

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

WA.No. 965 of 2015 () IN WP(C).2570/2015

AGAINST THE ORDER/JUDGMENT IN WP(C) 2570/2015 of HIGH COURT OF KERALA
DATED 17-04-2015

APPELLANT(S)/PETITIONER:

1. HAMZA
S/O.KUNHEENKUTTY HAJI, PILATHETH (H), ANDAVOOR PO
PIN 676 301, THIRUNAVAYA
MALAPPURAM DISTRICT (ROOM NO.3/520 G, 3/512A)
2. HYDROS T.C., S/O.MOIDEEN, POTTACHOLA (H)
ANDAVOOR PO, PIN - 676 301, THIRUNAVAYA
MALAPPURAM DISTRICT (ROOM NO.3/535 H)
3. ABDUL RASHEED P.C. AGED 36 YEARS
S/O.MOHAMMEDKUTTY, POTTACHOLA(H), VARIYANCODE 671 301
THIRUNAVAYA, MALAPPURAM DISTRICT (ROOM 3.35-C, F)
4. MOHAMMEDKUTTY, S/O.KAMMAD KUTTY,
THIRUVAKKALATHIL (H), AGED 45 YEARS
ANDAVOOR PO, PIN 676 301, THIRUNAVAYA
MALAPPURAM DISTRICT (ROOM 3/512 K, 3/312 I)
5. ALAVIKUTTY, S/O.KUNHAMMED AGED 56 YEARS
KEELAPPATTIL (H), ANDAVOOR PO, PIN 676 301
THIRUNAVAYA, MALAPPURAM DISTRICT (ROOM NO.3/512 J
512 F, 512 D)
6. C.K.MOIDEENKUTTY, S/O.KUNHI MOIDEEN, CHANGANAKKATTIL (H),
ANDAVOOR PO, PIN 676 301, THIRUNAVAYA
MALAPPURAM DISTRICT (ROOM NO.3/517)
7. C.K.IBRAHIM, S/O.KUNHU MOIDEEN
CHANGANAKKATTIL (H), ANDAVOOR PO, PIN 676 301
THIRUNAVAYA, MALAPPURAM DISTRICT (ROOM NO.3/512H)
8. ABDUL RAZACK C.P
S/O.MOHAMMEDKUTTY, CHULIKAPARAMBIL (H), ANDAVOOR PO
PIN 676 301, THIRUNAVAYA
MALAPPURAM DISTRICT (ROOM NO.512C, 512 D)

BY ADVS.SRI.T.KRISHNAN UNNI (SR.)
SRI.T.SIVADASAN
SRI.VINOD RAVINDRANATH
SMT.MEENA.A.
SRI.SAJU.S.A
SRI.K.C.KIRAN

RESPONDENT(S)/RESPONDENTS:

1. THE THIRUNAVAYA GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY
THIRUNNAVAYA PIN 676 301.
 2. THE SECRETARY
THIRUNNAVAYA GRAMA PANCHAYATH, THIRUNNAVAYA
PIN 676 301.
 3. SAKKEER, S/O.HAMZA, KALLANAPARAMBIL, VARIAMKODE PO, THIRUNAVAYA
MALAPPURAM DISTRICT PIN - 671 301.
 4. THAJUDEEN, S/O.MUHAMMED, PARIYADATH HOUSE
SOUTH PALLAR, VARIAMKODE P.O.
MALAPPURAM DISTRICT PIN - 671 301.
- R1&2 BY ADV. SRI.C.E.UNNIKRISHNAN, SC,
THIRUNAVAYA GRAMA PANCHAYAT
R3,R4 BY ADV. SRI.K.MOHANAKANNAN
R3,R4 BY ADV. SMT.A.R.PRAVITHA

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 01-07-2015 ALONG
WITH WA NO.1026/2015, THE COURT ON 29/7/2015 DELIVERED THE FOLLOWING:

ASHOK BHUSHAN, C.J.

&

A.M. SHAFFIQUE, J.

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W.A. Nos. 965 & 1026 of 2015

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Dated this, the 29th day of July, 2015

J U D G M E N T

Shaffique, J.

