



THE AIR APPELLATE AUTHORITY  
THIRUVANANTHAPURAM

Present: Shri.Aravintha Babu.P.K - Chairman  
Shri.Chandrasekar.S., IAS - Administrative Member  
Shri.Shibu.K. - Technical Member

Friday, the 26th March, 2021  
5th Chaithram, 1943

Appeal No.9/2019

Appellant:-

Shammy A Shahib, aged 45 years.  
S/o Ahamed, Palackal House,  
Cheruvandur, Ettumanoor.P.O.,  
Kottayam - 686631.

By Adv.M.Nizarudeen.

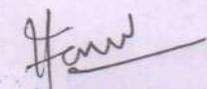
Respondents:-

1. The Environmental Engineer,  
Kerala State Pollution Control Board,  
Kottayam - 686001.

Addl. Respondents:-

2. K.G.Rajappan, aged 67 years,  
Kallethanath (II), Ettumanoor,  
Kottayam - 686 562.
3. K.V.Mathew, aged 64 years,  
Mangattu (H), Cheruvandoor,  
Ettumanoor.P.O., Kottayam-686 562.



  
A. M. HAREES  
Environmental Engineer

4. P.C.Chacko, aged 63 years,  
Chalappallil (II), Cheruvandoor,  
Ettumanoor.P.O., Kottayam-686 563.

(Additional Respondents 2 to 4 are impleaded as per order in  
IA No.29/2019 in Appeal No.9/2019.)

By Adv. Sankarlal.B.S. for R1.  
Adv. Sudheer Kuttiyani,  
Adv.Alex M.Scaria and  
Adv.Jayakrishnan.R. for Additional respondents 2 to 4.

This appeal having come up for hearing on 05/03/2021 in the presence of Adv. Adv.M.Nizarudeen for the appellant and Adv. Sankarlal.B.S. for 1<sup>st</sup> respondent, Adv.Sudheer Kuttiyani, Adv.Alex M.Scaria and Adv.Jayakrishnan.R. for Additional respondents 2 to 4 and having stood over for consideration to this day, the authority delivered the following.

### JUDGMENT

This is an appeal filed u/s. 31 of the Air (Pollution and Control of Pollution) Act, 1981 against the order No.PCB/KTM/CO/4583/2017 dated 30.05.2019 passed by the 1<sup>st</sup> respondent.

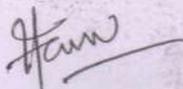
2. Allegations in the appeal memorandum in brief are that the appellant is the owner of plywood industry under the name and style M/s. Palackal Timbers making plywood and veneer. Appellant has already obtained development permit from Ettumanoor Panchayat and certificate from Village Industries Commission. The appellant is conducting two units

ANNEXURE IV

namely "Palackal Industries" and "Palackal Timbers" under separate licenses. Consent to operate for "Palackal Industries" was issued in 2012 and later it was renewed in 2017 up to 2020. Consent to Operate was also issued to "Palackal Timbers". False and frivolous complaints were filed by some neighbours against "Palackal Timbers" and based on which Consent Withdrawal Notice was issued by 1st respondent stating that the unit is located at a distance of 49 meters from a residential house and that the lease deed relied by appellant is a false one. In fact the owner of the residence fraudulently extended his house in order to bring in the distance below 50 meters from the industrial unit. There is no illegality in the lease deed. Subsequent construction of the neighbouring house is not a matter to be considered in the case of existing unit. The new regulation restricting the unit within 50 meters of the residential building is not applicable to the existing unit of the appellant. Though a notice was given to the appellant for hearing, the respondent without conducting the same issued closure order. This is against natural justice. Therefore, the impugned order of the respondent dated 30.05.2019 may be set aside.

