

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 24TH DAY OF FEBRUARY 2015/5TH PHALGUNA, 1936

WA.No. 412 of 2015 IN WP(C).3254/2014

AGAINST THE JUDGMENT IN WP(C) 3254/2014 DATED 17-12-2014

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APPELLANTS/WRIT PETITIONERS :

1. K.P.RAJENDRAN PILLAI, ANEESH BHAVANAM, THEKKEMALA P.O.,
KOZHENCHERRY, PATHANAMTHITTA.
2. VALSAMMA JOSEPH,
NADUVILETH, KURIYANNOOR P.O., PATHANAMTHITTA.
3. M.B.SOMAN,
MUNJANAADU VEEDU, KOZHENCHERRY P.O., PATHANAMTHITTA.
4. ANIL KUMAR T.G., THAZHATHETHIL, KURUMDAR, KUZHIKALA P.O.,
PATHANAMTHITTA.

BY ADVS.SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SRI.MANU SEBASTIAN
SMT.PARVATHY NAIR

RESPONDENTS/RESPONDENTS :

1. STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT
IN THE DEPARTMENT OF LOCAL SELF GOVERNMENT INSTITUTIONS
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
2. KOZHENCHERRY GRAMA PANCHAYATH,
KOZHENCHERRY, REPRESENTED BY ITS SECRETARY
KOZHENCHERRY GRAMA PANCHAYATH, KOZHENCHERRY P.O.
PATHANAMTHITTA DISTRICT - 689 641.
3. SECRETARY, KOZHENCHERRY GRAMA PANCHAYATH,
KOZHENCHERRY P.O., PATHANAMTHITTA DISTRICT - 689 641.

R1 BY SPL.GOVERNMENT PLEADER, SMT.GIRIJA GOPAL
R2 & R3 BY DR. K.P. SATHEESAN (SR)
ADV. SRI.ANOOP.V.NAIR

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 24-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

W.A. No. 412 OF 2015

Dated this the 24th day of February, 2015

JUDGMENT

Ashok Bhushan, Ag.C.J.

Heard learned counsel for the appellant.

2. This writ appeal has been filed against the judgment dated 17.12.2014 passed in W.P.(C) No.3254 of 2014 by which judgment the writ petition filed by the appellants has been dismissed. The writ petition was filed by the appellants praying for the following reliefs:

"i. Declare that Ext.P9 notice is void, inoperative and unconstitutional;

ii. Declare that Exts.P11 to P14 are void and inoperative, the same being illegal,unreasonable, arbitrary and unjust;

iii. Issue a writ in the nature of certiorari or any other appropriate writ, direction or order calling for the records leading to Exhibits P11 to P14 and quash the decision reflected in Exts.P11 to P14 to evict the petitioners under Kerala panchayat Raj (Removal of Encroachment and imposition and Recovery of Penalty for Unauthorised Occupation) Rules, 1996."

3. The petitioners were permitted to occupy a place belonging to the Panchayat and permitted to erect a temporary

shed to carry on business under Ext.P1 agreement. The said agreement was entered on 28.09.2006. According to the terms and conditions of the agreement, after shopping complex having been constructed, the petitioners were offered to take a shop room in the complex by the Panchayat, but they could not accept the offer and continued to carry on their business in the temporary shed. A request was made by the Panchayat to the petitioners to vacate the place, following which a notice dated 23.12.2013, Ext.P9, was issued to the petitioners directing them to vacate the premises. Subsequently, an order was passed by the Panchayat (Exts.P11 to P14) asking them to vacate the premises under the provisions of Kerala Panchayat Raj (Removal of Encroachment and imposition and Recovery of Penalty for Unauthorised Occupation) Rules, 1996. Aggrieved by the said action, the writ petition was filed.

4. Learned counsel for the appellants submits that appellants were not in unauthorised occupation since they were permitted to occupy a place under the agreement, thus the provisions of the rule were not attracted. He submits that in any

view of the matter, the appellants are entitled for an alternative accommodation by the Panchayat. However, learned counsel for the appellants submitted that under the provisions of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014, they cannot be evicted. He has placed reliance on the judgment of the Apex Court judgment in **Maharashtra Ekta Hawkers Union and another v. Municipal corporation, Greater Mumbai and others** [(2014) 1 SCC 490].

4. We have considered the submissions of learned counsel for the appellants and perused the records.

5. The conditions under which the appellants were permitted to erect a temporary shed on the place allotted by Panchayat is Ext.P1. It is useful to quote the conditions of the agreement, the translation of which are to the following effect:

“1. Trade has to be carried out by erecting temporary sheds in the place allotted by the Panchayat.

2. Existing traders would be allotted shop rooms in the newly constructed shopping complex as per the terms

and conditions of the Panchayat Committee, and subject to the prevalent government orders.

3. Three months' rent has to be paid as advance in accordance with the rules of the Panchayat.

4. Only such trade as licensed by the Panchayat shall be carried out.

5. No further right beyond the temporary arrangement shall be claimed.

6. The sheds would be removed as and when required by the Secretary, Grama Panchayat.

7. The plots shall not be sub-let without the leave of the Panchayat.

8. No activity prejudicial to public health or causing pollution would be carried out.

9. Panchayat is not liable for any loss arising out of the temporary sheds.

10. Electricity and water charges will be borne by the individual.

11. The second party shall observe the provisions of the Kerala Panchayat Raj Act and the rules made thereunder, the relevant government orders and the directions of the Hon'ble High Court while carrying out the trade."

6. There was a specific condition, condition No.6, in which it is stated that as and when required by the Secretary of

the Grama Panchayat, the sheds should be removed. However, as per the conditions appellants were offered a shop room in the newly constructed shopping complex which admittedly was not taken by them. The submission of learned counsel for the appellants that, since they were allotted a place by the Panchayat, they cannot be treated to be unauthorised occupants, does not appeal to us, there being a specific condition that they have to vacate as and when required by the Secretary, Grama Panchayat. When notice was given to vacate, they refused to vacate. Hence the learned Single Judge has opined that the Panchayat has rightly invoked the provisions of the Rules to vacate the appellants as they being unauthorised occupants. Learned Single Judge has come to the conclusion that petitioners have no right to continue. We have no different opinion to the one which has been taken by learned Single Judge.

7. In so far as invocation of the provisions of 2014 Act is concerned, it is relevant to note that in the writ petition nor in the writ appeal, no grounds are made out based on the said provision, claiming that the appellants are street vendors. Hence

it is not necessary to consider the submission of learned counsel for the appellants on that behalf.

In the above view of the matter, we do not find any merit in the appeal. Accordingly, the Writ Appeal is dismissed.

**Ashok Bhushan,
Acting Chief Justice.**

**A.M. Shaffique,
Judge.**