These appeals are filed against the common judgment dated 17/4/2015 in WP(C) Nos.2570/2015 and 35461/2014 respectively.

2. WP(C) No.2570/15 has been filed by the appellants herein challenging the action taken by the Thirunavaya Grama Panchayat and its Secretary in evicting them from their business premises without complying with any of the statutory provisions.

3. The short facts involved in the writ petition are:

The Panchayat owns two shopping complexes under the name and style 'New Shopping Complex' and 'Sashraya Shopping Complex'. Petitioners contend that they had taken shop rooms in the aforesaid shopping complexes on licence basis and they have been paying the rent. It is also stated that they have paid certain amount as security deposit and even if there was some rent in arrears, the security amount could have been adjusted towards

the arrears of rent. It is alleged that there was an attempt to forcibly evict them from the premises by certain others and the petitioners filed OS No. 445/2010 before the Munsiff's Court, which is pending. In the meantime, on 26/12/2014, the Secretary of the Panchayat along with a large police force came to the shop buildings and forcibly evicted them and the shop rooms were closed. A notice was also affixed indicating that the shops were closed as per the decision of the Panchayat on 9/12/2014 and parties were directed to submit their objections. Petitioners submitted their objections to the aforesaid action. However, they were not permitted to open the shop rooms. It is stated that various type of business activities were done in the shop rooms including sale of perishable articles. It is alleged that the action of the respondent Panchayat in closing down the shop rooms is a high handed action and therefore, the petitioners sought for the following reliefs;

"i) to declare that the petitioners and brother Pilathede Kunhi Muhammed of 1st petitioner and son of second petitioner Abdul Rasheed are the tenants of shop rooms in the new Shopping Complex and in the Sashraya Shopping Complex of Thirunavaya Grama Panchayat bearing Room Nos.3/520 G,

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3/512A, 3/35-C & F.

ii) to issue a writ of Mandamus or any other appropriate writ order directing the respondents to open the shop rooms and allow the petitioner Pilathedath Kunji Muhammed and brother of the 1st petitioner and the son of second petitioner Abdul Kareem to do business within shop rooms.

lii) to award a compensation of Rs.2 lakhs each to the petitioners and the brother of the 1st petitioner and to son of the second petitioner”.

4. WP(C) No.35461/2014 has been filed by respondents 1 and 2 in WA No.1026/2015 in which the appellants are additional respondents 5 to 12. The writ petition was filed by them seeking for a direction to the Deputy Director of Panchayats and the Secretary of the Panchayat to conduct public auction of the rooms in the market and shopping complex in accordance with the provisions of the Kerala Panchayat Raj Act and the Rules framed thereunder and to allot the rooms accordingly. Further direction was sought to the Director of Panchayats and Deputy Director of Panchayat to take action against the Secretary and President of the Panchayat in the light of Ext.P1 report dated 1/10/2014 and Ext.P2 audit report dated 23/7/2014.

5. It is *inter alia* contended in the said writ petition that

the shop rooms in the market and shopping complex of the Panchayat which is having 35 rooms are being occupied by unauthorised persons without any licence or permission from the Panchayat and some of them are being occupied by strangers. It is also alleged that certain persons are occupying the buildings on sub lease without permission and some of the rooms are remaining unoccupied. Reference is made to the audit reports of 2011-2012 and 2012-2013 in which various discrepancies and violations of statute have been noticed. Petitioners specifically refers to the observation which indicates that there is no effective rental/auction proceedings and the allotments have not been made in accordance with rules and no lease agreement has been executed as there are no bye-laws. Further it is contended that though certain rooms were evicted, the occupants continued to occupy the premises by force and it is in that background, police had intervened in the matter and the rooms were sealed on 26/11/2014 and 3/12/2014. It is further stated that the evictees had broke open the door of shop rooms by muscle power and trespassed into the building. A compliant was submitted by the 3rd respondent Secretary to the Sub Inspector, Kalpakamcherry

requesting to take action against such persons and it is thereafter that police intervened and the rooms were again locked and sealed on 26/12/2014. Except the room occupied by the postal department, all other 34 rooms were closed and sealed. Petitioners submit that earlier the licence/lease were granted without any public auction and if any steps are taken in that regard, the Panchayat will suffer huge loss and in that background insisting that the shop rooms should be let out only in public auction, this writ petition had been filed.

