

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE N. NAGARESH

FRIDAY, THE 22ND DAY OF JULY 2022 / 31ST ASHADHA, 1944

WP(C) NO. 17923 OF 2022

PETITIONERS

- 1 KIZHAKKAMBALAM PACHAKKARI KARSHAKA SANGHAM,
REPRESENTED BY ITS PRESIDENT ROOM NO. 12/586,
PANCHAYATH SHOPPING COMPLEX, REPRESENTED BY
K.V.HAMZA, REG.NO. EKM/TC/991/2014,
KIZHAKKAMBALAM - 683562.
- 2 P.V PAULOSE,
S/O VARGHESE ROOM NO. 12/600,
PANCHAYATH SHOPPING COMPLEX,
RESIDING AT PUTHIYAMADAM HOUSE,
KIZHAKKAMBALAM - 683562.
- 3 GEORGE M CHACKO,
S/O CHACKO UTHUP, ROOM NO. 12/613,
PANCHAYATH SHOPPING COMPLEX KIZHAKKAMBALAM.
RESIDING AT NEETTUKARA VEEDU,
POYYAKUNNAM, KIZHAKKAMBALAM - 683562.
- 4 K.J VARGHESE,
S/O JOSEPH ROOM NO. 12/614, PANCHAYATH SHOPPING
COMPLEX KIZHAKKAMBALAM, RESIDING AT KOYIKKARA
VEEDU, POYYAKUNNAM KIZHAKKAMBALAM - 683562.

BY ADVS.

JOBY JACOB PULICKEKUDY

ANIL GEORGE

DAJISH JOHN

HARIKRISHNAN P.

POOJA SEBASTIAN

RESPONDENTS

- 1 STATE OF KERALA
REPRESENTED BY ITS SECRETARY FOR LOCAL SELF
GOVERNMENT DEPARTMENT SECRETARIAT,
THIRUVANANTHAPURAM- 695001

- 2 THE PANCHAYATH DEPUTY DIRECTOR
OFFICE OF THE DEPUTY DIRECTOR OF PANCHAYATH.
ERNAKULAM, 1ST FLOOR, CIVIL STATION,
KAKKANAD PIN-682030
- 3 THE DISTRICT COLLECTOR,
ERNAKULAM DISTRICT,
CIVIL STATION, KAKKANAD - 682030
- 4 KIZHAKKAMBALAM GRAMA PANCHAYATH,
KIZHAKKAMBALAM (P.O),
REPRESENTED BY ITS SECRETARY,
ERNAKULAM-683562
- 5 THE ESTATE OFFICER (THE SECRETARY),
KIZHAKKAMBALAM GRAMA PANCHAYATH,
KIZHAKKAMBALAM (P.O), ERNAKULAM-683562.

BY ADV ABRAHAM P.MEACHINKARA -SC FOR R4 AND R5
SMT.SURYA BINOY SR.GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 22.07.2022, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

CR

N. NAGARESH, J.

.....
W.P.(C) No.17923 of 2022
.....

Dated this the 22nd day of July, 2022

J U D G M E N T

~ ~ ~ ~ ~ ~ ~ ~ ~

The 1st petitioner is a Karshaka Sangham and petitioners 2 to 4 are conducting business in the Shopping Complex of the 4th respondent-Grama Panchayat. The petitioners are aggrieved by the move to evict the petitioners from the Shopping Complex.

2. The petitioners state that the 4th respondent-Grama Panchayat owns a Shopping Complex consisting of three buildings. Petitioners 2 to 4 are occupying different

shop rooms in the Shopping Complex and are paying rent promptly. The Panchayat authorities issued notice disclosing their decision not to renew lease agreements. The petitioners were also issued with notices. The petitioners submitted their objection.

3. The petitioners state that the Panchayat issued Ext.P7 order dated 28.12.2021 requiring to vacate shop premises. The petitioners were not heard before issuance of Ext.P7. The petitioners hence filed W.P.(C) No.6567 of 2022. This Court, as per Ext.P8 judgment, directed the petitioners to file appeal before the District Collector. The petitioners state that the District Collector suggested to provide a suitable place to the petitioners, till a new Shopping Complex is constructed.

