'CR'

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 7TH DAY OF APRIL 2015/17TH CHAITHRA, 1937

WA.No. 804 of 2015 () IN WP(C).23038/2013

AGAINST THE JUDGMENT IN WP(C) 23038/2013 of HIGH COURT OF KERALA DATED 20-03-2015

APPELLANT/PETITIONER :-

K.P. PAUL, AGED 65 YEARS
S/O.PAILY, PROPRIETOR, PAULSON MEDICALS
RESIDING AT "PAULS VILLA", ARPOOKKARA EAST.P.O
GANDHI NAGAR, KOTTAYAM, PIN-686008.

BY ADVS.SRI.RAJU JOSEPH (SR.)
SRI.K.T.POULOSE (KORATTY)

RESPONDENTS/RESPONDENTS :-

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1. THE DISTRICT COLLECTOR (APPELLATE AUTHORITY), UNDER KERALA PUBLIC BUILDINGS (EVICTION OF UNAUTHORIZED OCCUPANTS) ACT, 1968 KOTTAYAM, PIN-686001.

2. THE SUPERINTENDENT, MEDICAL COLLEGE HOSPITAL, GANDHI NAGAR.P.O GANDHI NAGAR, KOTTAYAM, PIN-686008.

3. THE KERALA HEALTH RESEARCH AND WELFARE SOCIETY (KHRWS), GENERAL HOSPITAL CAMPUS, RED CROSS ROAD THIRUVANANTHAPURAM, PIN-695035 REPRESENTED BY ITS MANAGING DIRECTOR.

R1 & R2 BY SPL.GOVERNMENT PLEADER SRI.C.S.MANILAL
R3 BY SRI.M.AJAY, SC

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 07-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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ASHOK BHUSHAN, C.J & **'CR'**
A.M. SHAFFIQUE, J.

W.A. No.804 of 2015

Dated this the 7th day of April 2015

<u>J U D G M E N T</u>

<u>Ashok Bhushan, C.J</u>

Heard the learned counsel for the appellant, the learned Special Government Pleader as well as the learned counsel appearing for the 3rd respondent.

2. This writ appeal has been filed against the judgment dated 20.3.2015 passed in W.P.(C) No.23038 of 2013, by which, the writ petition filed by the appellant was dismissed. The appellant has filed the writ petition seeking for the following reliefs :-

> "(i) To issue a writ of certiorari quashing Exts.P7, P9 and P10.
>
> (ii) To issue a writ of mandamus or any other appropriate writ order or direction declaring that the 2nd respondent is not legally empowered to initiate action against the petitioner in respect of a building belonging to the 3rd respondent.
>
> (iii) To award cost for these proceedings."

2. The brief facts of the case for deciding the writ appeal are as follows :- The parties shall be described as referred to in the writ petition. The petitioner had leased out a premises from the 3rd respondent on 14.2.1976 for conducting a medical shop. The 3rd respondent is a Society registered under the Travancore-

Cochin Literary, Scientific and Charitable Societies Registration Act, 1955. The Society was directed to be constituted by the State Government by its order dated 19.6.1973 (a copy of which was produced as Ext.R3(a) in the writ petition), for the purpose of construction of pay wards in 10 Government Medical Colleges. The Government Order contemplates that the Society has to carry out the project of construction of pay wards. The Government Order also contemplated to take loan from State Bank of India, who had set out certain terms and conditions for sanctioning the loan. One of the conditions was that the project shall be implemented by a Society registered under the 1955 Act. The Government Order further contemplated that the Government shall also provide a loan of ₹7 lakhs for meeting the expenses of the Society.

3. The petitioner was leased out the premises for running a medical shop at the Medical College Junction, Gandhi Nagar, Kottayam. There had been an earlier litigation arising out of original suit filed by the Society against the petitioner which was decided in favour of the Society. The petitioner, thereupon filed appeal and the same was allowed. Thereafter the Society preferred Second Appeal before this Court with delay. The same was dismissed consequent to the dismissal of delay condonation

petition. Thereafter the Government initiated proceedings against the petitioner under the provisions of the Kerala Public Buildings (Eviction of Unauthorised Occupants) Act, 1968 through the Estate Officer, who was the Superintendent of Medical College, Kottayam, who initiated proceedings for eviction of the petitioner from the public building vide notice dated 9.3.2011. The Estate Officer subsequently passed an order on 3.4.2013 directing the petitioner to vacate the premises. The petitioner challenged the said order by filing appeal before the District Collector as Appeal No.H5-21109 of 2013 along with stay petition. Since no order has been passed in the appeal, apprehending possible eviction, the petitioner filed writ petition before this Court, which was disposed of by the learned Single Judge directing the District Collector to dispose of the appeal within six weeks. The District Collector, thereafter, vide order dated 12.8.2013 upheld the order of the Estate Officer and confirmed the order of eviction.