6. In the counter affidavit filed by additional respondents 5 to 12, they contended that they were occupying the rooms in accordance with the procedure prescribed. One such agreement has been produced as Exhibit R5(a) to indicate that similar agreements were executed and left with the Panchayat. It is alleged that there is no arrears of rent and even assuming that there is arrears, enough security deposit was available to be adjusted towards the said arrears.

7. In WP(C) No.2570/2015, counter affidavit has been filed by respondents 1 and 2 in which it is stated that it was revealed from the audit report for the years 2010-2011 and 2011-

2012 that due to indifferent attitude of the officers of the Panchayat, the shopping complexes have become a liability. It was reported that there was considerable delay and lapses on the part of the Panchayat in collecting the rent. It is also stated that many actions were taken by the officers without the knowledge and consent of the Committee of the Panchayat. Therefore, the Deputy Director by letter dated 23/7/2014 has requested for taking immediate action in the matter and to consider the audit report and further to take decision in accordance with the procedure prescribed. It was in the said circumstances that the Committee decided to evict all such unlawful occupants of the shopping complexes as per decisions dated 10/7/2014, 14/8/2014 and 6/11/2014. It is stated that 8 rooms were evicted on 26/11/2014 and the rest of the rooms on 3/12/2014 with the help of police. The occupants re-entered the room forcibly on 4/12/2014, but all of them were evicted on 5/12/2014 and 6/12/2014, with police help. They have also indicated that the licence was not renewed properly. Further it is indicated that the 1st petitioner has not remitted rent for 37 months but has

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adjusted the rent for the period from 1/1/2012 to 31/3/2014 unauthorisedly as per Exts.P6 and P6(a). Further it is alleged that the 2nd petitioner had not paid rent for 24 months and his son for a period of 14 years and 5 months. The 5th petitioner did not pay rent for 14 years and 3 months, 6th petitioner for 14 years and the 7th petitioner for 14 years and 4 months. It is further stated that the Panchayat decided to conduct public auction of the rooms on 25/2/2015 and necessary advertisements were issued.

8. Reply affidavit has been filed by the petitioners controverting the allegations regarding the liability to pay rent. They contended that they have all taken the premises by paying huge amounts as advance and the contrary averments were baseless.

9. The learned Single Judge by the impugned judgment dismissed WP(C) No. 2570/2015 with cost of ₹5000/- each to the petitioners and WP(C) No.35461/2014 was allowed, by which, directions were issued to the Director of Panchayat or any other competent authority to conduct a comprehensive enquiry into the issues raised in Ext.P2 audit report and to take appropriate action

against erring officials. Further it was stated that criminal prosecution should be launched against the appellants and any officials of the respondent Grama Panchayat in terms of the judgment of the Supreme Court in ***Iqbal Singh Marwah v. Meenakshi Marwah*** (AIR 2005 SC 2119).

10. The learned Single Judge formed an opinion that the petitioners having filed a suit for injunction and they were dispossessed during the pendency of the suit, the remedy was to approach the civil court. However, it was observed that the issue requires to be considered on merits as well. On the question as to whether the petitioners were evicted without following due process of law, it was found that, by virtue of Sec.63 of the Easements Act, only a reasonable time is required to be given to leave the property, which does not contemplate eviction by due process. It is also observed that the licensee has a right to use the immovable property and when Sec.64 of the Easements Act provides for certain remedy for a licensee who has been evicted for no fault of his and Sec.249 of the Panchayat Raj Act provides for remedy by filing a suit and when it is evident from Ext.P2 (in WP(c) No. 35461/2015) that gross illegalities had been done in

the matter, eviction in terms of Rule 7 of the Kerala Panchayat Raj (Acquisition and Disposal of Property) Rules, 2005 is justified. Learned Single Judge further proceeded to consider whether Ext.P8 lease deed has been fabricated. It was found that Ext.P8 is devoid of legal sanctity as there is no convincing reason to come to a conclusion that the duration of lease was from 01/04/2014 to 31/3/2014 especially when the stamp paper was purchased on 28/4/2014 for which there was no explanation in the pleadings.