4. The 5th respondent-Secretary, however, issued Ext.P9 notice dated 19.04.2021 informing that a building of a private party is available for rent. The 3rd respondent- District Collector rejected the appeal on 19.05.2022, as per Ext.P11. The petitioners have filed Ext.P13 application to the District

Collector seeking review of Ext.P11 order. However, in the meanwhile, the 5th respondent has issued Ext.P12 eviction notice on 24.05.2022.

5. The counsel for the petitioners argued that the 3rd respondent has not considered the merits of the case while passing Ext.P11 order. Ext.P7 order has been passed without giving any opportunity of hearing to the petitioners. Ext.P7 is passed without jurisdiction. The 5th respondent is not competent to exercise the powers of the Estate Officer.

6. The respondents have not considered the objections raised by the petitioners. There is no decision of the Panchayat to demolish the Shopping Complex building. Eviction is only a ruse to increase rent, contended the counsel for the petitioners.

7. Respondents 4 and 5 opposed the writ petition. On 31.01.2017, the Panchayat Committee took a decision to demolish the dilapidated Shopping Complex building. The Panchayat allocated funds for the purpose. Some of the tenants refused to vacate the premises and the funds got

lapsed. Section 4 notices under the Kerala Public Buildings (Eviction of Unauthorised Occupants) Act, 1968 were issued to the petitioners on 16.12.2021. The petitioners submitted their objection and insisted for alternate accommodation.

8. The objections of the petitioners were found unsustainable and hence order dated 28.12.2021 was passed directing the petitioners to vacate the building. On 19.01.2022, the Director of Panchayats has accorded sanction for demolition of the structure. The Panchayat has already auctioned the right to demolish the building. However, the demolition could not be carried out even with police protection due to obstructions, contended the Standing Counsel for respondents 4 and 5.

9. I have heard the learned counsel for the petitioners, the learned Senior Government Pleader representing respondents 1 to 3 and the learned Standing Counsel for respondents 4 and 5.

10. Exts.P7 and P11 orders are impugned in the writ petition. The petitioners would urge that the petitioners were

not heard by respondents 4 and 5 before passing Ext.P7 order. Ext.P7 order would show that Section 4 notices were issued to the petitioners and the petitioners have filed their objections. The objection raised by the petitioners was that they should be given alternate accommodation by the Panchayat.

11. Section 5 of the Kerala Public Buildings (Eviction of Unauthorised Occupants) Act empowers Estate Officers to evict unauthorised occupants of public buildings, after affording a reasonable opportunity of hearing and for reasons to be recorded in writing.

12. As per Section 2(f) of the Act, "unauthorised occupation" in relation to any public building, means the occupation by any person of the building without authority for such occupation and includes the continuance in occupation by any person of the public building after the authority (whether by way of lease or any other mode of transfer) under which he was allowed to occupy the building has expired or has been determined for any reason whatsoever.

13. The lease agreements with the occupants of the Shopping Complex were not renewed by the Panchayat as the Panchayat had decided to demolish the building in order to construct a new building. The Estate Officer found that the petitioners are occupying shop rooms in the existing building unauthorisedly. The objection of the petitioners was considered. The objection was that the Panchayat has to give alternate accommodation to the petitioners.

14. Section 4 of the Act, 1968 provides that if the Estate Officer is of opinion that any persons are in unauthorised occupation of any public building and that they should be evicted, the Estate Officer shall issue notice in the prescribed manner in writing calling upon all persons concerned to show-cause why an order of eviction should not be made. The Scheme of the Act, 1968 does not contemplate grant of alternate accommodation to unauthorised occupants in a public building before evicting them.

15. The Estate Officer considered the said objection and passed Ext.P7 order invoking Section 5. The objection raised by the petitioners was considered in Ext.P7 and the Estate Officer found that the demand of the petitioners is unsustainable. Ext.P7 is a speaking order. This Court do not find any illegality in Ext.P7- Section 5 order.

16. The learned counsel for the petitioners relied on the judgment in ***Gorkha Security Services v. Government (NCT of Delhi) and others [(2014) 9 SCC 105]*** and contended that there should be a fair opportunity of hearing and the show-cause notice should disclose the material grounds and action purported to be taken. This Court finds that Ext.P4 notice issued to the petitioners under Section 4 has fairly disclosed the grounds on which the notice is issued.

