order has been passed by the Health Inspector of the Municipality, who does not have the competence and without reference to Ext.P19 judgment and without even waiting to get copy of Ext.P19 judgment. Ext.P22 proceedings dated 11.5.2020 reads as follows :

“ഏറ്റുമാനൂർ നഗരസഭ 18- 19/304 നമ്പർ കെട്ടിടങ്ങളായി താങ്കൾ നടത്തിവരുന്ന പാലയ്ക്കൽ ടിംബേർസ്, ഷൈവുഡ് നിർമ്മാണ പ്രവർത്തികൾക്കായി യന്ത്രസാഹിത്യ സർട്ടിഫിക്കറ്റ് ഹാജരാക്കാൻ നിർദ്ദേശിച്ചുകൊണ്ട് സൂചന (1) പ്രകാരം താങ്കൾക്ക് നോട്ടീസ് നൽകിയിരുന്നതാണ്. എന്നാൽ താങ്കൾ സൂചന (1) പ്രകാരം നൽകിയ മറുപടിയിൽ ആയത് സംബന്ധിച്ച് യാതൊരു വ്യക്തതയും ഇല്ലാത്തതും മറിച്ച് ബഹു.കോടതിയിൽ വ്യവഹാരം ഫയൽ ചെയ്തിട്ടുള്ളതായും മാത്രമാണ് അറിയിച്ചിട്ടുള്ളത്. കോടതിയിൽ നിന്നുമുള്ള ഉത്തരവുകളോ ഒന്നും നാളിതുവരെ ലഭിച്ചിട്ടില്ലാത്തതുമാണ്. ആയതിനാൽ താങ്കൾ 15.2.2020 ൽ നൽകിയ 2174/20, 2175/20 നമ്പർ ലൈസൻസ് അപേക്ഷകൾ നിരസിച്ചതായും താങ്കൾ മേൽ നമ്പർ കെട്ടിടങ്ങളിൽ നടത്തി വരുന്ന പ്രവർത്തി ഈ നോട്ടീസ് കൈപറ്റി 48 മണിക്കൂറിനുള്ളിൽ നിറുത്തിവച്ച് ഈ ഓഫീസിൽ രേഖാമൂലം അറിയിക്കേണ്ടതുമാണ് എന്ന വിവരം ഇതിനാൽ അറിയിക്കുന്നു.”

7. Taking note of the facts and circumstances, it is only to be held that the impugned action taken by the respondent Municipal authorities as per Ext.P22 is illegal and improper for the simple reason that they have not taken any steps for proper and effective compliance of the directions already issued by this Court in Ext.P19 judgment and without even waiting for getting a copy of the judgment. It appears that a copy of the Ext.P19 judgment is made available to the petitioner only on 14.5.2020.

8. In the light of these aspects, the respondent Municipal authorities ought to have waited for getting a copy of Ext.P19 judgment before proceeding into the matter. Accordingly, it is evident that Ext.P19

judgment has not been complied with. Accordingly, it is ordered that Ext.P22 proceedings will stand set aside. Moreover, it was not right and proper for the Health Inspector of the respondent Municipality to have taken the decision as per Ext.P22 and the matter regarding the trade license should have been decided by the 2<sup>nd</sup> respondent Secretary and that the other directions as against the Municipal Council should have been complied with by the Municipal council.

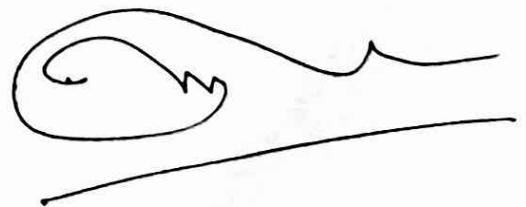
9. Accordingly, it is ordered that the directions in Ext.P19 judgment will have been complied with without any further delay. In view of the directions already issued by this Court in Ext.P19 judgment and in view of the special directions issued by the Government as per Ext.P20 G.O. dated 7.5.2020, it is ordered that the petitioner will stand permitted to operate the unit on a provisional basis until a decision is taken in accordance with the directions already issued by this Court in Ext.P19 judgment. The petitioner will produce a copy of this judgment along with the copy of the memorandum of this W.P.(C.) along with all the exhibits before the 2<sup>nd</sup> respondent for necessary information and further action.

