2025:KER:74984

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

THURSDAY, THE 9TH DAY OF OCTOBER 2025 / 17TH ASWINA, 1947

WP(C) NO. 27916 OF 2025

PETITIONER:

NISHAM,
AGED 45 YEARS
S/O ALI, POKKAKILLATH HOUSE, PALLITHAZHAM,
CHAVAKKAD, THRISSUR, PIN - 680506

BY ADV SHRI.MOHAMMED ASHRAF

RESPONDENTS:

1 CHAVAKKAD MUNICIPALITY,
REPRESENTED BY ITS SECRETARY, CHAVAKKAD P.O,
THRISSUR, KERALA, PIN - 680506

2 SECRETARY,
CHAVAKKAD MUNICIPALITY, CHAVAKKAD P.O, THRISSUR,
KERALA, PIN - 680506

3 PUBLIC HEALTH INSPECTOR,
CHAVAKKAD MUNICIPALITY, CHAVAKKAD P.O, THRISSUR,
KERALA, PIN - 680506

4 STATION HOUSE OFFICER,
CHAVAKKAD POLICE STATION, CHAVAKKAD P.O,
THRISSUR, KERALA, PIN - 680506

BY ADV SHRI.V.N.HARIDAS

OTHER PRESENT:

SMT. SURYA BINOY, SR. GP.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09.10.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

2025:KER:74984

JUDGMENT

The petitioner is stated to be a fishmonger who earns his livelihood by selling fish using a four-wheel cart at various places within the 1st respondent Municipality. On 29.09.2024, the 3rd respondent conducted an inspection allegedly based on a complaint received by the 2nd respondent, alleging obstruction caused to other vendors, vehicles, and pedestrians by the petitioner's fish vending cart. It is stated that the 2nd respondent, with the assistance of the police, seized the petitioner's four-wheel cart, approximately 82 kilograms of fish, and two electronic weighing scales, and the fish was destroyed on site, and the remaining articles were kept in the custody of the 2nd respondent. These facts are included in the Ext. P1 Mahazar dated 29.09.2024, prepared by the Public Health Inspector.

2. On 10.10.2024, the petitioner caused to issue a legal notice to respondents 2 and 3 demanding the return of the seized cart and weighing scales. The petitioner also filed Crl.M.P No.7986 of 2024 before the Judicial First Class Magistrate Court, Chavakkad, under Section 497 of the Baratiya Nagarik Suraksha Sanhita, 2023

2025:KER:74984

(BNSS), seeking release of the four-wheel cart and electronic weighing machines seized by the respondents 2 and 3. Through Ext.P6 order dated 25.06.2025, the Magistrate Court found that the actions taken by the Municipality were within its powers and that the seizure was effected by them, and on that basis, the Magistrate Court dismissed the petition. The 2nd respondent thereafter issued a notice on 23.01.2025 stating that the petitioner had violated the law and was not complying with the directions of the Health Squad, thereby imposing a fine of Rs. 5000/- (Rupees five thousand only) as per Ext.P4 notice.

3. The petitioner complains that the act of respondents 1 to 3 in forcibly evicting the petitioner and seizing his cart, fish, and weighing machines without any notice/without any kind of hearing, is illegal and in total violation of principles of natural justice. Petitioner contends that he is a street vendor who is engaged in a lawful occupation protected under Article 19(1)(g) of the Constitution of India, which guarantees the right to livelihood. The arbitrary seizure mentioned above is without following due process of law and violates his fundamental rights. The prayer in the writ petition is to return the petitioner's seized four-wheel cart

and two electronic weighing machines forthwith and also quash the seizure and destruction as illegal and violative of the Street Vendors Act, 2014. There is also a prayer to pay a compensation of Rs 15,000/- (Rupees fifteen thousand only) towards the loss caused due to illegal seizure and destruction of the fish and continued illegal retention of trade tools.

4. The learned counsel for the petitioner, Sri. Mohammed Ashraf argues that the actions of the Municipality are in violation of Section 18 of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014. Sections 479 and 481 of the Kerala Municipality Act, 1994, permit the destruction of food items that are proven to be diseased, noxious, or unfit for human consumption. It is also stated that the actions of the Municipality are a direct violation of the Kerala Street Vendors Scheme, 2019 *(hereinafter 2019 Scheme),* which operationalises the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014, and prescribes binding procedural safeguards in cases of eviction and seizure.