11. In respect of an issue relating to filing the writ petition on behalf of two others, the same was also found against the petitioners. Ultimately the learned Single Judge allowed WP(c) No. 35461/2014 and dismissed WP(c) No. 2570/2015 with costs.

12. During the pendency of the appeals, we permitted the Secretary of the Panchayat to report regarding the liability to pay rent as far as the petitioners are concerned. The Secretary filed report stating that Exts.P6 and P6(a) are unauthorized documents and there was no provision for adjustment of rent from security deposit. Hence, there was arrears of rent. In respect of the 2nd appellant, it was stated that he had paid rent upto March, 2014. However, in respect of the room occupied by his son Abdul

Kareem, he has not paid rent from 01/04/2000 to 31/3/2014. In regard to the 4th appellant, he had produced documents to show that he had paid rent upto March, 2015. The 5th appellant has paid rent upto November, 2014, the 6th appellant had paid rent upto March, 2015, the 7th appellant did not produce any documents to prove that he had paid the rent and 8th appellant has paid rent upto May, 2014. However, it was observed by the Secretary that none of the occupants had renewed the licences by way of a valid agreement.

13. Reply affidavit was submitted by the appellants in answer to the averments in the report of the 2nd respondent. It is stated that the 1st appellant had made deposit of ₹1,25,000/- as evident from Ext.P2 and by Exts.P6 and P6(a), the arrears as on the said date alone were adjusted. If at all there is any further arrears, it could have been adjusted from the security deposit. As far as Mr.Abdul Kareem is concerned, reference is made to Exts.P16 and P17 to indicate that rent was paid inclusive of December, 2014. As far as 7th appellant is concerned, he had paid

rent inclusive of December, 2014 as evident from Ext.P23 money order receipts.

14. Heard the learned senior counsel appearing for the appellants Sri.Krishnanunni, learned counsel Sri.C.E.Unnikrishnan appearing for the Panchayat and its officers, Sri.Mohanakannan, learned counsel appearing on behalf of respondents 1 and 2 in WA No.1026/15 and Sri.P.Chandrasekhar, learned counsel appearing on behalf of additional respondents, who are the successful bidders in respect of the premises, which was taken over by the Panchayat from the appellants.

15. It is argued by the learned senior counsel appearing for appellants Sri.T.Krishnanunni that the learned Single Judge has committed error in appreciating the legal and factual circumstances involved in the case. It is argued that Easements Act had no application to the issue on hand. The Kerala Panchayat Raj (Acquisition and Disposal of Property) Rules 2005 (hereinafter referred as the '2005 Rules') covers the issue. According to the Panchayat, the appellants were dispossessed from a premises which they were occupying. Though it is alleged

that the occupation was unauthorised, there is a further allegation that the rent was not being paid. The materials now made available and as reported before this Court indicates that most of the tenants/licensees were paying rent which was received by the Panchayat. Therefore, it is a case that though the licence/lease deeds were not being renewed from time to time, the petitioners were put in occupation legally and rent was being received by the Panchayat. Under such circumstances, 2005 Rules clearly applies to the factual situation and without complying with the procedure prescribed under Rule 7, the Panchayat had no right to evict the petitioners. Easements Act had no application in respect of a licence which is covered by specific rules and to that extent the learned Single Judge has committed serious illegality, is the submission. It is further argued that even assuming that the petitioners are in unauthorized occupation, still, they could be evicted only by issuing notice and by a procedure known to law. It cannot be an instance where a business establishment is locked with police assistance and without any notice at all. Hence, it is contended that when the action of dispossessing the petitioners is in gross violation of principles of natural justice, petitioners are

liable to be put back in possession of the premises.