With these observations and directions, the above W.P.(C.) will stand finally disposed of.

Sd/-

**ALEXANDER THOMAS,  
JUDGE**

SKS



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**APPENDIX**

**PETITIONER'S/S EXHIBITS:**

- EXHIBIT P1 TRUE COPY OF THE LICENSE ISSUED BY THE  
ETTUMANOOR MUNICIPALITY DATED 20.05.2015.
- EXHIBIT P2 TRUE COPY OF THE LICENCE ISSUED BY THE  
ETTUMANOOR MUNICIPALITY DATED 08.09.2017.
- EXHIBIT P3 TRUE COPY OF THE LICENSE DATED 01.04.2017  
ETTUMANOOR MUNICIPALITY.
- EXHIBIT P4 TRUE COPY OF THE INDUSTRIAL LICENSE ISSUED  
BY THE ETTUMANOOR MUNICIPALITY DATED  
12.04.2018.
- EXHIBIT P5 TRUE COPY OF THE INDUSTRIAL LICENSE ISSUED  
BY THE ETTUMANOOR MUNICIPALITY DATED  
12.04.2018.
- EXHIBIT P6 TRUE COPY OF THE RECEIPT ISSUED BY THE  
ETTUMANOOR MUNICIPALITY DATED 28.03.2019.
- EXHIBIT P7 TRUE COPY OF THE RECEIPT ISSUED BY THE  
ETTUMANOOR MUNICIPALITY DATED 28.03.2019.
- EXHIBIT P8 TRUE COPY OF THE LICENSE FEE RECEIPT FOR  
PALACKAL TIMBERS FOR D AND O TRADE LICENSE  
NO. 0031368 DATED 22.02.2020 FOR BUILDING  
WITH NO.19/304-B,12.
- EXHIBIT P9 TRUE COPY OF THE LICENSE FEE RECEIPT FOR  
PALACKAL INDUSTRIES FOR D AND O TRADE  
LICENSE NO.0031369 DATED 22.02.2020 FOR  
BUILDING WITH NO.12/18-B.
- EXHIBIT P10 TRUE COPY OF THE ORDER DATED 18.10.2019 IN  
IA 22/2019 IN APPEAL 9/2019 OF AIR  
APPELLATE AUTHORITY.
- EXHIBIT P11 TRUE COPY OF THE JUDGMENT IN WA 2095/2019.
- EXHIBIT P12 TRUE COPY OF THE JUDGMENT IN WPC NO.  
28689/2019 DATED 27.11.2019.
- EXHIBIT P13 TRUE COPY OF THE JUDGMENT IN WPC 32220/2019  
DATED 27.11.2019.
- EXHIBIT P14 TRUE COPY OF THE NOTICE DATED 14.02.2020 OF  
THE 2ND RESPONDENT.
- EXHIBIT P15 TRUE COPY OF THE SANCTION OF DISTRICT  
INDUSTRIES CENTRE FOR POWER LOAD OF 110 HP

56

A 33/10

DATED 08.03.2016.

