

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 10TH DAY OF AUGUST 2015/19TH SRAVANA, 1937

WA.No. 1759 of 2015 () IN WP(C).12418/2013

**AGAINST THE ORDER/JUDGMENT IN WP(C) 12418/2013 of HIGH COURT OF KERALA
DATED 27-07-2015**

APPELLANT(S)/PETITIONERS IN WPC 12418/13:

- 1. O.P.MOIDEEN
S/O.ALAVIKUTTY HAJI, O.P.HOUSE
MUNIYOOR P.O. MALAPPURAM DISTRICT.**
- 2. O.P.ALAVIKUTTY
S/O. MOHAMMED, O.P.HOUSE
MUNIYOOR P.O. MALAPPURAM DISTRICT**
- 3. T.A. RUKKIYA, W/O.SAIDALAVI
MAYATHENCHERI HOUSE, CHEMMAD
THIRURANGADI P.O. MALAPPURAM DISTRICT.**
- 4. K.T. AHAMMED KOYA, S/O.KUNJUAHAMMED
KUYAMTHADATHIYIL HOUSE, THIRURANGADI POST
MALAPPURAM DISTRICT.**
- 5. O.P. YUNAS SALAM, S/O.ABDUSALAM
THRIVENI HOUSE, THALAPPARA, MUNIYOOR P.O
MALAPPURAM.**
- 6. M. MOIDEEN, S/O.ABDU REHIMAN
MANAKADAVAN HOUSE, MUNIYOOR P.O, MALAPPURAM.**
- 7. V.M. KOYA,
S/O.ALI, NECHIMANNIL HOUSE, KOLAPPURAM
A.R.NAGAR, MALAPPURAM DISTRICT.**
- 8. N. RADHAKRISHNAN
S/O.K.KUTTIKRISHNAN NAIR, P.O.URAKAM, MELMURI
MALAPPURAM.**
- 9. ABDULKHAYUN K.P.
S/O.MUHAMMED HAJI, KONDACHAYAN PARAMBIL HOUSE
KOLAPPURAM, A.R.NAGAR P.O., MALAPPURAM.**

10. O.PABDUL RASAK
S/O.ALAVIKUTTY HAJI, OLAPPILAKKAL HOUSE, MUNIYOOR P.O.
MALAPPURAM DISTRICT.

BY ADVS.SMT.SUMATHY DANDAPANI (SR.)
SRI.PRAVEEN K. JOY

RESPONDENT(S)/RESPONDENTS IN WPC 12418/13:

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1. STATE OF KERALA
REP. BY SECRETARY, LOCAL SELF GOVERNMENT, SECRETARIAT
TRIVANDRUM - 695 024.
 2. DISTRICT COLLECTOR
MALAPPURAM DISTRICT, MALAPPURAM - 676 001.
 3. THE DEPUTY DIRECTOR OF PANCHAYATH
MALAPPURAM DISTRICT - 676 001.
 4. THE ESTATE OFFICER
THE TIRURANGADI GRAMA PANCHAYATH, TIRURANGADI
MALAPPURAM DISTRICT - 676 306.
 5. THE SECRETARY
TIRURANGADI GRAMA PANCHAYATH, TIRURANGADI
MALAPPURAM DISTRICT - 676 306.
 6. THE ASSISTANT EXECUTIVE ENGINEER
KERALA STATE ELECTRICITY BOARD, TIRURANGADI
MALAPPURAM DISTRICT - 676 306.

R3 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R4-R5 BY ADV. SRI.T.SETHUMADHAVAN (SR.)
R4-R5 BY ADV. SRI.PUSHPARAJAN KODOTH
R4-R5 BY ADV. SRI.K.JAYESH MOHANKUMAR
R1 to RE BY SR GOVERNMENT PLEADER SRI.P.I.DAVIS
BY SRI.SAJEEVKUMAR K.GOPAL,SC,KSEB

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 10-08-2015,
ALONG WITH WA. 1763/2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WA NO.1759/15

APPENDIX

APPELLANTS' EXHIBITS

ANNEXURE 1: THE TRUE PHOTOCOPY OF THE INTEIRM ORDER DT 17.5.13 IN WPC 12418/13 OF THIS HON'BLE COURT.

ANNEXURE 2: TRUE PHOTOCOPY OF THE LETTER DT 31.7.15 OF SUB INSPECTOR OF POLICE, THIRURANGADI TOGETHER WITH TRANSLATION.

ANNEXURE 3: THE TRUE PHOTOCOPY OF THE NOTICE DT 27.7.15 OF THE RESPONDENT PANCHAYATH TOGETHER WITH TRANSLATION.

//True Copy//

PS to Judge

Rp

ASHOK BHUSHAN, C.J.

&

A.M. SHAFFIQUE, J.