16. As far as the auction is concerned, it is a subsequent event which cannot have any bearing on the possession exercised by the petitioners in respect of the property. In regard to the finding regarding fabrication of Ext.P8 is concerned, it is argued that Ext.P8 is signed by the Secretary of the Panchayat and attested by two witnesses. The entries are made by the Panchayat authorities themselves and not by any of the petitioners and therefore the learned Single Judge was not justified in arriving at a conclusion that the said document is fabricated. It is argued that under normal circumstances, printed formats in stamp paper will be signed and given to the Panchayat authorities which will be filled up by them and kept in their office. All the petitioners have done so and it is only to defend their illegal action, that it is contended by the Panchayat regarding absence of any valid agreement. It is also contended that all the shop owners were having business in the premises and, one fine morning they were all evicted with police help and they have not indulged in any act of violence by re-entering into the premises. As far as the suit is concerned, it was only against certain private

persons who proposed to forcibly evict the petitioners. Panchayat is not a party to the said proceeding and therefore pendency of the suit is not an impediment to challenge the arbitrary and illegal action by approaching this Court under Art.226 of the Constitution of India. Learned counsel relied upon the report prepared by the Secretary as per the directions issued by this Court and the reply given by the appellants and submitted that if at all there was any arrears of rent, it could have been adjusted against the security which was very much available with the Panchayat. It is also pointed out that during the auction, the petitioners were not permitted to participate on the ground that petitioners were defaulters and, at any rate, the auction was conducted during the pendency of the *lis*. Further, as far as the petitioners are concerned, they are entitled to get back their rooms when the procedure adopted is bad in law and any steps taken by the Panchayat after the filing of the writ petition are to be declared illegal and shall not affect the rights of the appellants.

17. On the other hand, learned counsel appearing for the Panchayat would submit that eviction proceedings had to be initiated by virtue of decision taken by the Panchayat as it was

found that the Panchayat was suffering huge loss on account of the illegal occupation by the appellants and their failure to pay the rent in time. However, it was fairly submitted that prior to evicting the petitioners, no notice had been issued to them. It is argued that subsequent to the judgment of the learned Single Judge, auction was conducted and the persons who had bid the auction had quoted substantial amounts for the rooms and if the rooms are surrendered back to the petitioners, the Panchayat will suffer huge loss.

18. It is argued by the learned counsel appearing for the petitioners in WP(c) No. 35461/14 that the appellants have been illegally holding the rooms without paying the rent in time and the original allotment was without even a public auction and unless an auction is conducted, the Panchayat will suffer huge loss. It is contended that none of the appellants have any legal right to make a claim to continue occupation of the premises especially on account of the fact that they have no valid licence/lease in their favour.

19. Learned counsel appearing for the additional respondents who had been impleaded in the case submits that

they had participated in the auction and are successful bidders and on account of the pendency of the present appeals, they are unable to occupy the premises. It is argued that their rights should not be affected on account of any decision being taken in the appeals. Further it is contended that the petitioners do not have any legal right to be put back to the premises. It is submitted that the auction had been conducted in accordance with the procedure prescribed and there is no reason for setting aside the said auction.

20. Having regard to the factual situation arising in the case, the question to be considered is whether the Panchayat was justified in evicting the appellants from the shop rooms, which were in their occupation and whether they are entitled for any direction as sought for.

21. As far as the suit is concerned, it is admitted by either side that the Panchayat was not a party to the suit. The suit is one filed for injunction to restrain certain others from forcibly evicting the petitioners from the shop rooms. It is not a *lis* between the Panchayat and the petitioners. Therefore, the pendency of the said suit cannot be a bar for entertaining the writ petition.

Further this writ petition is filed when the petitioners were forcibly evicted from the premises without any notice. Writ petition is filed on a cause of action which was subsequent to the filing of the suit and, therefore, it cannot be stated that the writ petition was not maintainable. Even otherwise, the learned Single Judge having decided to consider the matter on merits, we have to consider the question whether the learned Single Judge was justified in dismissing the writ petition on merits.

22. It is not in dispute that before evicting the appellants and two others, who were in occupation of the shop rooms, no notice had been issued to them. In fact, the 2005 Rules contains specific provisions by which the Panchayat is entitled to give on lease or licence any building constructed by them and the respective rights and liabilities of the parties with reference to violation of any conditions of the licence/lease as the case may be. Rule 7 of the 2005 rules is relevant which reads as under;

“7: Grant Panchayat's own property for rent or lease on licence:

(1) A Panchayat may construct buildings for the purpose of trade or otherwise and can give the same to the public who require them on rent or lease on license in accordance with provisions of

the Act and the rules made thereunder and the bye-laws that may be made by the Panchayat for this purpose and may also levy fees that may be decided by the Panchayat for its enjoyment and possession.

