

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

THURSDAY, THE 12TH DAY OF MARCH 2015/21ST PHALGUNA, 1936

WA.No. 573 of 2015 () IN WP(C).350/2015

AGAINST THE ORDER/JUDGMENT IN WP(C) 350/2015 of HIGH COURT OF
KERALA

APPELLANT(S)/PETITIONERS:

1. NAVAS AGED 49 YEARS
S/O.KAMALUDEEN, NOUSHAD NIVAS, KOTTIYAM
AADHICHANALLOOR VILLAGE, KOLLAM.
2. JALALUDHEEN
S/O.SHAHUL HAMEED, ULLAS NIVAS, KOTTIYAM
AADHICHANALLOOR VILLAGE, KOLLAM.

BY ADVS.SRI.C.RAJENDRAN
SRI.K.R.RANJITH
SMT.R.S.SREEVIDYA

RESPONDENT(S)/RESPONDENTS:

1. THE STATE OF KERALA
REPRESENTED BY SECRETARY TO PUBLIC WORKS DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM – 695 001.
2. THE ASSISTANT ENGINEER
PUBLIC WORKS DEPARTMENT, ROAD SECTION, CHATHANNOOR
KOLLAM DISTRICT –691 572.
3. THE DISTRICT COLLECTOR, KOLLAM
COLLECTORATE, KOLLAM DISTRICT –691 013.
4. THE AADICHANALLOOR GRAMA PANCHAYATH
ADICHANALLOOR
KOLLAM DISTRICT – 691 573 REPRESENTED BY ITS SECRETARY.
5. THE DIRECTOR
KOTTIYAM HOLLY CROSS HOSPITAL, ADICHANALLOOR
KOTTIYAM P.O., KOLLAMDISTRICT – 691 571.

BY GOVERNMENT PLEADER SRI. C.R. SHYAMKUMAR

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
12-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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Writ Appeal No. 573 of 2015 – A
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Dated this the 12th day of March, 2015

JUDGMENT

Ashok Bhushan, Ag.CJ.

Heard the learned counsel for the appellant and the learned Government Pleader.

This Writ Appeal has been filed against the judgment dated 30-1-2015 in W.P. (C) No. 350/2015 . Petitioners have filed the Writ Petition praying to quash Ext. P4 notice by which the petitioners were informed that they have unauthorisedly put encroachment on the road purambokku. Petitioners have further prayed that respondents may direct not to take any steps under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and also not to evict the petitioners from their shops.

2. The Writ Petition was heard by the learned Single Judge and the learned Single Judge dismissed the Writ Petition after referring to the allegations in the counter affidavit which clearly mentions that sufficient notice has been given to the petitioners and they did not turned up in pursuance of the notice. It was

further noted that in the area near Holly Cross Hospital, Kottayam, there is a sharp curve on the western side of the road and the inside of this curve has been occupied by the petitioners and some other encroachers, hindering the minimum site distance for the motor drivers.

3. Learned Single Judge, referring to the materials produced, recorded a finding and dismissed the Writ Petition imposing cost of Rs. 5,000/- each on the petitioners.

4. Sri. C. Rajendran, the learned counsel appearing for the appellants submitted that the learned Single Judge should have given more opportunity to the petitioners to submit their case. He further submits that the petitioners were petty shop owners and whose continuance was beneficial to the patients of the Hospital. He also submits that the cost ought not to have been imposed on the petitioners who were petty shop owners.

5. Learned Government Pleader, opposing the submissions, contend that opportunity was given and the petitioners did not turn up and they being encroachers, they have no right to occupy the place and continue their shops.

6. We have considered the submission of the learned counsel appearing for the appellants, the learned Government Pleader and perused the records.

7. The learned Single Judge entered a finding that after issuance of notice three adjournments were given to the petitioners, still they did not choose to appear and place their case. It has been further noted by the learned Single Judge that the encroachment is on a curve of the road which hinders the sight from the road. It has been noted that proceedings were finalised and orders have been issued for eviction.

In view of the findings recorded by the learned Single Judge and the materials on record, we do not find any error in the judgment of the learned Single Judge. Petitioners were not entitled for any of the reliefs as claimed in the Writ Petition. However, looking into the fact that, the petitioners were only petty shop owners, we reduce the amount of cost from Rs. 5,000/- to Rs. 1,000/- (Rupees one thousand only) each.

Subject to the above modification, this Writ Appeal is dismissed.

ASHOK BHUSHAN ,
Ag. CHIEF JUSTICE

A.M.SHAFFIQUE,
JUDGE

cri/