- EXHIBIT P16 TRUE COPY OF THE LETTER DATED 28.06.2017 OF ASSISTANT DIVISIONAL OFFICER, FIRE AND RESCUE SERVICES, KOTTAYAM.
- EXHIBIT P17 TRUE COPY OF THE NOC DATED 25.04.2018 OF THE ASSISTANT DIVISIONAL OFFICER, FIRE AND RESCUE SERVICES, KOTTAYAM.
- EXHIBIT P18 NOTICE DATED 11.03.2020 OF THE 2ND RESPONDENT.
- EXHIBIT P19 TRUE COPY OF THE JUDGMENT IN WPC 8172/2020 DATED 18.03.2020.
- EXHIBIT P20 TRUE COPY OF THE GOVERNMENT ORDER DATED 07.05.2020 OF INDUSTRIES DEPARTMENT, GOVERNMENT OF KERALA.
- EXHIBIT P21 TRUE COPY OF THE LETTER DATED 27.04.2020 OF THE SECRETARY ETTUMANOOR MUNICIPALITY,
- EXHIBIT P22 TRUE COPY OF THE ORDER DATED 11.05.2020 OF THE HEALTH INSPECTOR, ETTUMANOOR MUNICIPALITY.

*This is the true copy of the document  
marked as EXHIBIT P*

*in above case*

ANNEXURE A25

ADVOCATE

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE SMT. JUSTICE P.V.ASHA

WEDNESDAY, THE 07TH DAY OF OCTOBER 2020 / 15TH ASWINA, 1942

WP(C).No.20042 OF 2020(E)

PETITIONER:

SHAMMY A SHAHIB  
AGED 46 YEARS, S/O AHAMED, PALACKAL HOUSE,  
CHERUVANDUR, ETUMANNOOR P.O. KOTTAYAM-686 631.

BY ADVS.  
SRI.PRAVEEN K. JOY  
SRI.E.S.SANEEJ  
SRI.M.P.UNNIKRISHNAN  
SRI.N.ABHILASH  
SMT.BEENA JOSEPH  
SMT.SREELEKHA. P  
SHRI.DEEPURAJAGOPAL

RESPONDENTS:

- 1 STATE OF KERALA.  
REP BY ITS SECRETARY,  
DIRECTORATE OF INDUSTRIES AND COMMERCE,  
SECRETARIAT, TRIVANDRUM-695 001.
- 2 THE DIRECTOR (INDUSTRIES AND COMMERCE),  
DIRECTORATE OF INDUSTRIES AND COMMERCE,  
TRIVANDRUM-695 001.
- 3 THE GENERAL MANAGER,  
DISTRICT INDUSTRIES CENTRE, KOTTAYAM-686 001.
- 4 KERALA STATE POLLUTION CONTROL BOARD,  
KOTTAYAM DISTRICT - 686 001  
REP. BY ITS ENVIRONMENTAL ENGINEER.

(IMPLEADED AS PER ORDER DATED 07.10.2020 IN  
I.A.NO.1/2020)

SMT.VINITHA.B, GOVERNMENT PLEADER  
ADVOCATE T.NAVEEN, STANDING COUNSEL FOR R4

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
07.10.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

***P.V.ASHA, J.***

***W.P(C).No.20042 of 2020-E***

***Dated this the 7<sup>th</sup> day of October, 2020***

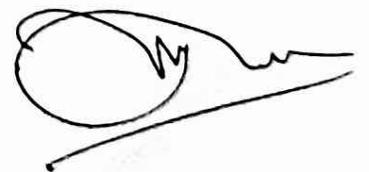
***JUDGMENT***

The petitioner claims that he has been running 2 industrial units in the name and style "Palackal Timbers" and "Palackal Industries" in the very same industrial plot and there had been complaints against the functioning of Palackal Timbers and the Pollution Control Board had issued orders of closure. Now the petitioner claims the benefit of EASY scheme. The petitioner submits that a report is filed by the 3<sup>rd</sup> respondent on the claim for exemption under the EASY scheme. The petitioner has submitted Ext.P4 representation before the 2<sup>nd</sup> respondent.