(2) Every licence under sub-rule (1) shall contain the conditions for the enjoyment and possession of that building or room or space in it and rate of fees and time of payment, and the above said conditions and stipulations shall be written in the form of an agreement in stamped paper of appropriate value and shall also be in accordance with Form III appended to these rules.

(3) No building or room or space given on rent under sub-rule (1), shall be subletted to another or change its nature of use by the licensee.

(4) If at any time the Secretary feels that any building or room given on rent to any person under sub-rule (1), has been subletted to another person, he shall cancel the licence issued to such person immediately by an order and direct the person or persons enjoying and possessing that building or room or space, as the case may be to vacate within the time mentioned in the order.

Provided that the Secretary shall before issuing an order cancelling the licence and also before evicting the user or the possessor, give notice asking him to show cause the reason if any for not issuing such order within a reasonable time to be specified in the notice.

(5) If the order under sub-rule (4) is not complied within the time specified therein, the Secretary shall evict such person or persons from the building, room or space with or without the assistance of police and the building, room or space, as the case may be, shall be closed. Thereafter all the properties found in that premises become the property of the Panchayat and shall be disposed of and the income therefrom shall be credited in the Panchayat fund.

(6) Every person having been granted a licence as per sub-rule (1) shall remit without demand the licence fee and other charges at the rate specified in the agreement within the time mentioned therein.

(7) If any licensee defaults the remittance of licence fee beyond the period for which the amount deposited in accordance with the provisions of the licence, the Secretary shall, by notice in writing, demand the defaulter to remit the amount due along with interest or fine provided for in the agreement, within 7 days from the issuance of such notice and in the case of default, he shall make to close the premises temporarily at once and evict the possessor or possessors from there with or without the assistance of the police.

(8) Even if such premises are closed under sub-rule (7) the licensee shall continue as the user and possessor of that premises and shall be

responsible for the safety of the properties present there. Provided that he shall not open such premises by force or shall re-enter there.

(9) When a premises is caused to be closed by the Secretary under sub- rule (7), he shall direct the licensee to remit the amount due within the period that may be specified in the notice.

(10) If the licensee remits the amount demanded under sub-rule (9), the Secretary shall handover possession of the premises to him immediately and if he defaults the payment of that amount, the Secretary shall cancel the licence at once and the order of cancellation of the licence shall be communicated to him and where it is not possible to communicate to him personally that order, it shall be published in the premises closed under sub-rule (7) and it shall be deemed to be sufficient notice.

(11) Where a licence has been cancelled by the Secretary under sub-rule (10) he shall after giving advance notice to the licensee and public notice dispose of the properties found in the premises by auction or otherwise on the date notified and the income received from it shall be set off towards the amount due from the licensee and other expenses and charges connected with the sale and the balance, if any, shall be returned to the licensee. If the income received from such sale is not sufficient to set off completely the amount to be realised from the licensee and other charges and

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expenses connected with the sale; the balance amount shall be realised from the licensee as arrear of tax due to the Panchayat”.

23. The learned Single Judge found that Rule 7 cannot be made applicable as the petitioners are in illegal occupation of the premises. When the fact remains that they were in occupation of the premises, and it is also an admitted fact that rent was being paid, evicting them from the premises without notice is clearly contrary to Rule 7 of the 2005 Rules and is in violation of the principles of natural justice. For that reason itself, the contention urged on behalf of the respondent Panchayat has to be rejected. However, the learned Single Judge proceeded on the basis that licensee has no right after termination of the licence. Reference is made to the Easements Act, especially Sections 63 and 64, and the rights of the respective parties under the said statutory provision. Easements Act can have application only if no other procedure has been prescribed under any other statute. In the case on hand, parties are governed by the 2005 Rules and eviction of a licensee, a sub licensee, lessee or sub lessee, who are in authorised or unauthorised occupation, can be effected by

resorting to the procedure prescribed under Rule 7. In a case where the occupation is totally unauthorized, that is, even without entering into any agreement or paying any rent, even in such a situation, eviction can be resorted to only after issuing notice to surrender possession. Apparently in the case on hand, no such situation had arisen and there is non compliance of statutory provisions.