17. The reliance placed by the learned counsel for the petitioners on the judgments of the Hon'ble Apex Court in ***Wire-Netting Stores and another v. Delhi Development Authority and others [(1969) 3 SCC 415]*** and ***Government***

of Mysore and others v. J. V. Bhat and others [(1975) 1 SCC 110] is also unfounded as the petitioners were given notice with sufficient clarity and the petitioners have filed their objection which was duly considered by the Estate Officer.

18. The petitioners filed Ext.P16 appeal before the District Collector invoking Section 10(1) of the Act. In Ext.P16 appeal, the petitioners contended that the petitioners were not given reasonable opportunity of hearing; that the 5th respondent is not an Estate Officer and that the Estate Officer has not considered the issue independently.

19. The appellate authority considered the grounds urged by the petitioners and passed Ext.P11 order. The Appellate Authority found that the petitioners were given notice and opportunity of hearing before passing Ext.P7 order. The Appellate Authority noted that the petitioners are occupying the shopping complex unauthorisedly and the occupation was in spite of the fact that the petitioners had agreed to vacate the building at the time of its reconstruction.

20. The Secretary of the Panchayat is empowered to act as Estate Officer. The Estate Officer has acted in accordance with the provisions of the Act, 1968. The Appellate Authority has considered all aspects of the case and has passed a detailed speaking order.

21. The Panchayat authorities intend to construct a new building and the Director of Panchayats has accorded sanction to demolish the existing building constructed in the year 1972, for that purpose. About 43 licensees / tenants of the building have vacated their shop rooms to facilitate construction. Only four occupants have refused to vacate. There is a threat of allocated funds for construction getting lapsed.

For all the aforementioned reasons, this Court finds that the writ petition is devoid of any merit. The writ petition is hence dismissed.

Sd/-

N. NAGARESH, JUDGE

aks/22.07.2022

APPENDIX OF WP (C) 17923/2022

PETITIONER'S EXHIBITS

Exhibit P1 TRUE PHOTOCOPY OF RENT RECEIPTS DATED 06/02/2020

Exhibit P1(A) THE RENT RECEIPT IN RESPECT OF THE SECOND PETITIONER'S SHOP ROOM DATED 09/03/2020

Exhibit P1(b) THE RENT RECEIPT IN RESPECT OF THE THIRD PETITIONER'S SHOP ROOM DATED 31/03/2021

Exhibit P1(C) THE RENT RECEIPT IN RESPECT OF THE FOURTH PETITIONER'S SHOP ROOM DATED 09/03/2021

Exhibit P2 THE TRUE PHOTO COPY OF RESOLUTION DATED 31/12/17 OF THE FIRST RESPONDENT GRAMAPANCHAYATH

Exhibit P3 THE TRUE PHOTOCOPY OF NOTICE DATED 16/12/21 ISSUED TO THE FIRST PETITIONER

Exhibit P3(A) NOTICES RECEIVED BY PETITIONERS

Exhibit P3(B) NOTICES RECEIVED BY PETITIONERS

Exhibit P4 THE TRUE PHOTOCOPY OF NOTICE DATED 6/12/2021 ISSUED BY THE 1ST RESPONDENT TO THE 3RD PETITIONER

Exhibit P4(A) THE TRUE PHOTOCOPY OF RESOLUTION DATED 26/11/2021 ISSUED BY THE 1ST RESPONDENT

Exhibit P5 THE TRUE PHOTOCOPY OF REPRESENTATION DATED 14/12/2021 SUBMITTED BY THE PETITIONERS TO THE 2ND RESPONDENT

Exhibit P6 HE TRUE PHOTO COPY OF LETTER DATED 22/11/2021 ISSUED BY THE 4TH RESPONDENT TO THE SECOND RESPONDENT

Exhibit P6(A) THE TRUE PHOTO COPY OF REPORT OF THE PERFORMANCE OF AUDIT SUPERVISOR TO THE 4TH RESPONDENT DATED 15/11/2021