5. Reliance is made on Clause 16 of the Scheme, which states that any seizure of goods must be accompanied by a detailed

inventory prepared at the time of seizure, and the vendor must be given the right and opportunity to reclaim the seized articles within a specified time, and that perishable items, unless certified as noxious or harmful, are required to be preserved for at least 24 hours, thereby ensuring an opportunity for retrieval. All these provisions of law were flouted by the respondents by their actions aforesaid.

6. The petitioner further contends that the respondents failed to prepare any inventory at the time of seizure, failed to obtain his signature, and destroyed the fish without any sanitary certification or test to establish that the goods were noxious or unfit for consumption. Such summary destruction, without compliance with Regulation 16(2) of the 2019 Scheme or the conditions of Section 481 of the Municipality Act, is manifestly arbitrary and illegal. The actions of the respondents deprived the petitioner of his tools of trade and livelihood, contrary to Articles 14, 19(1)(g), 21, and 300-A of the Constitution. He also relies on the decisions in ***State of Kerala v. Safia*** (2021 (5) KHC 199) and ***D.K. Basu v. State of West Bengal*** (1997 KHC 245) to contend that illegal destruction of property by public authorities gives rise to a public

law claim for compensation under Article 226.

7. The learned counsel for the Municipality, Sri. Haridas argues based on Sections 476 to 482 of the Kerala Municipality Act, 1994, that it fell within their power to seize the fish and destruction. The Municipality, in its counter affidavit, asserts that the petitioner was engaged in illegal fish sales without any trade license or permission and that the place of business was a prohibited area under the Town Vending Act and Scheme. They rely on the complaint received on 29.09.2024 and the mahazar prepared by the Health Department to show that the petitioner and another person were obstructing the market road, creating a hindrance to other traders, vehicles, and pedestrians. It is also stated that the petitioner misbehaved and abused the officials during the inspection, for which a police complaint was filed. They contend that action was taken under Sections 470, 470A, 476, 477, 478, 480, and 481 of the Kerala Municipalities Act, 1994, and that the petitioner had earlier been warned and fined but failed to pay the penalty. The respondents contend that the petitioner is not a registered street vendor nor authorised under the Town Vending Scheme, and therefore cannot claim protection under the Street

Vendors Act or Scheme. They further state that the seized fish was destroyed as it was unsafe and could not be preserved, and that the actions taken were within their statutory powers.

8. Heard both sides and perused the records.

9. Regulation No. 16 of 2019 Scheme, is extracted below:

> *"16. **Manner and method of eviction of vendors, seizure and disposal of goods.***-
> *(1) A street vendor, whose Certificate of Vending is cancelled under section 10 of the Act, or who vends without a certificate of vending or who vends in a no-vending zone shall be liable to be evicted immediately from his place of vending and his vending articles and goods shall be seized by the local authority and kept in its custody.*
>
> *(2) The articles and goods of such street vendors shall be seized under a proper inventory and the signature of the street vendor concerned shall be obtained in the same. Where the vendor refuses to sign the inventory, the Health Officer or Health Supervisor or Health Inspector of the local authority concerned shall attest the inventory in addition to the attestation by the officials seizing the articles.*
>
> *(3) Where a vendor does not apply for the return of the articles and the goods seized by the local authority after the expiry of 24 hours, in case of perishable goods and after the expiry of fifteen days, in case of non-perishable goods, the local authority shall dispose of the same by a public auction. The proceeds of such auction shall be adjusted towards the charges and penalties, if any, that are payable by the vendor under the rules or the scheme and the cost incurred for conducting the auction. The balance, if any, shall be kept in a separate account and paid to the street vendor on his application.*

(4) If a vendor or his legal heirs fail to claim the balance amount under sub-paragraph (3), within a period of three months, the same shall be forfeited by the local authority and deposited in its general account.

(5) Wherever action for relocation or evicting of street vendor is contemplated or evicting street vendor is contemplated under section 18 of the Act, the street vendor shall be served with a notice in writing to vacate the place:

(a) Served with a notice in case he is to be relocated due to exigencies of public purpose;

(b) Temporarily, in case his certificate of vending has been suspended,

(c) Permanently, in case his certificate of vending has been cancelled by the town vending committee;

(d) In case the vendor is vending without obtaining a vending certificate.