24. Learned counsel for appellants also brought to our notice the Kerala Panchayat Raj (Removal of Encroachment and Imposition and Recovery of Penalty for Unauthorised Occupation) Rules 1996, to contend that in terms of Rule 3, if a person is in unauthorised occupation of any land belonging to or vested in a Panchayat, it can be recovered only by resorting to the procedure under Rule 5, which requires Panchayat to serve 15 days' notice to the occupant before evicting that person from the land belonging to or vested with the Panchayat. Though the 1996 Rules may not have strict application to the factual situation involved in the case, having regard to the fact that 2005 Rules enables a notice to be issued before evicting any person, the Panchayat was bound to comply with the said statutory

provisions, which has not been done in the case on hand. A reference to Rule 7(7) would clearly indicate that if any licensee defaults the remittance of licence fee beyond the period mentioned in the licence, the Secretary has to demand the said amount with interest or fine as provided in the agreement and after making such demand, if remittance is not made within 7 days, the Secretary can close the premises temporarily and evict the possessor with or without the assistance of the police. However, sub rule (8) further indicates that the licensee whose premises are closed shall continue as the user and possessor of the premises. Sub rule (9) further indicates that when the premises is closed by the Secretary, he shall direct the licensee to remit the amount due within the period as specified in the notice. Sub rule (10) enables the licensee to remit the amount as demanded under sub rule (9) and if such payment is made, the premises shall be returned to the person in possession. However, if default is made in payment, the Secretary will have the right to cancel the licence at once which shall be communicated to the licensee and shall also be published in the premises which was closed under sub rule (7) if it is not possible to communicate the

same to the licensee personally.

25. It is apparent that this procedure had not been complied with and therefore under normal circumstances, licensee having valid documents are entitled to get back possession of the premises on payment of the arrears of licence fee.

26. In the case on hand, though the Panchayat proceeded on the basis that there were huge arrears of licence fee and the occupation was unauthorised, it is brought to the notice of this Court that most of the licensees have given deposit as security for occupying the premises. Therefore, it was possible for the Panchayat to adjust the arrears, if any, from such security deposit or even call upon the licensee to remit the arrears of licence fee within a specified time. Even a sub lessee or a sub licensee is entitled to notice if there is transfer of licence without permission from the Panchayat. Under such circumstances, we are of the view that the action taken by the Panchayat to close down the premises without notice to enable either the licensees to pay arrears, if any, or without giving an opportunity to explain unauthorised occupation of the premises, was illegal and in

violation of principles of natural justice.

27. Coming to the next question regarding the right of the petitioners to reoccupy the premises in question, we have to consider the entire factual circumstances involved in the case including the audit report produced as Ext.P2 in WP(C) No.35461/2014, wherein, it has been stated that the action of the Panchayat in permitting several persons to remain in possession without proper licence/lease deeds executed and at nominal rent/licence fee is irregular.

28. It is also not in dispute that the licence arrangement has not been renewed from year to year in respect of any of the petitioners. Only the first petitioner could produce a document by which the licence had been renewed, which is Ext.P8. Ext.P8 apparently contains a mistake which the learned Single Judge opines to be a manipulation. On a perusal of Ext.P8, we do not think that it is a manipulation, as Ext.P8 is signed by the Secretary and witnessed by two persons. As rightly argued by the learned senior counsel appearing for the appellants, the entries are filled up in the office of the Panchayat and therefore, the extension of licence is apparently for a period of one year from

01/04/2014 and it has to be till 31/3/2015 and not 31/3/2014. Therefore, we do not think that Ext.P8 is a document fabricated by the writ petitioners.