Therefore, the Writ Petition is disposed of directing the 2<sup>nd</sup> respondent to consider the request of the petitioner in Ext.P4 after affording an opportunity of hearing to the petitioner as well as the Pollution Control Board and to pass orders on it in accordance with law within a period of two months from the date of receipt of a copy of this judgment.

rtr/

Sd/- ***(P.V.ASHA, JUDGE)***



**APPENDIX**

**PETITIONER'S EXHIBITS:**

- EXHIBIT P1 TRUE COPY OF THE LICENSE NO H2-21741/20-21  
DATED 14.9.2020 FOR M/S PALACKAL TIMBERS.
- EXHIBIT P2 TRUE COPY OF THE LICENSE NO H2-21751/20-21  
DATED 14.9.2020 FOR M/S PALACKAL  
INDUSTRIES.
- EXHIBIT P3 TRUE COPY OF THE REPORT DATED 29.2.2020  
SUBMITTED BY THE 3RD RESPONDENT.
- EXHIBIT P4 TRUE COPY OF THE REPRESENTATION DATED  
7.9.2020 BEFORE THE 3RD RESPONDENT.

*This is the true copy of the document  
marked as                       
in whose case*

ADVOCATE *Ag*

ADVOCATE



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE N. NAGARESH

FRIDAY, THE 16<sup>TH</sup> DAY OF JULY 2021 / 25<sup>TH</sup> ASHADHA, 1943

WP(C) NO. 11198 OF 2021

PETITIONER:

SHAMMY A. SHAHIB  
AGED 47 YEARS  
S/O. AHAMED, PALACKAL HOUSE, CHERUVANDUR,  
ETTUMANOOR P. O., KOTTAYAM - 686631.

BY ADVS.  
PRAVEEN K. JOY  
SRI.E.S.SANEEJ  
SRI.M.P.UNNIKRISHNAN  
SMT.M.K.SAMYUKTHA  
SRI.N.ABHILASH  
SMT.M.R.ESHRATH BAI  
SMT.BEENA JOSEPH  
SMT.SREELEKHA. P  
SHRI.DEEPURAJAGOPAL

RESPONDENTS:

- 1 KOTTAYAM DISTRICT SINGLE WINDOW CLEARANCE BOARD  
KOTTAYAM - 686 001, REP. BY ITS CONVENOR.
- 2 ETTUMANOOR MUNICIPALITY  
REP. BY ITS SECRETARY, ETTUMANOOR - 686 631.
- 3 THE DISTRICT MEDICAL OFFICER  
KOTTAYAM - 686002.
- 4 KERALA STATE POLLUTION CONTROL BOARD  
PATTOM, TRIVANDRUM - 695004.,  
REP. BY ITS SECRETARY.
- 5 THE ENVIRONMENTAL ENGINEER  
KERALA STATE POLLUTION CONTROL BOARD,  
KOTTAYAM - 686001.
- 6 K. G. RAJAPPAN  
AGED 67 YEARS  
FATHER'S NAME NOT KNOWN TO PETITIONER,  
KALLETHANATH HOUSE, ETTUMANOOR,  
KOTTAYAM - 686562.

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A35/2

W.P.(C) No.11198/2021

: 2 :

- 7 K. V. MATHEW  
AGED 64 YEARS  
FATHER'S NAME NOT KNOWN TO PETITIONER,  
MANGATTU HOUSE, CHERUVANDOOOR, ETTUMANOOOR,  
KOTTAYAM - 686562.
- 8 P. C. CHACKO  
AGED 63 YEARS  
FATHER'S NAME NOT KNOWN TO PETITIONER,  
CHALAPPALLIL HOUSE, CHERUVANDOOOR, ETTUMANOOOR,  
KOTTAYAM - 686562.

BY ADVS.

