

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

TUESDAY, THE 7<sup>TH</sup> DAY OF MARCH 2023 / 16<sup>TH</sup> PHALGUNA, 1944

WA NO. 369 OF 2023

AGAINST THE JUDGMENT DATED 10.02.2023

IN W.P. (C) NO. 4542/2023

APPELLANT/PETITIONER:

HARRIS T.K., AGED 42 YEARS,  
S/O. AN GILLATH ABOOBACKER. T.K. HOUSE,  
CHANDERA, POST MANIYEKAT, TRIKARIPUR VIA,  
KODAKKAD, KASARAGAOD DISTRICT, PIN - 671310.

BY ADVS.  
THAYYIB SHA P.S.  
NABIL KHADER

RESPONDENTS/RESPONDENTS:

- 1 GREATER COCHIN DEVELOPMENT AUTHORITY,  
REPRESENTED BY THE SECRETARY, KADAVANTHRA P.O.,  
ERNAKULAM, PIN - 682020.
- 2 ACCOUNTS OFFICER (REVENUE),  
GREATER COCHIN DEVELOPMENT AUTHORITY,  
KADAVANTHRA P.O., ERNAKULAM, PIN - 682020.

BY ADVS.  
VIPIN P VARGHESE  
ADARSH MATHEW (KAR/2577/2015)  
CELINE JOHN (K/209/2022)  
MERLINE MATHEW (K/001279/2022)

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 07.03.2023,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**A.MUHAMED MUSTAQUE & SHOBA ANNAMMA EAPEN, JJ.**

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**Writ Appeal No.369 of 2023**

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**Dated this the 7<sup>th</sup> day of March, 2023**

**J U D G M E N T**

**A. Muhamed Mustaque, J**

A rank trespasser is now preaching solemnity. The appellant, an occupant of a room in GCDA, trespassed into the common area and erected vertical garden, placed boards, stored/kept cooler, fridge, gas cylinder, water bottles, shawarmatandoor (equipment), grill caps, steel with glass racks, chairs, tables, benches, etc. He has no case that this place has been even let out to him nor that he has been permitted to use it. Even according to him, this common area is earmarked for use by every other occupants. But he still persisted with the arguments that he shall not be

removed except by the procedure established by law, as contemplated by the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The learned Single Judge dismissed the writ petition. This is how he approached this Court.

2. At the outset, we have cautioned the learned counsel that he is arguing as against established principles of law and that we may have to impose costs if he persists with such arguments. Perhaps it is because of his misunderstanding of law that the learned counsel went on with his arguments and placed certain precedents which have no bearing in this matter.

3. The Public Premises (Eviction of Unauthorised Occupants) Act, is an enactment for eviction of unauthorised occupants of public premises. This postulates that the occupant but for termination, is deemed to have a relationship of that between the public authority and the occupant. For example, if he is an occupant of a

room in GCDA by way of lease or licence, if his jural relationship comes to an end by invoking the provisions of the contract or the provisions of law, he can only be evicted by invoking the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Here petitioner is a rank trespasser who trespassed into a common area. He has no resemblance of possession or interest either as lessee or licensee. He continues to use common areas and is bent on to seek assistance of law to protect his illegal use of public premises. The learned counsel placed reliance on the following judgments to argue that the appellant shall not be evicted otherwise than by due process of law:

- i. **Manjunath K. v. Bangalore Development Authority [2019 KHC 5274] &**
- ii. **Kumar S. v. Commissioner of Others [2019 KHC 6409].**

4. The judgments he cited only relates to cases where on a given time, occupant had

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semblance of any other jural relationship with the State or authority to whom the building belongs and cannot be evicted without procedure established by law. The rank trespasser has no recognition under law as far as illegal occupation and the court cannot clothe him with some sort of protection to accord solemnity of illegal use. Accordingly, we dismiss the appeal with cost of Rs.15,000/- (Rupees fifteen thousand only). The cost shall be paid to GCDA within one month from today.

Sd/-

**A.MUHAMED MUSTAQUE, JUDGE**

Sd/-

**SHOBA ANNAMMA EAPEN, JUDGE**