29. Petitioners have a case that similar agreements are executed and given to the Panchayat for extension of licence, but apart from collecting the rent, no steps are being taken by them for renewing the lease. At any rate, it is always possible for the Panchayat either to renew the lease/licence or to evict the persons in occupation. It is apparent that the licence had been originally granted for a period of one year, which, according to the petitioners were renewed from time to time. There is dispute between the parties regarding renewal of the licence. But, even according to the Secretary of the Panchayat, who had submitted the report, most of them were paying licence fee which was valid upto March, 2015. Under such circumstances it has to be assumed that even without proper document being created for renewal of licence, the Panchayat had permitted the petitioners to occupy the premises. Despite the aforesaid factual situation involved in the matter, we are of the view that, still, the Panchayat is entitled to conduct re-auction of the premises after

evicting the persons in occupation. Though it was an improper action on the part of the Panchayat in evicting the petitioners from the premises, without notice, taking into consideration the over all situation involved in the matter, especially the fact that Panchayat is entitled to evict the persons in possession of the shop rooms after expiry of the licence period, we are of the view that the petitioners ought to have been granted an opportunity to participate in the auction as far as the buildings in their occupation are concerned. This is so on account of the fact that their livelihood is based on the business being conducted in the shop rooms. Therefore, taking into consideration the overall factual situation involved in the matter and respective rights of the parties, we are of the view that a fresh auction has to be conducted in respect of the shop rooms which were in the occupation of the petitioners and their representatives and the petitioners also should be allowed to participate in the said auction.

30. Petitioners have also claimed that they should be awarded damages for wrongful dispossession. Though we have already held that the dispossession was without notice and not in

accordance with the statutory provisions, we do not think that this Court should exercise the public law remedy to assess the compensation, especially on account of the fact that the Panchayat has a contention that most of the occupants are illegal occupants and were unauthorised. It is always open for the appellants to agitate their claim, if any, in an appropriate civil proceeding.

31. As far as the directions issued by the learned Single Judge for taking action on the basis of Exts.P1 and P2 reports are concerned, we do not think that the learned Single Judge was justified in directing the mode in which action has to be taken. It is relevant to note that the Panchayat has permitted most of the persons to occupy these premises several years back and substantial amounts had been collected as security deposit. Under what circumstances these persons were given occupation is not known. However, on account of any inaction committed by the officers of the Panchayat, it is always open for the competent authorities to take necessary action, but there is no reason why this Court should direct any action to be taken against the appellants. Appellants have only occupied the premises on the

basis of a licence granted or in certain cases, even assuming that their occupation is unauthorised, the Panchayat had all the time to either regularise their occupation or to evict them in accordance with law. Delay on the part of the officials of the Panchayat in taking action can never be a reason for penal action against the appellants unless their complexity is proved beyond doubt. Therefore, it is always open for respondents, the Director of Panchayat or the Deputy Director of Panchayat, as the case may be, to take appropriate enquiry and take necessary action in the matter for which this Court need not issue any direction.

In the result, the writ appeals are disposed of as under;

- 1) The judgment of the learned Single Judge is set aside.
- 2) It is declared that eviction of the appellants from the shop rooms without notice was illegal and arbitrary.
- 3) Since the appellants have already been evicted, and there is no current licence arrangement, the request for repossession is rejected. However, the appellants shall be

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permitted to remove their articles from the shop rooms. Panchayat shall issue a notice in that regard within a period of 7 days and the appellants will be entitled to remove the materials in the presence of the officials of the respondent Panchayat.

4) The auction conducted with reference to the shop rooms which are the subject matter of WP(C) No.2570/2015, being during the pendency of the writ appeal, shall be set aside, if any of the appellants expresses their intention to participate in the auction, which shall be expressed in writing within 7 days from the date of receipt of the judgment. In such an event, the Panchayat is directed to conduct re-auction of the said premises by giving an option to the petitioners to participate in the said auction. If no such option is exercised by the appellants or any one of them, the auction already conducted and confirmed shall not be set aside.

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- 5) The Panchayat is free to recover any arrears of rent from the licensees/occupants after adjusting the security deposit furnished by them. If there is any balance due after such adjustment, the same shall be refunded to the respective appellants/occupants of the shop rooms.
- 6) The appellants' right to claim damages for wrongful eviction is reserved.
- 7) In respect of WP(C) No.35461/2014, it shall be open for respondents 1 and 2 to take appropriate action based on Exts.P1 and P2 in accordance with the procedure prescribed.

Sd/-

ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-

A.M. SHAFFIQUE, JUDGE

Rp

//True Copy//

PS to Judge