R2 - SHRI.SIBY CHENAPPADY, SC, ETTUMANOOOR  
MUNICIPALITY

R6 to R8 - SRI.R.S.KALKURA

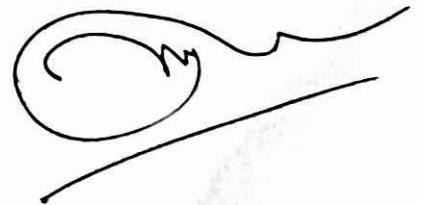
SRI.P.B.SAHASRANAMAN

SRI.T.S.HARIKUMAR

R4&5 - SRI.T. NAVEEN

GOVT. PLEADER SMT.G.RANJITA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 16.07.2021, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:



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A35/3

W.P.(C) No.11198/2021

: 3 :

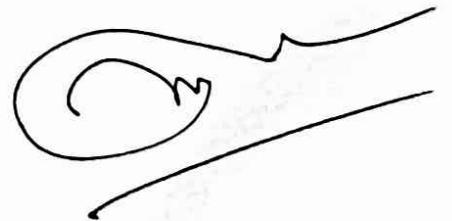
**J U D G M E N T**

~~~~~

*Dated this the 16<sup>th</sup> day of July, 2021*

The petitioner, who is the owner of a plywood industry, approached this Court seeking to direct respondents 2 to 5 to stop all proceedings against the unit of the petitioner, since the petitioner requires reasonable time to get the statutory appeal numbered and moved, against Ext.P18 order.

2. It is the case of the petitioner that the Environmental Engineer issued a closure notice dated 30.05.2019 to the petitioner, alleging violation of distance criteria. The petitioner thereupon approached the Air Appellate Authority, Thiruvananthapuram filing Appeal No.9/2019 invoking Section 31 of the Air (Prevention and Control of Pollution) Act, 1981 against the order dated 30.05.2019 of the Environmental Engineer. The Air Appellate Authority held that the industrial unit of the



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A35/4

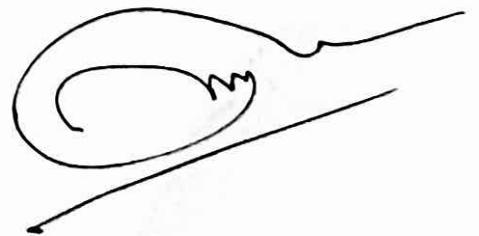
W.P.(C) No.11198/2021

: 4 :

petitioner is not situated as per the stipulations in Circular dated 20.07.2011. Accordingly, the appeal filed by the petitioner was dismissed as per Ext.P18 order.

3. The petitioner wanted to challenge Ext.P18 order by filing a further appeal before the National Green Tribunal invoking Section 31B of the Air (Prevention and Control of Pollution) Act, 1981. The petitioner has, in fact, filed Ext.P19 appeal memorandum before the National Green Tribunal along with Ext.P20-Miscellaneous Application for stay. However, due to the second Covid wave, the petitioner is not in a position to move Exts.P19 and P20 Appeal/Application before the National Green Tribunal. It is in such circumstances that the petitioner has approached this Court.

4. When the writ petition came up for admission on 11.05.2021, this Court passed an interim order granting reasonable time to the petitioner to get the statutory appeal numbered and moved and permitted the petitioner to continue the functioning of the unit based on Exts.P1 to P11 licences and sanctions issued by the statutory authorities.



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A 35/5

W.P.(C) No.11198/2021

: 5 :

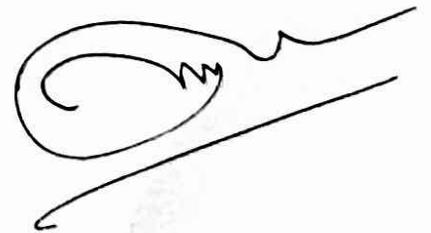
