

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

&

THE HONOURABLE SMT. JUSTICE P.V. ASHA

WEDNESDAY, THE 11TH DAY OF NOVEMBER 2015/20TH KARTHIKA, 1937

WA.No. 1265 of 2014 () IN WP(C).28432/2013

AGAINST THE ORDER/JUDGMENT IN WP(C) 28432/2013 of HIGH COURT OF KERALA
DATED 09-06-2014

APPELLANTS/PETITIONER(S):

1. SUBAIDA ABDUL RASHEED,
W/O. ABDUL RASHEED, AGED 51 YEARS, T.C 36/145
OLD T.C 44/1762(1), PADMA NAGAR, FORT
TRIVANDRUM.
2. RAHUMA BEEVI,
W/O. SHAHUL HAMEED, AGED 56 YEARS, T.C 37145
OLD T.C 44/1762(1U), PADMA NAGAR, FORT
TRIVANDRUM.

BY ADVS. SRI. R. S. KALKURA

RESPONDENT(S)/RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY THE SECRETARY, REVENUE DEPARTMENT
SECRETARIAT, TRIVANDRUM -695 001.
2. THE DISTRICT COLLECTOR
COLLECTORATE OFFICE, KUDAPPANAKUNNU
TRIVANDRUM -695 043.
3. REVENUE DIVISIONAL OFFICER
COLLECTORATE OFFICE, KUDAPPANAKUNNU
TRIVANDRUM -695 043.
4. THE ADDITIONAL TAHSILDAR
TALUK OFFICE, FORT, TRIVANDRUM - 695 043.
5. SPECIAL TAHSILDAR
SREE PANDARAVAKA, COLLECTORATE OFFICE, KUDAPPANAKUNNU
TRIVANDRUM -695 043
6. CORPORATION OF TRIVANDRUM
REPRESENTED BY ITS SECRETARY, MUSEUM JUNCTION
TRIVANDRUM - 695 033
7. ASSISTANT COMMISSIONER OF POLICE,
FORT, TRIVANDRUM -695 023.

R6 BY ADV. SRI. N. NANDAKUMARA MENON (SR.)

R6 BY ADV. SRI. P. K. MANOJKUMAR, SC, TVPM CORPORATION

R1 TO R5, R7 BY SR GOVT PLEADER SHYSON P. MANGUZHA

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 01-11-2015, THE
COURT ON 11.11.2015 DELIVERED THE FOLLOWING:

C.R.

ANTONY DOMINIC & P.V.ASHA, JJ.

W.A.No.1265 of 2014

Dated this the 11th day of November, 2015

JUDGMENT

Antony Dominic, J.

1. Petitioners in W.P(C).28432/13 are the appellants.

They filed the writ petition seeking to declare that the act of the 6th respondent demolishing the portion of the building where they were residing, without any notice, is illegal and to direct the 6th respondent to restore the demolished portion of the residential building or to recover the costs of the same from the respondents. The writ petition having been dismissed, this appeal is filed.

2. Briefly stated, the facts of the case are that according to the appellants, they are in possession of 12 cents of land in Survey No.680 and 683 of Vanchiyoor village, where they have constructed a building which has been numbered by the Corporation. Although the Corporation has described the structure as a shed and has disputed the assertion that the building was numbered by it, we do not think it necessary to resolve that controversy in this case. Be that as it may, it is a fact that the appellants

are in possession of the land and are residing in the structure therein.

3. According to the appellants, various proceedings were initiated by different authorities to illegally evict them from the property and the building and at one stage, the Revenue Divisional officer took over the property and appointed a Receiver. Those proceedings concluded by restoring the property to the appellants. It is also stated that subsequently, the residents' association of Padma Nagar, a neighbouring residential colony, filed OS.132/96 before the Munsiff Court, Trivandrum seeking an order of injunction against the appellants from 'trespassing' into the property in question. The suit was dismissed by Ext.P3 judgment and the said judgment was confirmed by the first appellate court. It is stated that subsequently, though this Court remanded the matter to the Munsiff Court, judgment was again rendered dismissing the suit.