3. The 1<sup>st</sup> respondent filed objection and contended that the appellant was permitted to operate a sawmill for production of wooden packing case and accordingly consent to operate was issued in 2012. The

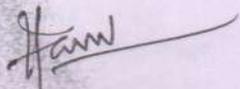


  
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same was renewed up to 2020. The consent to operate for producing plywood unit was issued only on 20.12.2017 based on the Circular dated 20.07.2011 that the minimum distance between the nearest house and the unit is 50 meters and setback of 25 meters on all sides. In 2018, complaint was received alleging pollution from the unit. On verification of the site it was found that the location of the proposed building has been changed and there is no sufficient setback of 25 meters on 3 sides. The residential building of Mr.P.C.Chacko is situated 49 meters away from the unit. The lease agreement produced by the appellant was found false and misleading. Considering all these facts a consent withdrawal intention notice was issued to the appellant. Notice was issued to the appellant and his brother was heard on his behalf. However, the complainant did not attend the hearing and therefore the case was adjourned after 10 days. Since the appellant did not comply the norms applicable to plywood unit, closure order has been issued. That order is legal.

4. Additional respondents 2 to 4 are impleaded and the additional 2<sup>nd</sup> respondent filed a counter affidavit and contended that the impugned order was passed on merit and the finding that the consent from the Pollution Control Board was secured by the appellant by committing fraud and forgery is correct. The alleged sale agreement is also not legal and valid.



  
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## 5. Points raised for consideration:

Whether the impugned order dated 30.05.2019 of the 1<sup>st</sup> respondent is liable to be cancelled?

6. The evidence consists of Exhibits A1 and R1 to R2.

7. **Point:-**

Admittedly, the appellant was conducting Palackal Timbers based on the permission granted by the 1<sup>st</sup> respondent. Subsequently, complaints were raised by the neighbours about pollution from the industrial unit. On inspection by the Pollution Control Board it was found that the distance between the industrial unit and the nearest house is only 49 meters. The minimum distance as per Exhibit R2 Circular is 50 meters. Same way, the minimum setback also is less than 25 meters. Since the appellant has no space and sufficient setback, he executed a lease agreement with another person. Now, that lease deed is in dispute. Copy of that lease deed is marked as Exhibit A1. If there is no such lease deed no doubt, the appellant will not get 25 meters setback. Therefore, in order to get sufficient space as setback Exhibit A1 is relied by the appellant. Based on the above reason 1<sup>st</sup> respondent issued Exhibit R1 consent withdrawal intention notice.



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8. Now, the appellant alleged that the nearest house owner constructed additional structures alongwith his house. Therefore, the distance between the house and the industrial unit is reduced to 49 meters. According to him, when the original consent was given the distance of this house and unit was 50 meters. Whereas the owner by deliberately constructing and extending his house, the distance is subsequently reduced. However, there is no evidence to prove this allegation of the appellant. The distance can be reduced to 49 meters either by additional construction to the existing house or to the existing industrial unit. The Pollution Control Board has found that the construction is done by the unit. Therefore, the distance is reduced. Appellant could not prove otherwise. Same way, based on the dispute of Exhibit A1 document also, the Pollution Control Board found that the minimum setback of 25 meters is also not available. It appears that Exhibit A1 is an incomplete document. Though that document contains three typewritten pages, only in the front sheet the signature of the 1<sup>st</sup> party namely Bennichan is seen. In all other sheets he has not signed. So, it can be clearly seen that it is an incomplete document. Based on this document, it is not possible to see that appellant will have the right to claim 25 meters setback on all sides of the unit. So, the stand taken by the 1<sup>st</sup> respondent that the distance between the unit and the nearest residence is 49 meters and minimum setback of 25 meters is not available is true and correct. If that is

the case, this is a violation of Exhibit R2 Circular. Therefore, Exhibit R1 notice was issued intimating the decision to consent withdrawal intention notice. None of the allegations raised by the appellant is proved and correct. Hence, the challenge against Exhibit R1 order will not stand.

9. Therefore, we are of the opinion that the industrial unit of the appellant is not situated as per the stipulation in Exhibit R2 Circular of the Pollution Control Board. The minimum distance between the nearest house and the unit and the minimum setback criteria are not complied in this case. In such case, 1<sup>st</sup> respondent is perfectly authorized and entitled to issue Exhibit R1 notice and it cannot be set aside on any of the grounds alleged by the appellant.

10. In the result, the appeal is found to be devoid of any merit and it is dismissed. Stay order passed as per IA No.22/2019 is hereby vacated.

Pronounced on this the 26th day of March, 2021.

**Chairman**

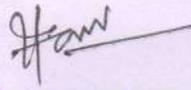
Sd/-

**Administrative Member**

On leave

**Technical Member**

Sd/-

  
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