5. When this writ petition came up for hearing today, the counsel on either side submitted that the appeal filed by the petitioner is numbered as appeal No.50/2021 by the National Green Tribunal and the appeal stands posted to 30.07.2021. In the circumstances, this Court feels that this writ petition need not be retained and it can be disposed of permitting the petitioner to pursue his appeal before the Tribunal.

In the circumstances, the writ petition is disposed of permitting the petitioner to pursue his appeal filed before the National Green Tribunal against Ext.P18 order of the Air Appellate Authority. The interim order passed by this Court on 11.5.2021 will continue to enure to the benefit of the petitioner till 30.07.2021.

Sd/-

**N. NAGARESH, JUDGE**

aks/16.07.2021



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A.35/6

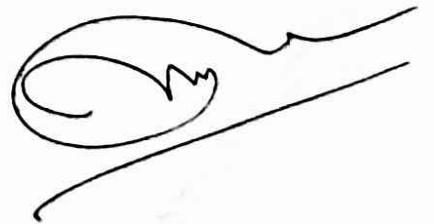
W.P.(C) No.11198/2021

: 6 :

APPENDIX OF WP(C) 11198/2021

PETITIONER'S EXHIBITS:

- EXHIBIT P1 THE TRUE COPY OF THE NO OBJECTION CERTIFICATE ISSUED BY THE ASSISTANT DIVISIONAL OFFICER, FIRE AND RESCUE SERVICES, KOTTAYAM DATED 25.04.2018.
- EXHIBIT P2 THE TRUE COPY OF THE ORDER NO.T2/7466/2017/F AND B DATED 04.10.2017 OF DIRECTOR OF FACTORIES AND BOILERS AT TRIVANDRUM.
- EXHIBIT P20 THE TRUE COPY OF THE ORDER IN RECORD OF PROCEEDINGS DATED 27.04.2021 IN MISCELLANEOUS APPLICATION NO.665/2021 IN SMW(C) NO.3/2020 OF SUPREME COURT OF INDIA.
- EXHIBIT P3 THE TRUE COPY OF THE ORDER DATED 12.07.2017 OF DISTRICT MEDICAL OFFICER, KOTTAYAM.
- EXHIBIT P4 THE TRUE COPY OF THE LICENSE DATED 28.09.2018 OF FOREST DEPARTMENT FOR PALACKAL TIMBERS ISSUED BY DIVISIONAL FOREST OFFICER, KOTTAYAM.
- EXHIBIT P5 THE TRUE COPY OF THE ORDER DATED 24.07.2018 OF THE 1ST RESPONDENT.
- EXHIBIT P6 THE TRUE PHOTOCOPY OF THE CONSENT NO.PCB/KTM/CO/4583/2017 ISSUED BY THE POLLUTION CONTROL BOARD DATED 24.11.2017.
- EXHIBIT P7 THE TRUE PHOTOCOPY OF THE INDUSTRIAL LICENCE ISSUED BY THE ETTUMANOOR MUNICIPALITY DATED 12.04.2018.
- EXHIBIT P8 THE TRUE PHOTOCOPY OF THE LICENCE ISSUED BY THE ETTUMANOOR MUNICIPALITY DATED 28.03.2019.
- EXHIBIT P9 THE TRUE COPY OF THE LICENCE ISSUED BY THE ETTUMANOOR MUNICIPALITY DATED 22.02.2020.



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A35/7

W.P.(C) No.11198/2021

:7:

- EXHIBIT P10 THE TRUE COPY OF THE LICENCE RECEIPT FOR 21-22 ISSUED BY THE ETTUMANOOR MUNICIPALITY WITH NO.0071565 DATED 01.03.2021.
- EXHIBIT P11 THE TRUE COPY OF THE LICENCE RECEIPT FOR 21-22 ISSUED BY THE ETTUMANOOR MUNICIPALITY WITH NO.0071567 DATED 01.03.2021.
- EXHIBIT P12 THE TRUE COPY OF ORDER IN IA 1449/2018 IN OS 175/2018 DATED 07.01.2018 OF MUNSIFF COURT, ETTUMANOOR.
- EXHIBIT P13 THE TRUE COPY OF THE NOTICE DATED 01.04.2019 OF ENVIRONMENTAL ENGINEER, KERALA STATE POLLUTION CONTROL BOARD, KOTTAYAM.