(6) The notice under sub-action (3) of section 18 of the Act shall be served by the local authority asking the vendor to vacate the place/space within thirty days.

(7) Where the vendor fails to vacate the place/space area within the period specified in the notice, the local authority shall evict him physically by its staff and if necessary with the assistance of police and goods and material found with him at the place shall be seized.

In the initial phase where the street vendors are located without any authority; the local authority can relocate the vendor considering the width of the street, traffic, volume of the street, presence of important institution like hospital, court, Govt. office etc. at a suitable place, identified by the local authority."

10. Even assuming that the petitioner did not have a trade license as contended by the municipality or was vending without a certificate, the Municipality had to conform to the procedure above referred, which admittedly was not done.

11. The power to destroy the articles under Section 481 is only for those items prescribed in Section 479. That apart, Sections 476 and 477 only enable the Secretary to inspect for the purpose stated in Section 477, and the protection given there is only for those acts mentioned therein and cannot be construed as the power to commit high-handed acts as has been done in the instant case. This is a total violation of the provisions of the 2019 Scheme, which was framed in exercise of the powers conferred under Section 38 of the Street Vendors Act. At any rate, the power granted under the Central statute and the regulations framed therein, particularly regulation No.16, which deals with the manner and method of eviction of vendors and seizure and disposal of goods, overrides the powers granted to the Municipality under the Municipality Act, even in cases where it is applicable, more so, in a case where, the actions of the Municipality cannot be sustained even under the provisions of the Municipality Act. The

Mahazar reveals the reason for the seizure and the quantity of fish seized.

12. The petitioner, a hapless fishmonger struggling at the margins of existence, was illegally prevented from carrying on his avocation, and his entire stock of fish was destroyed. This constitutes a stark abuse of power, exercised with high-handed arbitrariness, and amounts to nothing less than denial of the right to livelihood guaranteed under Article 21 of the Constitution of India. When the Authority is abused in such an oppressive action against a defenceless citizen, the law mandates a remedy in the form of compensation for the unlawful restraint on his livelihood, and his entire stock of fish was wantonly destroyed. This action is wholly alien to the rule of law and squarely attracts the public law remedy of compensation. The petitioner is thus entitled to just recompense for the injury inflicted by such oppressive exercise of power violating his fundamental rights.

13. Given the above, I am inclined to allow the writ petition, and it is declared that the entire actions of the Municipality leading to Ext.P4 are high-handed, unjust, and unfair trampling upon the fundamental rights guaranteed to the

2025:KER:74984

petitioner. Under such circumstances, there will be a direction to the 1st respondent to pay the petitioner an amount of Rs. 15,000/- (Rupees fifteen thousand only) towards the value of the fish illegally destroyed and also to return the cart and the two electronic weighing scales forthwith. There will be a further direction to pay an amount of Rs. 15,000/- (Rupees fifteen thousand only) as compensation to the petitioner for the high-handed acts of respondents 2 and 3. The Municipality shall pay the amount within a month and recover the same from those found responsible.

The writ petition is allowed as above.

Sd/-
MOHAMMED NIAS C.P.
JUDGE

Anu

2025:KER:74984

APPENDIX OF WP(C) 27916/2025

PETITIONER EXHIBITS

Exhibit P1	**A TRUE COPY OF THE MAHAZAR DATED 29.09.2024 ALONG WITH ITS TRANSLATED COPY**
Exhibit P2	**A TRUE COPY OF THE LAWYER NOTICE ISSUED BY THE PETITIONER TO THE 2ND AND 3RD RESPONDENT**
Exhibit P3	**A TRUE COPY OF THE CRL.M.P. NO. 7986/2024 FILED BEFORE THE JFCM, CHAVAKKAD**
Exhibit P4	**A TRUE COPY OF THE NOTICE DATED 23/01/2025 ISSUED BY THE 2ND RESPONDENT**
Exhibit P5	**A TRUE COPY OF THE COUNTER FILED BY THE RESPONDENTS 2 AND 3**
Exhibit P6	**A TRUE COPY OF THE ORDER IN CRL.MP 7986/2024 OF THE HON'BLE JFCM, CHAVAKKAD**