4. While matters stood thus, the Corporation issued Ext.P7, an order under section 406(3) of Kerala

Municipalities Act, 1994 (hereinafter, the 'Act', for short). Subsequently, proceedings under the Kerala Land Conservancy Act, 1957 were also initiated by Exts.P13(a) and P13(b). That was contested by the appellants by filing Ext.P14 reply, where, they inter alia contended that the application filed by them for assignment of the land was pending consideration of the District Collector. Apprehending coercive action pursuant to Exts.P13(a) and P13(b), appellants filed W.P(C).20899/07, which culminated in Ext.P16 judgment, where, this Court directed that the District Collector should pass final orders on the assignment application submitted by the appellants. It was also ordered that further proceedings pursuant to Exts.P13(a) and P13(b) will be kept in abeyance and will be continued subject to the order to be passed by the District Collector. This resulted in Ext.P22 order passed by the District Collector whereby the application for assignment of the land was rejected. According to the appellants, a revision filed by them against this order is still pending before the Land Revenue Commissioner.

5. In the mean while, appellants challenged Ext.P7 order issued under section 406(3) of the Kerala Municipality Act in an appeal filed before the Tribunal for Local Self Government Institutions. By Ext.P25 order, the Tribunal set aside Ext.P7 holding thus:

"13. As already pointed out above, it is stated in the provisional order dated 18.6.2008 that the construction is done over property belonging to the Government. If the constructions are done on properties vested in the Corporation the proper procedure to be followed is that under Section 376 of the Kerala Municipality Act. The procedure under Section 406 of the Kerala Municipality Act are to be initiated as against unauthorised and illegal constructions if any done over the property of the person against whom the proceedings are initiated.

14. In the circumstances pointed out above, the impugned order is not sustainable and is liable to be set aside with direction to the 1st Respondent to initiate fresh proper proceedings, if any, as per law, without any unnecessary delay, if there are any reasons for doing so.

In the result, the Appeal is allowed. The impugned order bearing No.TP7/ZR1/1082/04 dated 16.11.2008 of the Secretary, Corporation of

Thiruvananthapuram is set aside. The 1st Respondent is directed to initiate fresh proper proceedings, if any, as per law, without any unnecessary delay, if there are any reason for doing so."

6.while matters stood thus, a complaint was submitted by Thiruvananthapuram Citizens Protection Forum before the Ombudsman for Local Self Government Institutions. In that complaint, the Ombudsman passed Ext.P26 order, where it was directed thus:

"I direct the Corporation to follow up and find out what has happened to the proceedings initiated under Ext.P30 in the writ petition and whether it has been disposed of in favour of the petitioners or it is turned down. If it is turned down, then necessarily the construction made by Respondents 3 and 4 are unauthorised and therefore Corporation has to initiate action for demolition of the same in accordance with the rules and ordered by the Tribunal."

7.It is stated that thereafter, without any notice or other intimation to the appellants, the residential building, which is described by the Corporation as a

shed, was partially demolished by the Corporation on 24.10.2013. It is in these circumstances, the writ petition was filed.

8.The Corporation has filed a statement where it is stated that the property in question is a puramboke land and that no licence or permit was issued for the construction of any building there. In so far as the incidents which led to the demolition of the building is concerned, the Corporation has justified its action by stating thus:

"The Corporation was informed by letter dated 16-7-2013 by the District Collector, Trivandrum that the Application for assignment filed by the Petitioners has been rejected. It is submitted that Exhibit-P22 order has been issued by the District Collector of Trivandrum, on the basis of the directions issued by this Hon'ble Court in Exhibit-P16 Judgment. On the basis of the Hon'ble Ombudsman for Local Self Government Institutions by order dated 4-6-2013, the Corporation has demolished the unauthorized construction made by the Petitioners in the Puramboke land on 24-10-2013. It is submitted that the construction made by the Petitioners is totally unauthorized and was made by trespassing

into the road puramboke near the Sreepadmanabha Swami Temple. The construction was made on the road puramboke through which the Pipeline for cleaning the Sreepadmanabha Swami Temple pond is laid. The puramboke land forms part of the drainage road."

