
(2002) 03 KL CK 0022
In the High Court Of Kerala
Case No : O.P. No. 2608 of 2002

Joseph Thomas

APPELLANT

Vs

Changanacherry Municipality

RESPONDENT

Date of Decision : 20-03-2002

Acts Referred:

Kerala Municipalities Act, 1960 — Section 271, 272, 272(1)

Citation : (2002) 3 ILR (Ker) 236

Hon'ble Judges : Kurian Joseph, J

Bench : Single Bench

Advocate : J. Om Prakash, for the Appellant; Siby Mathew, A.A. Mohammed Nazir, Philip J. Vettickattu and George Johnson, for the Respondent

Judgement

Kurian Joseph, J.—Does it require permission from the Municipality for exhibiting or erecting an advertisement even in a private place, is the question involved in the Original Petition. Petitioner is the owner of a building complex within the first respondent Municipality. The second respondent is a tenant of one of the rooms. The second respondent put up an advertisement board of his shop in front of the building. True this is without the consent of the petitioner landlord. But the issue raised is that the advertisement board cannot be put up without obtaining permission from the first respondent Municipality. Petitioner represented the unauthorised installation of the Board before the Secretary of the first respondent Municipality, as per Ext. P4. By Ext. P5 the Secretary informed the petitioner that it is a matter of dispute between the petitioner and the tenant and hence the Municipality cannot interfere in the matter. The said communication Ext. P5 is under challenge in the Original Petition.

2. It is the contention of the Municipality as well as the second respondent that no permission as such is necessary for the Municipality for erecting an advertisement board in a private place. The Municipality contends that only if the Board is put up in a public place, it requires permission. Reliance is placed on the proviso to Section 271 of the Kerala Municipality Act, 1994. The said section to

the extent it is relevant is extracted below:

"271. Tax on advertisements.- Every person who erects, exhibits, fixes or retains upon or over any land, building, wall, hoarding or structure in a Municipal area any advertisement or who displays any advertisement to public view in any manner whatsoever in any place in such area, whether public or private, shall pay on every such advertisement a tax calculated at such rates and in such manner and subject to such exemptions as the Council with the approval of the Government, by resolution determine:

xxx xxx xxx xxx Provided also that no such tax shall be levied on any advertisement which is not a sky sign and which-

(a) is exhibited within the window of any building which is not a public place: or

(b) relates to the trade or business carried on within the land or building upon or over which such advertisement is exhibited, or to any sale or letting of such land or building or any effects therein or to any sale, entertainment or meeting to be held upon or in the same; or

(c) relates to the name of the land or building upon or over which the advertisement is exhibited, or to the name of the owner or occupier of such land or building; or

(d) relates to the business of any railway administration; or

(e) is exhibited within any railway station or upon any wall or other property of a railway administration except any portion of the surface of such wall or property fronting any street".

It is to be noted that Section 271 relates only to tax on advertisement. The issue of permission as such is dealt with u/s 272(1), which reads as follows:-

"272. Prohibition of advertisement without written permission of the Secretary.-

(1) No advertisement shall, after the levy of the tax u/s 271 has been determined upon the Council, be erected, exhibited, fixed or retained upon or over any land, building, wall, hoarding or structure within the municipal area or shall be displayed in any manner whatsoever in any place in that area without the written permission of the Secretary."

A reading of Section 272 (1) would clearly indicate that once it is resolved by the Municipality to levy tax on advertisement, irrespective of the fact that whether tax is leviable or not, no advertisement shall be erected, exhibited, fixed or retained over any land, building, wall, hoarding or structure within the municipal area or no advertisement shall be displayed within the municipal area without the written permission of the Secretary. The only exemption u/s 272 is in respect of the advertisement by the railway administration on the premises of the railways in matters relating to the business of the railways.

3. The legislative intent is made clear on a reading of Section 275, which reads

as follows:-

"275, Removal of unauthorised advertisement.-

(1) Where any advertisement is erected, fixed or retained contrary to the provisions of Section 271 or Section 272 or after the written permission for the erection, exhibition, fixation or retention thereof for any period shall have expired or becomes void, the Secretary may, by notice in writing require the owner or occupier of the land, building, wall, hoarding or structure upon or over which the same is erected, exhibited, fixed or retained to take down or remove such advertisement or may enter any building, land or properly and have the advertisement removed.

(2) Any person exhibiting or responsible for exhibiting any advertisement otherwise than in accordance with the provisions of this Act shall be liable, in addition to the penalty prescribed in the Fourth Schedule and the Fifth Schedule to pay the Municipality the charges of the removal of the unauthorised advertisement".

(Emphasis supplied).

Thus it can be seen that both Sections 271 and 272 operate in distinctive spheres. While Section 272 provides for written permission for an advertisement within the Municipal area, what Section 271 provides is liability to pay tax. True there are certain examples from payment of tax on advertisements including the exemption on advertisements in private places. Therefore, irrespective of the liability to pay tax, written permission of the Secretary of the Municipality is mandatory for displaying an advertisement or erecting advertisement board, whether it is in public place or not. Such a provision cannot also be said to be unreasonable, since consideration of public order, decency and morality require certain guidance in the matter, apart from the angle of planning as to the size, colour, graphics etc. of advertisements.

4. Learned counsel for the respondents relies on the rules introduced as per SRO No. 601/99. The very caption, it is submitted, is regarding advertisements in streets and public places. It is significant to note that those rules are issued under S. 565(1) read with Sections 369 and 375. Section 369 and Section 375 operate in an entirely different field. They read as follows:-

"369. Prohibition of structures or fixtures which cause obstruction in public streets. No person shall except with the written permission of a Municipality erect or set up within a municipal area any wall, fence, rail, post, step, both or other structures or fixtures in or upon any public street or upon or over any open channel, well or tank in any street so as to form an obstruction, or an encroachment upon or a projection over, or to occupy any portion of such street, channel, drain, well or tank."

"375. Prohibition of making holes and causing obstruction.-

(1) No person shall make a hole or cause any obstruction in any street, unless he previously obtains the permission of the Secretary and complies with such conditions as he may impose.

(2) Where such permission is granted, such person shall, at his own expense, cause such whole or obstruction to be sufficiently fenced and enclosed until the whole or obstruction is filled up or removed and shall cause such hole or obstruction to be sufficiently lighted during the night."

Therefore, those rules cannot have any application in the instant case. Even without any rule made u/s 271 or Section 272, the legislative intent is manifest in Section 272. Written permission of the Secretary of the Municipality is mandatory for placing an advertisement board or displaying an advertisement irrespective of the fact that the advertisement is in a public place or a private place.

5. In the above circumstances I set aside Ext. P5 and direct the first respondent to reconsider Ext. P4 with notice to the petitioner and the second respondent and if it is found that there is no permission by the second respondent for installing the advertisement board referred to in the petition, prompt action shall be taken u/s 275 for removal of the unauthorised advertisement and other steps contemplated therein. This shall be done within a period of one month.

The Original Petition is disposed of as above.

Petitioner will produce a copy of this judgment along with a copy of the Original Petition before the first respondent.