

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE

MONDAY, THE 2ND DAY OF FEBRUARY 2015/13TH MAGHA, 1936

WA.No. 196 of 2015 () IN WP(C).30345/2014

AGAINST THE ORDER/JUDGMENT IN WP(C) 30345/2014 of HIGH
COURT OF KERALA DATED 14-11-2014

APPELLANT(S)/PETITIONER:-

BALAKRISHNAN P.T.,
S/O.KUMARAN ACHARY, PALLOORTHODI HOUSE
P.O.KALPAKAMCHERY, THIRUR, MALAPPURAM - 676 551.

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENT(S)/RESPONDENTS:-:

1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT
LOCAL SELF GOVERNMENT DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM - 695 001.

2. THE DIRECTOR OF PANCHAYATHS,
PUBLIC OFFICE BUILDING, THIRUVANANTHAPURAM - 33.

3. DEPUTY DIRECTOR OF PANCHAYATHS,
MALAPPURAM - 676 505.

4. THE SECRETARY,
VALAVANNUR GRAMA PANCHAYATH, KALPANCHERY
MALAPPURAM - 676 551.

BY GOVERNMENT PLEADER SMT. GIRIJA GOPAL

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
02-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ASHOK BHUSHAN , Ag. CJ,
&
A.M.SHAFFIQUE, J.

.....
W.A. No. 196 of 2015
.....

Dated this the 2nd day of February, 2015

JUDGMENT

Shaffique, J.

Writ Petitioner is the appellant who challenges the judgment dated 14-11-2014 in W.P.C. No. 30345/2014. Petitioner being a physically handicapped person having 50% disability has participated in the auction for allotment of shop rooms in a shopping complex constructed by the Panchayath. Petitioner got allotment of Room No.7 and the rent was fixed at the rate of ₹6315/- per month. He had also executed necessary agreement with the Panchayath.

2. Petitioner relied upon a Circular dated 27-9-1996

issued by the Government as Ext. P5 and submits that despite the existence of such a Circular, no provision has been made for allotment of rooms for physically handicapped persons. It is interalia contended that one room in the shopping complex owned by the Local Self Government Department has to be allotted to the physically handicapped. That apart, reliance was placed on Sec. 43 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, (hereinafter mentioned as the Act, 1995) wherein it was indicated that a Scheme shall be framed by way of notification to provide space to persons with disabilities at concessional rates for setting up business and Local Self Government Authorities have to comply such aspects as well. Reference is also made to a judgment in National Federation of Blinds & Anr. v. State of U.P. & Others - 2002 (2) AWC 1234. The contention raised by the petitioner was that a Scheme has to be framed to allot to

the persons having disability at concessional rate and the same has to be notified by the concerned Local Authorities. On these allegations, the petitioner, sought for the following reliefs:-

- i) *to issue Writ of Certiorari against Ext. P6 as unjust, illegal, unsustainable and arbitrary.*
- ii) *to issue a writ of mandamus directing the 4th respondent to allocate one room to the petitioner in tune with Ext. P5 Circular and a further direction to the 2nd respondent to ensure that the 4th respondent acts in tune with Ext. P5 Circular and reduces the rent of the room allotted to the petitioner in a fair manner, as if there was no auction;*
- iii) *to issue a writ of mandamus directing the 2nd respondent to fix the rent for the room No. 7 allotted to the petitioner by the Panchayat at a concessional rate in the light of the monthly rent for the other rooms as evident from Exts. P3 and P4;*
- iv) *to issue a writ of mandamus directing the 2nd respondent to take necessary action for non-implementation of Ext.P5 by the 4th respondent.*

- v) *to direct the 4th respondent to refund the excess amount paid or adjust the same towards the future rent.*
- vi) *to direct the 2nd respondent to consider Ext.P8 representation submitted by the petitioner within a time frame to be fixed by this Hon'ble Court;*
- vii) *to issue such other orders, directions or writs as may be prayed for and that this Hon'ble Court may deem fit on the facts and circumstances of the case”.*

3. Learned Single Judge having considered the contentions on behalf of the petitioner dismissed the Writ Petition forming an opinion that the petitioner has voluntarily participated in the auction in the 'general category' and having agreed to comply with the terms and conditions thereof, it is not open for the petitioner to challenge the allotment based on Ext. P5 Circular.

4. Heard the learned counsel or the appellant and the learned Government Pleader.

5. The learned counsel for the appellant submits that

despite the existence of Ext. P5 Circular, no action has been taken by the Local Authorities to reserve any room in the shopping complex to disabled persons. That apart, reference is made to Section 43 of the Act aforesaid and the judgment produced as Ext. P10 to contend that the Government or the Local authorities is under obligation to fix concessional rate for the rooms to be allotted to the persons with physical disabilities.

6. Learned Government Pleader, based on the materials on record, submitted that as far as the present shopping complex is concerned, the materials available clearly indicate that three rooms have been set apart for the purpose of disabled persons. Reference is made to Ext. P4 which clearly indicates that Room Nos. 19, 21, 22 and 24 are lying vacant, which have been reserved for disabled persons as well as other weaker sections of the Society. In so far as the local authority has already reserved certain rooms for physically handicapped, it is clear that they

have complied with the directions in the Circular and appropriate provision has been made as mandated under Section 43 of the Act.

7. The learned counsel for the appellant, however, submits that he has submitted Ext. P8 representation to the Director of Panchayath. In that representation, petitioner has stated that the monthly rent was increased progressively from Rs. 6315/- to Rs. 6556/- and recently to Rs. 8210/-. He had also referred to the rent fixed for other rooms and according to him earlier the rent payable by him was only Rs. 900/- per month and, therefore, he has requested for refund of the excess rent paid by him and also to adjust the same towards future rent.

8. Apparently, the materials on record indicates that the petitioner has participated in the public auction with reference to the room which was reserved under 'general category'. Since he has participated in the auction under the general category, he is

bound to pay rent as per the auction amount. If there is any special circumstance by which the auction amount has to be reduced it is only for the lessor to decide which cannot be directed by this Court. No doubt, the petitioner can approach the concerned authorities for the said purpose. That does not mean that the petitioner has a legal right to seek for the relief sought for in the Writ petition.

9. We do not find any error in the judgment of the learned Single Judge warranting interference by this Court by invoking appellate jurisdiction.

Accordingly, this Writ Appeal is dismissed.

ASHOK BHUSHAN ,
Ag. CHIEF JUSTICE

A.M.SHAFFIQUE,
JUDGE

cri/