

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2020 / 1ST ASWINA, 1942

WP(C).No.15458 OF 2020(F)

PETITIONER:

M.MAHSHOOK RAHMAN
AGED 62 YEARS
S/O. (THE LATE) MOHAMMED SALIH,
ELANCHIMOODU LANE, EDAPAZHANJI,
THIRUVANANTHAPURAM-695 014

BY ADVS.
SRI.S.BALACHANDRAN (KULASEKHARAM)
SRI.V.R.GOPU

RESPONDENTS:

- 1 CITY POLICE COMMISSIONER
OFFICE OF THE CITY POLICE COMMISSIONER, VAZHUTHACUAD,
THIRUVANANTHAPURAM-695 014
- 2 CIRCLE INSPECTOR OF POLICE,
MUSEUM POLICE STATION,
THIRUVANANTHAPURAM-695 014
- 3 RARITH R.R.
S/O. THE LATE RAVINDRAN ANIR,
RDR CONVENTION CENTRE, EDAPAZHANJI,
THYCAUD P.O., THIRUVANANTHAPURAM-695 014

R3 BY ADV. SRI.M.R.ANANDAKUTTAN
R3 BY ADV. SRI.MAHESH ANANDAKUTTAN
R1 & R2 SRI P.P.THAJUDHEEN, SR.GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
23.09.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

"CR"

JUDGMENT

The petitioner, his wife and son are residing in a residential building bearing number T.C.16/437(2), Elanjimoodu Lane, Edapazhanji, Thiruvananthapuram. The convention centre of the 3rd respondent, namely, RDR Convention Centre, Edapazhanji, is at a distance of only 2 meters from that residential building. The petitioner has filed this writ petition under Article 226 of the Constitution of India, seeking a writ of mandamus commanding respondents 1 and 2 to provide adequate police protection to the life, liberty and property of the petitioner and his family members, from the hands of the 3rd respondent and his men.

2. In the writ petition, it is alleged that, in the convention centre of the 3rd respondent wedding functions are being conducted in almost all days, with thousands of people. Hundreds of vehicles are being parked in the compound of the convention centre, very close to the residential building of the petitioner. The vacant land on the southern side of the convention centre is being used for the preparation of food, in open space. Since the workers employed for the preparation of food are making loud noise, day and night, the petitioner and his family members are unable to reside in that

residential building. For marriage functions, the 3rd respondent is invariably allowing panchavadyam, in open space, and also live musical performance in the convention centre, creating loud noise. Sound pollution from these activities is unbearable. The petitioner filed complaints before the Pollution Control Board and the Corporation of Thiruvananthapuram. The authorities have issued several directions to the 3rd respondent to abate the nuisance, but the 3rd respondent has not complied with any such directions. In the writ petition, it is alleged that, the 3rd respondent is compelling the petitioner and others to sell their property for a throw-away price. Alleging threat to the life and property, the petitioner submitted Ext.P2 representation dated 06.03.2020 before the 1st respondent City Police Commissioner.

3. On 29.07.2020, when this writ petition came up for admission, this Court admitted the matter on file. The learned Government Pleader sought time to get instructions from respondents 1 and 2. Notice was ordered to the 3rd respondent by speed post, returnable by 20.08.2020. This Court has ordered that, until 20.08.2020, the 2nd respondent will ensure that the lives of the petitioner and his family members are adequately and effectively protected from any action on the part of the 3rd

respondent or his men. The said interim order was extended till this date, by the order dated 20.08.2020.

4. Heard the learned counsel for the petitioner, the learned Senior Government Pleader for respondents 1 and 2 and also the learned counsel for the 3rd respondent.

5. The Kerala Police Act, 2011 is enacted to consolidate and amend the law relating to the establishment, regulation, powers and duties of the Police Force in the State of Kerala and for matters connected therewith and incidental thereto. Chapter II of the Act deals with duties and functions of Police. Section 3 of the Act deals with general duties of Police. As per Section 3, the Police, as a service functioning category among the people as part of the administrative system shall, subject to the Constitution of India and the laws enacted thereunder, strive in accordance with the law, to ensure that all persons enjoy the freedoms and rights available under the law by ensuring peace and order, integrity of the nation, security of the State and protection of human rights. Section 4 of the Act deals with functions of Police. As per Section 4, the Police Officers shall, subject to the provisions of the Act, perform the functions enumerated in clauses (a) to (s) of Section 4. As per clause (a), the Police Officers shall enforce the law impartially; and

as per clause (b), the Police Officers shall protect the life, liberty, property, human rights and dignity of all persons in accordance with the law.

6. Lord Denning in 'The Due Process of law' [First Indian Reprint 1993, Page 102] has described the role of the Police thus;

"In safeguarding our freedoms, the police play vital role. Society for its defence needs a well-led, well-trained and well-disciplined force or police whom it can trust, and enough of them to be able to prevent crime before it happens, or if it does happen, to detect it and bring the accused to justice.

The police, of course, must act properly. They must obey the rules of right conduct. They must not extort confessions by threats or promises. They must not search a man's house without authority. They must not use more force than the occasion warrants."

7. In **Manohar Lal Sharma v. Principal Secretary [(2014) 2 SCC 532]** the Apex Court held that, one of the responsibilities of the police is protection of life, liberty and property of citizens. The investigation of offences is one of the important duties the police has to perform. The aim of investigation is ultimately to search for truth and bring the offender to the book. The Apex Court reiterated the said principle in **Ankush Maruti Shinde v. State of Maharashtra [(2019) 15 SCC 470]**.