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W.A. Nos. 1759 & 1763 of 2015

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Dated this, the 10th day of August, 2015

J U D G M E N T

Shaffique, J.

These appeals are filed by the petitioners in WP(C) Nos.12418/13 and 12349/13 challenging judgment dated 27/7/2015 by which the writ petitions stand dismissed and the petitioners were called upon to pay cost of ₹25,000/- to the Kerala State Legal Services Authority.

2. The short facts involved in these appeals are as under;

Petitioners were tenants of the 5th respondent Grama Panchayat. Notices were issued for evicting them under the Kerala Public Buildings (Eviction of Unauthorised Occupants) Act, 1968. Initially, there was a challenge to the eviction order issued under Section 5 of the Act. This Court by judgment in WP(C) No.23948/12 directed the appellate authority before whom the appeals were pending to dispose of the said statutory appeals. Ext.P21 is the order passed by the appellate authority. It is

challenging the order passed by the appellate authority that these writ petitions have been filed.

3. Learned Single Judge by the impugned judgment having considered the entire matter in detail, dismissed the writ petitions.

4. Heard the learned senior counsel for the appellants and the learned senior counsel appearing for respondents 4 and 5.

5. The short question involved in the above writ petitions is with reference to the legality of Ext.P21 order passed by the District Collector. It is argued that the District Collector had not considered the matter on merits and there is absolute non application of mind. It is further argued that the Secretary of the Panchayat was not the Estate Officer at the relevant point of time and therefore, the entire proceedings is illegal and no steps could have been taken for evicting the petitioners from the said premises. Learned counsel also submits that the petitioners/appellants are carrying on business in the premises for

the last several decades and their livelihood is being affected on account of the order of eviction. It is also argued that there are other tenants, who are still in occupation and no steps are being taken by respondents 4 and 5 for evicting them.

6. Having regard to the factual issues arising in these cases, it is not in dispute that the petitioners are in occupation of the building owned by the Panchayat. Act provides a special remedy for the Panchayat to evict unauthorised occupants. Unauthorised occupation is defined in Section 2(f) of the Act as under;

“2(f) “unauthorised occupation”, in relation to any public building, means the occupation by any person of the building without authority for such occupation and includes the continuance in occupation by any person of the public building after the authority (whether by way of lease or any other mode of transfer) under which he was allowed to occupy the building has expired or has been determined for any reason whatsoever”.

7. It is not in dispute that the parties have agreed to vacate the premises in terms of Clause 4 (4) of the agreement

and once such an eventuality had occurred and notice had been issued calling upon the tenants to vacate the premises within the specified period of 30 days and if they do not vacate, they become unauthorised occupants. Once they become unauthorised occupants, it is always open for the Panchayat to take proceedings under Section 5 of the Act. Ext.P18 is a common order passed by the Estate Officer exercising power under the provisions of the Act. Once such power has been exercised, there is obligation on the part of the persons in occupation to surrender the said premises. Of course, they have an appellate remedy, which they have availed of and the appellate authority, viz., the District Collector, had concurred with the view expressed in Ext.P18. Having regard to the argument that the District Collector had not exercised the appellate power in accordance with law, does not appeal to us. The District Collector in Ext.P21 order dated 25/4/2013 had clearly indicated that there is violation of Clause 4(4) of the agreement as there was a clear undertaking that they would vacate the premises within a period of 30 days

from the date of making the request. Once it is found by the appellate authority that the persons in occupation were unauthorised occupants, we do not think that any other defence would be available to the petitioners/appellants. For that reason itself, as already held by the learned Single Judge, though not an admirable order expected from a quasi judicial authority, the crux of the order passed by the District Collector clearly indicates that the petitioners' right to occupation have already been terminated by notices and therefore they become unauthorised occupants.

8. Regarding the contention that Secretary was not the Estate Officer, it is clear from Ext.P18 order that the Secretary of the Panchayat has been exercising the powers as an Estate Officer as well. Under such circumstances, we do not think that the petitioners are entitled to challenge the impugned judgment which has been rendered after taking into consideration all the relevant aspects. We do not find any error in the judgment of the learned Single Judge warranting interference.

9. Lastly, it was argued by the learned senior counsel for

W.A. Nos.1759 & 1763/15

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the appellants that there was no reason to impose cost on the petitioners. Petitioners have only ventilated their legal grievances in the matter and therefore the imposition of cost was unwarranted. Having regard to the factual issues arising in the case and having regard to the nature of contentions urged on behalf of the appellants, we are of the view that the cost imposed on each petitioners can be reduced from ₹25,000/- (Rupees Twenty five thousand only) to ₹5,000/- (Rupees Five thousand only). These writ appeals are disposed of with the above modification.

Sd/-
ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE, JUDGE

Rp

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PS to Judge