

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

WP(C).No. 5809 of 2007 (N)

PETITIONER :

**SHRI. P.K.ABRAHAM
AGED 53, S/O.LATE MATHEW KURIAN,
PUNCHATHALAKKAL HOUSE
KADUTHURUTHY VILLAGE, KOTTAYAM DIST.
REP. BY DULY CONSTITUTED POWER OF ATTORNEY HOLDER
SHRI.THOMAS MATHEW.**

**BY ADVS.SRI.VARGHESE C. KURIAKOSE
SRI.E.M.MURUGAN
SRI.PRAVEEN K. JOY
SMT.THANKOM G.**

RESPONDENT(S) :

- 1. STATE OF KERALA
REP. BY THE PRINCIPAL SECRETARY,
DEPARTMENT OF INDUSTRIES
SECRETARIAT, TRIVANDRUM.**
- 2. THE KERALA SMALL INDUSTRIES DEVELOPMENT CORPORATION LTD.,
(UNDERTAKING OF GOVT. OF KERALA), SANTHI NAGAR
TRIVANDRUM, REP. BY MANAGING DIRECTOR.**
- 3. THE MANAGER,
INDUSTRIAL ESTATE, MAYITHARA,
CHERTHALA, ALAPPUZHA TALUK.**

**R1 BY GOVT. PLEADER SRI. MANOJ P. KUNJACHAN
R2 & R3 BY ADVS. SRI.M.A.MANHU, SC
SRI.R.T. PRADEEP**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P1 : PHOTOSTAT COPY OF THE ORDER ISSUED BY THE 1ST RESPONDENT ON 2.5.2005.
- EXT.P2 PHOTOSTAT COPY OF THE APPLICATION FOR OUT RIGHT SALE SUBMITTED ON 3.4.1993.
- EXT.P3 PHOTOSTAT COPY OF THE COMMUNICATION FROM THE 2ND RESPONDENT.
- EXT.P4 PHOTOSTAT COPY OF THE INTIMATION DATED 4.7.2005.
- EXT.P5 PHOTOSTAT COPY OF THE OBJECTION RAISED BY THE PETITIONER.
- EXT.P6 PHOTOSTAT COPY OF THE NOTICE ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.
- EXT.P7 PHOTOSTAT COPY OF THE REPLY.
- EXT.P8 PHOTOSTAT COPY OF THE REQUEST DATED 12.4.2006.
- EXT.P9 PHOTOSTAT COPY OF THE RECEIPT ISSUED BY THE 2ND RESPONDENT.
- EXT.P10 PHOTOSTAT COPY OF THE JUDGMENT IN WP(C) NO 13690/2006 DATED 26/5/2006 PASSED BY THIS HONOURABLE COURT.
- EXT.P11 PHOTOSTAT COPY OF THE LETTER DATED 31.1.2007 ISSUED BY THE 2ND RESPONDENT.
- EXT.P12 PHOTOSTAT COPY OF THE ARGUMENT NOTE.

(Contd...)

- EXT.P13 PHOTOSTAT COPY OF THE LETTER ISSUED BY THE 2ND
RESPONDENT.
- EXT.P14 PHOTOSTAT COPY OF THE LETTER OF OBJECTION SUBMITTED BY
THE PETITIONER.
- EXT.P15 PHOTOSTAT COPY OF THE LETTER DATED 14.12.199.
- EXT.P16 PHOTOSTAT COPY OF THE LETTER DATED 22.5.2000.
- EXT.P17 PHOTOSTAT COPY OF LETTER DATED 29.5.2000.
- EXT.P18 PHOTOSTAT COPY OF THE PROCEEDINGS DATED 3.8.2010.
- EXT.P19 PHOTOSTAT COPY OF CONSENT LETTER ISSUED BY DEEPA PRABHU
IN FAVOUR OF SHRI K. APPUKUTTAN DATED 20.5.2010.

RESPONDENT'S EXHIBITS :

- EXT.R2(a) : PHOTOCOPY OF THE LEASE DEED DATED 9.2.2000 BETWEEN THE
PETITIONER AND THE 2ND RESPONDENT.
- EXT.R2(b) PHOTOCOPY OF THE ORDER OF EVICTION DATED 25.2.1999 UNDER
SUB SECTION (1) OF SECTION 5 OF THE KERALA PUBLIC BUILDINGS
(EVICTION OF UNAUTHORISED OCCUPANTS) ACT, 1968 ISSUED BY
THE ESTATE OFFICER.

//TRUE COPY//

P.S. TO JUDGE

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A.MUHAMED MUSTAQUE, J.

W.P.(C).No. 5809/2007

Dated this the 3rd Day of November, 2015

J U D G M E N T

The petitioner was in occupation of 'B' type shed in the industrial estate at Mayithara, Cherthala under the control of the third respondent. The above shed was allotted to the petitioner as per lease agreement dated 25/5/1991. The lease was terminated on account of non-payment of the rent. The petitioner did not surrender possession of the shed. Thereafter, it is seen from the records that the petitioner was evicted by the respondents invoking the power under the Kerala Public Buildings (Eviction of Unauthorised Occupants) Act, 1968. The shed was repossessed pursuant to the above proceedings. Thereafter, the shed was again reallocated to the petitioner as per Exhibit R2(a) lease deed. This was on 09/02/2000.

2. The present dispute is arising out of the claim of the petitioner in tune with Exhibit P1 Government Order. The petitioner now seeks conversion of lease to outright sale. Exhibit P1 Government Order clearly indicates the manner in which such outright sale has to be given. Exhibit P1 clearly indicates that to those who have applied for allotment after 01/02/1994, the appreciation value will be 300% instead of 121%. The petitioner submits that since he is in occupation of the

shed since 28/5/1991 i.e. prior to 01/02/1994 stipulated in Exhibit P1 he is entitled for the benefits in tune with Exhibit P1.

3. The learned Standing Counsel submits that since the original lease deed got snapped through a legally initiated proceedings, Exhibit R2(a) can be treated only as a fresh lease deed executed on 9/2/2000 and therefore, the petitioner cannot claim the benefits of Exhibit P1 Government order. It is to be noted that Exhibit P1 Government order gives permission for conversion of lease to outright sale on concessional rate to lessees, who are in possession prior to 1/2/1996. But the petitioner can be treated only as a lessee, who is in possession with effect from 9/2/2000 and hence, for any benefit, the petitioner's entitlement is from 9/2/2000 and not from 28/05/1991.

4. Therefore, the Writ Petition is disposed of declining the prayer of the petitioner to give outright sale as a lessee, who is in possession from 25/05/1991. However, the petitioner is entitled for any benefits as a lessee as on 9/2/2000, the same shall be given to the petitioner. The respondents are also free to proceed against the petitioner for any breach of lease in accordance with law.

The writ petition is disposed of as above. No costs.

Sd/-

(A.MUHAMED MUSTAQUE, JUDGE)