- EXHIBIT P14 THE TRUE COPY OF THE APPEAL 9/2019 DATED 6.6.2019 BEFORE THE APPELLATE AUTHORITY UNDER AIR (PREVENTION AND CONTROL OF POLLUTION), TRIVANDRUM.
- EXHIBIT P15 THE TRUE COPY OF THE STAY PETITION FILED AS IA 22/2019 IN APPEAL 9/2019 DATED 6.6.2019 BEFORE THE APPELLATE AUTHORITY UNDER AIR (PREVENTION AND CONTROL OF POLLUTION), TRIVANDRUM.
- EXHIBIT P16 THE TRUE COPY OF THE ORDER DATED 18.10.2019 IN IA 22/2019 IN APPEAL 9/2019 OF THE APPELLATE AUTHORITY UNDER AIR (PREVENTION AND CONTROL OF POLLUTION), TRIVANDRUM.
- EXHIBIT P17 THE TRUE COPY OF THE JUDGMENT DATED 27.11.2019 IN WPC 28689/2019.
- EXHIBIT P18 THE TRUE COPY OF THE ORDER DATED 26.03.2021 IN APPEAL 9/2019 OF THE APPELLATE AUTHORITY UNDER AIR (PREVENTION AND CONTROL OF POLLUTION), TRIVANDRUM.
- EXHIBIT P19 THE TRUE COPY OF THE APPEAL WITHOUT ANNEXURE WITH REF. NO.330511701080/2021 DATED 30.04.21 BEFORE THE HON'BLE GREEN TRIBUNAL, CHENNAI.



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A35/8

W.P.(C) No.11198/2021

: 8 :

EXHIBIT P20 TRUE COPY OF THE ORDER IN RECORD OF  
PROCEEDINGS DT. 27.4.2021 IN  
MISCELLANEOUS APPLICATION NO.665/2021  
IN SMW(C) NO.3/2020 OF SUPREME COURT  
OF INDIA.

RESPONDENT'S EXHIBITS :

R6(A) TRUE COPY OF THE CLOSURE ORDER DT. 30.5.2019  
ISSUED BY THE 5TH RESPONDENT.

*This is the true copy of the document  
marked as ~~EXHIBIT~~  
ANNEXURE A1 referred  
in above case*

ADVOCATE

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL SITTING AT  
CHIENNAI

IA No. /2021

in

Appeal No. 50/2021

Between :

Shammy A Shahib, aged 45 years, : Petitioner/Appellant  
S/o Ahamed, Palackal House,  
Cheruvandur, Ettumanoor P.O.  
Kottayam-686631, Kerala,  
Mobile : 9847120599,  
Email- [shammyplackal19@gmail.com](mailto:shammyplackal19@gmail.com)

And

1. The Environmental Engineer, : Respondents/Respondents  
Kerala State Pollution Control Board,  
Srinivasa Iyyar Road, Near C M S College,  
Kottayam District-686001, Kerala,  
Phone/Fax 0481-2302445.  
Mobile 9447975715  
Email: not available
2. K.G.Rajappan, aged 67,  
Kallethanath House, Ettumanoor,  
Kottayam-686562, Kerala,  
Mobile & Email : not available.
3. K.V Mathew, aged 63,  
Mangattu House, Cheruvandoor,  
Ettumanoor, Kottayam-686562,  
Kerala,  
Mobile & Email : not available.
4. P.C Chacko, aged 63,  
Chalappallil House, Cheruvandoor,  
Ettumanoor, Kottayam-686562, Kerala,  
Mobile & Email : not available.

**PETITION FILED UNDER SECTION 19 OF THE NATIONAL GREEN  
TRIBUNAL ACT, 2010**

For the reasons stated in the accompanying affidavit it is most respectfully prayed that this Honourable Court may be pleased to accept the documents Annexure-29 to Annexure-35 as paper of the paper book of the above appeal, in the interest of justice.

Dated this the 3<sup>rd</sup> day of August, 2021.



PRAVEEN K JOY

Counsel for the petitioner