Exhibit P7 TRUE PHOTOCOPY OF THE EVICTION ORDER DATED 28/12/21 IS ISSUED BY THE SECOND RESPONDENT

Exhibit P8 THE TRUE PHOTOCOPY OF JUDGMENT DATED
10.03.2022 IN WPC NO. 6567 OF 2022

Exhibit P9 THE TRUE PHOTOCOPY OF LETTER DATED
19.4.2021

Exhibit P10 THE TRUE PHOTOCOPY OF THE LETTERS
ISSUED BY SRI. K.P GOVINDHAN NAIR
DATED 25.05.2022

Exhibit P10 (A) THE TRUE PHOTOCOPY OF THE LETTERS
ISSUED BY SRI. K.P.VIJAYAKUMAR DATED
25.05.2022

Exhibit P11 THE TRUE PHOTOCOPY OF ORDER DATED
19.05.2022 ISSUED TO THE 1ST
RESPONDENT

Exhibit P12 NOTICE DATED 24.05.2022 ISSUED BY THE
5TH RESPONDENT

Exhibit P13 THE TRUE PHOTOCOPY OF PETITION DATED
26/05/2022 SUBMITTED BY THE 1ST
PETITIONER BEFORE THE 3RD RESPONDENT

RESPONDENT'S EXHIBITS

Exhibit R4(B) TRUE COPY OF THE ORDER NUMBER C4-
4387/2021 (7) DATED 28/12/2021 OF THE
5TH RESPONDENT WITH REGARD TO THE 2ND
PETITIONER

Exhibit R4(A) TRUE COPY OF THE DECISION NO. 25 OF
KIZHAKKAMBALAM GRAMA PANCHAYATH DATED
31/01/2017

Exhibit R4(C) TRUE COPY OF THE ORDER NUMBER C4-
4387/2021 (7) DATED 28/12/2021 OF THE
5TH RESPONDENT WITH REGARD TO THE 3RD
PETITIONER

Exhibit R4(D) TRUE COPY OF THE ORDER NUMBER C4-
4387/2021 (7) DATED 28/12/2021 OF THE
5TH RESPONDENT WITH REGARD TO THE 4TH
PETITIONER

Exhibit R4(E) TRUE COPY OF THE ORDER NUMBER C4-
4387/2021 (7) DATED 28/12/2021 OF THE
5TH RESPONDENT WITH REGARD TO THE 1ST
PETITIONER

- Exhibit R4(F) TRUE COPY OF THE ORDER ISSUED BY THE DIRECTOR OF PANCHAYATH, NO. C8-16108/2021 DATED 19/01/2022
- Exhibit R4(G) TRUE COPY OF THE DECISION OF THE KIZHAKKAMABALAM GRAMA PANCHAYATH DATED 25/01/2022
- Exhibit R4(H) TRUE COPY OF THE REQUEST FOR POLICE PROTECTION BY THE 4TH RESPONDENT TO THE CIRCLE INSPECTOR OF POLICE, KUNNATHUNADU POLICE STATION, PATTIMATTOM, ERNAKULAM DATED 04/02/2022
- Exhibit R4(I) TRUE COPY OF THE COMPLAINT FOR POLICE PROTECTION SUBMITTED BY THE 4TH RESPONDENT TO THE CIRCLE INSPECTOR OF POLICE, KUNNATHUNADU POLICE STATION, PATTIMATTOM, ERNAKULAM DATED 09/02/2022
- Exhibit R4(J) TRUE COPY OF THE LETTER ISSUED BY K.P. GOPINATHAN NAIR DATED 27/03/2022
- Exhibit R4(K) TRUE COPY OF THE JUDGMENT DATED 30/09/2022 IN W.P(C) 19577/2020

PETITIONER'S EXHIBITS

- Exhibit P14 THE TRUE PHOTOCOPY OF THE APPLICATION SUBMITTED UNDER THE RIGHT TO INFORMATION ACT DATED 27/04/2022.
- Exhibit P15 THE TRUE PHOTOCOPY OF REPLY DATED 16/05/2022 ISSUED BY THE PANCHAYATH.
- Exhibit P16 THE APPEAL FILED BY THE 1ST PETITIONER BEFORE THE DISTRICT COLLECTOR.
- Exhibit P16(A) THE APPEAL PREFERRED BY THE 2ND PETITIONER BEFORE THE DISTRICT COLLECTOR.
- Exhibit P16(B) THE APPEAL PREFERRED BY THE 3RD PETITIONER BEFORE THE DISTRICT COLLECTOR.
- Exhibit P16(C) THE APPEAL PREFERRED BY THE 4TH PETITIONER BEFORE THE DISTRICT COLLECTOR.