8. During the course of arguments, the learned counsel for the 3rd respondent would submit that the said respondent has absolutely no intention to cause any threat to the life and property of the petitioner and his family members or to take law into his own hands. The learned counsel would submit further that, the 3rd respondent never compelled the petitioner to sell his property for a throw-away price.

9. The learned Senior Government Pleader would submit that, in case of any threat to the life, liberty and property of the petitioner and his family members, from the hands of the 3rd respondent or his men, the 2nd respondent shall render necessary police protection.

10. The learned counsel for the petitioner would submit that the 3rd respondent is invariably allowing 'panchavadyam' in open space, and also live musical performance in the convention centre, creating loud noise. Since sound pollution from these activities is unbearable, the petitioner filed complaints before the Pollution Control Board and the Corporation of Thiruvananthapuram. Though those authorities have issued several directions to the 3rd respondent to abate the nuisance, he has not complied with any such directions.

11. On the other hand, the learned counsel for the 3rd respondent would submit that the said respondent is conducting the convention centre at Edapazhanji after obtaining necessary consent/permission/licence from the statutory authorities and in strict compliance of the statutory requirements.

12. In **Forum, Prevention of Environmental and Sound Pollution v. Union of India [(2005) 5 SCC 733]** the Apex Court noticed that those who make noise often take shelter behind Article 19(1)(a) of the Constitution of India pleading freedom of speech and right to expression. Undoubtedly, the freedom of speech and right to expression are fundamental rights but the rights are not absolute. Nobody can claim a fundamental right to create noise by amplifying the sound of his speech with the help of loudspeakers. While one has a right to speech, others have a right to listen or decline to listen. Nobody can be compelled to listen and nobody can claim that he has a right to make his voice trespass into the ears or mind of others. Nobody can indulge in aural aggression. If anyone increases his volume of speech and that too with the assistance of artificial devices so as to compulsorily expose unwilling persons to hear a noise raised to unpleasant or obnoxious levels, then the person speaking is violating the right of

others to a peaceful, comfortable and pollution-free life guaranteed by Article 21 of the Constitution of India. Article 19(1)(a) cannot be pressed into service for defeating the fundamental right guaranteed by Article 21.

13. In **Forum, Prevention of Environmental and Sound Pollution** the Apex Court, in the context of noise pollution in public place vis-a-vis right to life enshrined in Article 21 of the Constitution of India, observed that Indian judicial opinion has been uniform in recognising the right to live in freedom from noise pollution as a fundamental right protected by Article 21 of the Constitution, and noise pollution beyond permissible limits as an inroad into that right. People indulge in making noise beyond tolerable limits and create a health hazard unmindful of consequences which are likely to befall not only others but also themselves who create noise. Not only the use of loudspeakers and playing of hi-fi amplifier systems has to be regulated, even the playing of high sound instruments like drums, tom-toms, trumpets, bugles and the like which create noise beyond tolerable limits need to be regulated. The law enforcing agencies must be equipped with necessary instruments and facilities out of which sound level meters conforming to the Bureau of Indian Standards (BIS) code

are a bare necessity.

14. The right to live in an atmosphere free from noise pollution is a fundamental right protected by Article 21 of the Constitution of India, and noise pollution beyond permissible limits is an inroad into that right. The fundamental right guaranteed to the 3rd respondent under Article 19(1)(g) to carry on any occupation, trade or business is not absolute. Any attempt by the 3rd respondent to create noise by amplifying the sound with the help of hi-fi amplifier systems and loudspeakers in his convention centre or even the playing of high sound instruments like drums, tom-toms, trumpets, bugles and the like which create noise beyond tolerable limits, thereby compulsorily exposing the petitioner and other unwilling persons to hear noise raised to unpleasant or obnoxious levels, will amount to violation of their right to a peaceful, comfortable and pollution-free life guaranteed by Article 21 of the Constitution of India.

15. Having considered the submissions made by the learned counsel on both sides, this writ petition is disposed of by directing the 2nd respondent to render adequate and effective police protection to the life, liberty and property of the petitioner and his family members, in case there is any threat from the side of the 3rd

respondent or his men. The 2nd respondent shall also take necessary steps to maintain law and order in that area. In case of noise pollution beyond permissible limits from the convention centre of the 3rd respondent at Edapazhanji, the petitioner shall move the 2nd respondent Station House Officer and also the concerned Environmental Engineer of the Kerala State Pollution Control Board for necessary action, in which event the 2nd respondent Station House Officer shall take necessary steps to protect the right of the petitioner and his family members to have a peaceful, comfortable and pollution-free life guaranteed by Article 21 of the Constitution of India, if found necessary, with the assistance of the concerned Environmental Engineer of the Kerala State Pollution Control Board.

No order as to costs.

sd/-

ANIL K.NARENDRAN

JUDGE

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1 **COPY OF LETTER DATED 17.2.2020 SENT BY
THE 3RD RESPONDENT TO THE PETITIONER**

EXHIBIT P2 **COPY OF COMPLAINT DATED 6.3.20 SENT TO
THE RESPONDENTS 1 AND 2 BY THE
COMPLAINANT**