

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR.JUSTICE BECHU KURIAN THOMAS
THURSDAY, THE 30TH DAY OF APRIL, 2020/10TH VAISAKHA, 1942
W.P(C) TMP NO.225 OF 2020**

PETITIONER:

SHELBIN JOHN MATHEW, AGED 40 YEARS,
S/O.K.J.MATHEW, KODIYATTIL HOUSE,
KEEZHILLAM KARA, RAYAMANGALAM VILLAGE,
KUNNATHUNADU TALUK, ERNAKULAM DISTRICT.

BY. ADV. NIREESH MATHEW

RESPONDENTS:

- 1 . THE EXCISE COMMISSIONER,
COMMISSIONERATE OF EXCISE,
THIRUVANANTHAPURAM-695 033.
- 2 . THE DEPUTY COMMISSIONER OF EXCISE,
ERNAKULAM-682018
- 3 . THE CIRCLE INSPECTOR OF EXCISE,
MUVATTUPUZHA, PIN-686661
ERNAKULAM DISTRICT.
- 4 THE EXCISE INSPECTOR,
MUVATTUPUZHA, PIN-686661,
ERNAKULAM DISTRICT.
- 5 STATE OF KERALA REPRESENTED BY SECRETARY,
TAXES (A) DEPARTMENT, GOVT. SECRETARIAT,
THIRUVANANTHAPURAM, PIN-695 001.
6. THE DISTRICT COLLECTOR, COLLECTORATE P.O,
KAKKANAD, ERNAKULAM, PIN-682 030.

R1-R6 BY GOVERNMENT PLEADER SRI. T.S. SYAM PRASANTH

THIS WRIT PETITION HAVING COME UP FOR ADMISSION ON 30.04.2020, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

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Dated this the 30th day of April, 2020

It is submitted by the learned counsel for the petitioner that Ext.P9 order rejecting the auction in his favour of toddy shops in group No. XI of Muvattupuzha Excise Range, Ernakulam Division has been issued by the Excise Commissioner without hearing him. According to the counsel for the petitioner decision in **Anil Kumar C.B. v. State of Kerala** [2013 (3) KLT 358] stands in his favour.

2. The learned Government Pleader opposes the relief claimed by the petitioner and submits that the decision in 2010 (2) KLT 190 is the decision that holds the field and in fact the same is referred to by the Excise Commissioner in Ext.P9.

3. Having given my consideration for the purpose of grant of interim relief, I find that after obtaining sale of toddy shop in an open auction, in favour of the petitioner, the Excise

Commissioner refused to confirm the auction by Ext.P9 order and instead rejected it. Prima facie, I feel the Excise Commissioner ought to have heard the petitioner before issuing Ext. P9 order. This principle of natural justice can be read into Rule 5(15) of Abkari Shops Disposal Rules. Prima facie I find that Ext.P9 is liable to be stayed and I stay Ext.P9 for four weeks. Consequently no resale of the toddy shops shall be carried out till a decision is taken in the writ petition. The stay shall continue for four weeks.

Post on 29.05.2020.

**BECHU KURIAN THOMAS
JUDGE**

APPENDIX

PETITIONERS' EXHIBITS

- EXT.P1: PHOTOCOPY OF THE ORDER NO.XA2-9438/2014 DATED 24.4.2014 PASSED BY THE 1ST RESPONDENT.
- EXT.P2: PHOTOCOPY OF THE CHEMICAL ANALYSIS CERTIFICATE DATED 14.3.2014 ISSUED BY THE ASST.CHEMICAL EXAMINER TO GOVT. OF KERALA, ERNAKULAM.
- EXT.P3: PHOTOCOPY OF THE CRIME AND OCCURRENCE REPORT IN C.R.NO.15/2014 OF MUVATTUPUZHA EXCISE RANGE.
- EXT.P4: PHOTOCOPY OF THE CHEMICAL ANALYSIS CERTIFICATE DATED 23.5.2014 ISSUED BY THE ASST.CHEMICAL EXAMINER TO GOVT. OF KERALA, KOZHIKODE.
- EXT.P5: PHOTOCOPY OF THE INTERIM ORDER DATED 10.06.2014 IN WP(C)NO.14535/2014 PASSED BY THIS HON'BLE COURT.
- EXT.P6: PHOTOCOPY OF THE ORDER DATED 02.07.2014 PASSED BY THE 1ST RESPONDENT.
- EXT.P7: PHOTOCOPY OF THE STATEMENT DATED 19.02.2018 FILED BY THE 4TH RESPONDENT IN CRL.MC.NO.1010/2018 BEFORE THIS HON'BLE COURT.
- EXT.P8: PHOTOCOPY OF THE CERTIFICATE OF PREFERENCE ISSUED BY THE 3RD RESPONDENT.
- EXT.P9: PHOTOCOPY OF THE ORDER DATED 22.04.2020 PASSED BY THE 1ST RESPONDENT.