4. Learned counsel for the appellant, in support of the appeal, contended that the Superintendent of Medical College, who had initiated proceedings for eviction has no jurisdiction to proceed under the provisions of 1968 Act. It is submitted that the Estate Officer ought to have been appointed by the 3rd respondent

Society and that the Estate Officer appointed by the Society can alone have proceeded to take action against the petitioner. It is further submitted that the building was leased out by the Society and not by the Government to the petitioner. Hence, the building is not covered under the provisions of 1968 Act. It is submitted that the Society building is not a 'public building' as defined under the 1968 Act. Lastly, it was submitted that in any event, if the eviction of the petitioner is to be made under the order of the Estate Officer, he may be allowed a reasonable time to find out an alternate arrangement to vacate the premises.

5. The learned Special Government Pleader as well as the learned counsel appearing for the 3rd respondent has refuted the submission made by the learned counsel for the appellant and contended that the Estate Officer was appointed by the State Government by notification dated 31.12.1993, a copy of which was produced as Ext.R3(b). As per the said notification, the Superintendents of Medical Colleges, Thiruvananthapuram, Kottayam, Alappuzha, Thrissur and Kozhikode were appointed as Estate Officers in their respective institutions for the purpose of 1968 Act. It is submitted that the learned Single Judge, after considering all the submissions made by the learned counsel for the petitioner, has rightly dismissed the writ petition.

6. We have considered the submissions made by the learned counsel for the parties and perused the records.

7. The submission of the appellant that the Estate Officer ought to have been appointed by the Society, which was constituted under the Government Order dated 19.6.1973 is to be considered first. It is useful to look into the Government Order dated 19.6.1973 to find out the nature and purpose of the Government Order and to know about the entity of the Society as was contemplated therein. Paragraphs 1 and 2(a) of the said Government Order reads as under :-

> "Government have, for some time now, been considering how best the problem of increasing demand for the paywards in Government Hospitals could be tackled. Out of a total bed strength of 18759, only 492 are in paywards. With more and more people demanding accommodation in the paywards, the question of increasing the bed strength so as to give accommodation as soon as it is wanted has been extremely urgent and imperative. But inadequacy of resources and the policy to provide more beds in general wards on priority have made it difficult for the Government to allocate Departmental funds for constructing additional paywards. It has however been recognised that additional accommodation in paywards would indirectly benefit the weaker sections of the community because a large number of people who at present occupy beds in the general wards per force would prefer paywards thereby reducing the pressure in general wards.
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> 2. Keeping in mind all these aspects of the matter, the Government have been exploring the possibility of a scheme for constructing paywards aided by institutional finance. A

project report has therefore been prepared for this purpose. The salient features of the project are:

(a) It envisages the construction of paywards in 10 major hospitals to start with, viz., the Medical College Hospitals at Trivandrum, Kottayam, Calicut and Alleppey and the District Hospitals of Quilon, Ernakulam, Trichur, Palghat, Malappuram and Cannanore. In each of the Medical College Hospitals, 135 paywards and in each of the District Hospitals, 30 paywards will be constructed. Thus a total of 720 paywards will be constructed. The Government would provide the sites adjoining the hospitals for constructing these paywards. It has been ascertained that land in available within the campus of these hospitals."

Paragraphs 4, 5 and 7 are also relevant to quote, which are to the following effect :-

4. It has been considered that an autonomous non-profit making body would be the most suitable agency for taking the loan and undertaking the construction and administration of the paywards. In fact, the State Bank of India has stipulated this as an essential condition for granting the loan. The society is to be constituted under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 and several charitable scientific and philanthropic activities, quite apart from construction of paywards, such as research and scientific investigations, provision of assistance to the rehabilitation of discharged patients and physically disabled and mentally retarded patients etc., will also be undertaken by the society. The society will be a Government owned non-profit making body and the surplus that is accumulated will not be distributed as dividend or profit. Being a non-profit making society utilising funds for the purposes envisaged in the Act the society will be eligible for exemption from the payment of Income Tax. And so the entire

> yearly surplus earned by the society will be available for implementing the programmes referred to above. The draft memorandum of Association and rules of the society have been framed accordingly. The Society will be designated as "The Kerala Health research and Welfare Society". Being a Government owned institution, the Government will have control in regard to its working.
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> 5. The necessary extent of land required for constructing payward buildings in the various Hospitals will be pegmarked and transferred to the society subject to the formalities stipulated in G.O.MS.258/60/Fin. dated 18.5.1960. The total extent of land required for the project is approximately 3½ acres, the value of which has been estimated at ₹2 lakhs per acre. Being Government land its value viz., ₹7 lakhs will be treated as Government's contribution to the Society.
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> xx xx xx
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> 7. The programme of construction is intended to be completed within two years. During the first year, the capital requirement has been estimated at ₹17 lakhs from the State Government and ₹40 lakhs from the State Bank of India and during the second year, ₹7 lakhs from the Government and ₹16 lakhs from the State Bank. Taking credit for ₹7 lakhs being cost of land to be transferred to the society, the balance of Government contribution required during the first year is ₹10 lakhs. This will have to be given to the society as cash contribution. In addition, the amount required for running expenses of the society including establishment charges during this first year (when the society will have no income) estimated at ₹7 lakhs will have to be given by Government as loan which will be got repaid in due course by the society."

