

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 6TH DAY OF APRIL 2015/16TH CHAITHRA, 1937

OP(C).No. 964 of 2015 (O)

(O.S.370/2015 OF MUNSIFF'S COURT, ERNAKULAM)

PETITIONER:

BEJOY K.S. AGED 42 YEARS
S/O.LATE SURENDRAN, KOLAPPILLIL HOUSE, VENNALA DESOM
EDAPPALLY SOUTH VILLAGE,
NOW RESIDING AT KOLAPPILLIL HOUSE, ELAMAKKARA
ELAMAKKARA P.O.

BY ADV. SRI.K.P.ARAVINDAKSHAN

RESPONDENTS:

1. DISTRICT COLLECTOR, COLLECTORATE,
KAKKANAD, ERNAKULAM - 682 032.
2. SPECIAL TAHSILDAR (LA NO.1) METRO RAIL PROJECT,
ERNAKULAM, CIVIL STATION, KAKKANAD,
KAKKANAD P.O - 682 032.

BY SPL. GOVERNMENT PLEADER SRI.TOM K THOMAS.

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
06-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS :

- EXT.P1: REPRESENTATION DATED 17.11.2014 SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT NO.1 THROUGH THE 2ND RESPONDENT.
- EXT.P2: NOTICE DATED 08.1.2015 BY THE 2ND RESPONDENT ADDRESSED TO THE PETITIONER CALLING UPON HIM TO APPEAR FOR A PERSONAL HEARING.
- EXT.P3: REPRESENTATION DATED 07.3.2015 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT REGARDING PAYMENT OF COMPENSATION TO HIM TAKING OVER THE SHOP ROOM IN WHICH HE IS RUNNING A SMALL SCALE INDUSTRIAL UNIT.
- EXT.P4: COPY OF INTERLOCUTORY APPLICATION NO.2460/2015 FILED BY THE PETITIONER IN O.S. 370/2015 OF THE MUNSIFFS COURT ERNAKULAM FOR APPOINTMENT OF ADVOCATE COMMISSIONER FOR LOCAL INSPECTION.
- EXT.P5: COPY OF OBJECTION FILED BY GOVERNMENT PLEADER IN IA.NO. 2460/2015 IN O.S.NO.370/2015 OF MUNSIFF COURT ERNAKULAM.
- EXT.P6: CERTIFIED COPY OF THE IMPUGNED ORDER DATED 20.3.2015 IN I.A.NO.2460/2015 IN O.S. 370/2015 OF THE MUNSIFFS COURT, ERNAKULAM.

RESPONDENT'S EXHIBITS: NIL.

// True Copy //

P.A. To Judge.

smp

P.BHAVADASAN, J.

Original Petition (Civil) No.964 OF 2015

Dated this the 6th day of April, 2015.

J U D G M E N T

The petitioner instituted a suit as O.S.No.370/2015 for permanent prohibitory injunction restraining the defendant and his men from removing the roof of the plaintiff's property without giving notice and also to restrain them from removing the articles belonging to the plaintiff along with removal of building materials.

2. The case of the petitioner was that he was a tenant of the premises and his valuables are lying in the building which was demolished and that he is entitled for compensation as per the Land Acquisition Act. He filed Ext.P1 representation before the District Collector, Ernakulam stating that he is willing to vacate the premises. He received Ext.P2 notice asking him to produce necessary documents before the authority who issued Ext.P2 to show that he is entitled to compensation.

3. The grievance of the petitioner is that without prior notice to him and without informing him that he is entitled to compensation, his shop was pulled down and his machineries were kept exposed. It was in order to get an inventory of the materials in the place that he had sought for issuance of a commission.

4. The court below felt that this is an attempt to delay the acquisition proceedings. The court held that if the petitioner is aggrieved by the acquisition proceedings, it is for him to approach the authorities concerned. The court below finding that seeking of issuance of commission is baseless, dismissed the petition.

5. Learned counsel appearing for the petitioner contended that there was no harm in issuing a commission and there was no justification in the court below dismissing the application. It is also pointed out that the premises was pulled down without notice to the petitioner and the articles kept in the premises were exposed and that he wanted that inventory of the articles be taken by a Commissioner so that he can establish his claim before the authorities concerned. It is also claimed by the

petitioner that he has produced necessary documents before the authorities concerned to show that he was a tenant of the premises.

6. Learned Special Government Pleader appearing for the respondent pointed out that the entire proceedings were taken as a result of direction of this Court and this Court had issued a commission. It is also pointed out that if the petitioner is successful in showing that he was a tenant in the premises concerned, he is entitled to compensation and he will receive the same. Even in Ext.P3 produced by the petitioner, it is evident that compensation to the tenant has been determined and the petitioner was called upon to produce certain documents showing that he is entitled to compensation and without notice to him his shop was pulled down.

7. As to what transpired after Ext.P2 notice is not clear from the petition. The counter affidavit filed by the respondent before the court below shows that if the petitioner is able to establish his claim he will be entitled to compensation due as per law.

8. Even assuming that a commission is issued and certain aspects have been considered, that cannot help the petitioner since he is yet to establish that he was running the shop at the relevant time. He has claimed in the petition that he has produced several documents before the authorities concerned to show his tenancy right. If he has any grievance in the matter, the remedy available to him is not filing of a suit.

The court below is perfectly justified in its conclusion that this is an attempt made by the petitioner to delay the acquisition proceedings and that cannot be permitted. If the petitioner has any grievance against the authorities for non consideration of his claim on the basis of the documents produced, he has liberty to approach the authorities concerned in accordance with law.

With the above observation, this original petition is dismissed.

Sd/-

**P.BHAVADASAN
JUDGE**

smp