8. On a perusal of the said order, it is clear that the Society should be registered under the 1955 Act as implementing

agency of the project which was envisaged by the Government. Under the project, the pay wards were to be constructed in the Government Medical Colleges as mentioned in paragraph 2(a). The Society was contemplated as non-profit body which was to implement the project. Paragraph 7 of the Government Order as noted above also contemplates that a loan of ₹7 lakhs was to be given by the Government to the Society.

9. The construction of pay wards were in the existing Government Medical Colleges. We have been informed by the learned counsel for the parties that the Store which was leased out to the petitioner is within the Medical College premises. The Store is adjoining to the pay wards which were constructed by the Society. Thus, the Store, which was constructed within the premises of the Medical College is part of the Medical College, Kottayam.

10. Sec.3 of the 1968 Act begins with the word "the Government may, by notification in the Gazette" appoint estate officers for the purpose of this Act. Sec.3 quoted as below :-

> **"3. Appointment of estate officers.**- The Government may, by notification in the Gazette,-
>
> (a) appoint such persons, being Gazetted Officers of Government below the rank of District Collector, as they think fit, to be estate officers for the purposes of this Act.

Provided that -

(i) in the case of a local authority, the executive authority of that local authority; and

(ii) in the case of a company or a corporation, an officer of that company or corporation not below the rank of a Deputy Director of the Industries Department, nominated by that company or corporation shall be appointed as estate officer.

(b) define the local limits within which, or the categories of public buildings in respect of which, the estate officers shall exercise the powers conferred, and perform the duties imposed, on estate officers by or under this Act.”

The appointment of estate officer should be published in the Gazette by the Government. The submission that the Estate Officer ought to have been appointed by the Society is without any basis and is against the statutory provision.

11. Now, the submission, which has been pressed by the learned counsel for the appellant is that the Store as well as the pay wards were part of the project implemented by the Society and which is not covered under the 1968 Act. For this purpose, 1968 Act needs to be examined. Sec.2 of the 1968 Act is definitions. Sec.2(d) provides “any building or part of a building belonging to or taken on lease or requisitioned by, or on behalf of, the Government or a local authority or a company or a corporation is a public building”. Sec.2(d) is an inclusive definition, which is clear from the word “includes”. When a

definition clause provides inclusive definition, it is well settled statutory interpretation that the definition has to be given a wide meaning and is an expansive definition and not an exhaustive definition. The scheme issued by the Government Order dated 19.6.1973 envisaged construction of pay wards only. The Society was only an implementing body and the construction was envisaged in 5 Medical Colleges. Since the pay wards and the Store which were implemented by the Society are the construction in the Government Medical College, they are part of the Government Medical College and are Government property. Hence, the submission of the petitioner that the building is owned by the Society and not by the Government has no substance.

12. A reading of the Government Order clearly indicates that the Society was only an implementing agency for construction of pay wards in the existing Government Medical Colleges. Another submission that the building is out of purview of 1968 Act cannot be accepted. Sec.2(d)(iii) contains inclusion of "all buildings, whether residential or non-residential irrespective of categories or types, constructed by individuals or co-operative societies or other institutions with the aid of any loan from the Government". Paragraph 7 of the Government

Order dated 19.6.1973 as quoted above clearly indicates that the Government has granted a loan of ₹7 lakhs to meet the expenses of the Society. The building, even if to be treated as constructed by the Society, there being a loan from the Government and the said building has to be treated as a 'building' within the meaning of Sec.2(d) of the 1968 Act. Thus, the submission of the petitioner that the proceedings initiated by the Estate Officer were beyond the jurisdiction has to be rejected.

13. Now, we come to the last submission of the learned counsel for the appellant that the appellant may be granted some time to vacate the premises. The learned Single Judge by his judgment had already granted one month time to the petitioner to vacate the premises.

14. Learned counsel for the 3rd respondent submits that the petitioner has not even deposited the rent which was agreed between the parties. Learned counsel for the appellant submits that the appellant is always ready to pay the rent but the amount was never accepted by the 3rd respondent. Be that as it may, we are of the view that, some further period can be granted to the appellant to vacate the premises, in view of the fact that, he is running a medical shop. But further extension shall be permissible only when the petitioner deposits the entire

outstanding rent to the 3rd respondent by Bank Draft. On depositing the entire rent by Bank Draft on or before 30.4.2015, he shall be allowed to continue in the premises till 30.6.2015. The petitioner shall also file an undertaking before the 2nd respondent that he shall hand over the vacant possession on or before 30.6.2015. We make it clear that in any event, any default in complying with any of the above directions, it shall be open for the 2nd respondent to take possession of the premises with the assistance of police.

With the above observations, this Writ Appeal is dismissed.

Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE
JUDGE

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P.A. TO JUDGE

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