9.A reading of the statement filed by the Corporation would therefore show that it admits of having demolished the structure in the property in the possession of the appellants on 24.10.2013. It also does not have a case that the said act was preceded by any notice or other intimation to the appellants. On the other hand, what it says is that it did demolish the building on the basis of Ext.P26 order passed by the Ombudsman for Local Self Government Institutions.

10.Judgment under appeal shows that the view taken by the learned single Judge is that in Ext.P26 order of the Ombudsman, it was clearly ordered that if the application for assignment of the land is turned down, the structure therein should be demolished. Therefore, since demolition was as ordered by the

Ombudsman in its order, there is nothing illegal in the action of the 6th respondent Corporation. It was accordingly the writ petition was dismissed.

11. Having heard the learned counsel for the appellants, learned Government Pleader and the learned senior counsel appearing for the 6th respondent Corporation, we are satisfied that the action of the Corporation in demolishing the structure in the land in the possession of the appellants is clearly illegal and it amounts to violation of their fundamental rights guaranteed under Article 21 of the Constitution of India.

12. From the statement dated 8.2.2014 filed on behalf of the 6th respondent Corporation, it can be seen that all what is stated is that it was on the basis of the order passed by the Ombudsman, the Corporation has demolished the structure of the appellants on 24.10.2013. Ext.P26 order of the Ombudsman, the relevant portion of which has already been extracted herein above, would reveal that what has been directed therein is that if the decision pursuant to

Ext.P13 notice issued under the Kerala Land Conservancy Act, which has been referred to in Ext.P26 as Ext.P30, is against the appellants, the Corporation is given liberty to initiate action for demolition of the structure in accordance with the rules and as ordered by the Tribunal for Local Self Government Institutions in Ext.P25 order. Though it is true that Ext.P13 proceedings culminated in Ext.P22 order passed by the second respondent and that the assignment application of the appellants was rejected, even apart from the fact that a revision filed by the appellants is stated to be pending before the Land Revenue Commissioner and therefore, the proceedings have not attained finality, the order passed by the Ombudsman only enabled the Corporation to initiate action as directed by the Tribunal for Local Self Government Institutions in Ext.P25 order and in accordance with law, viz., the Kerala Municipality Act, 1994.

13. In so far as Ext.P25 order is concerned, though the Tribunal has indicated that if the construction is on the properties vested in the Corporation, the

proper procedure to be followed was under section 376 of the Municipality Act, it would only mean that further action to be initiated by the Corporation should be in accordance with section 376 or section 406 of the Kerala Municipality Act. A reading of section 376 of the Act shows that as per this provision, if a person is found to be occupying any land belonging to the Municipality, without its previous sanction, he shall be liable for penalty and also, for summary eviction under sub section (3)(a) thereof. However, section 376(3)(b) provides before eviction under section 376 (3)(a), a notice shall be served on the person in occupation or his agent, requiring him, within such time as the Secretary may deem reasonable after receipt of the said notice, to vacate the land. If such notice is not obeyed, then only, the occupant can be evicted in the manner as provided therein. This provision, therefore, shows that only after serving notice on the occupant and only if the occupant does not vacate the land within the time specified in the notice, summary eviction under this provision can be resorted to.

14. Now we shall see the procedure that is prescribed under Section 406 of the Municipality Act. Section 406 deals with demolition or alteration of building work unlawfully commenced, carried on or completed. Section 406(1) provides inter alia that where the Secretary is satisfied that construction has been commenced or carried on or has been completed attracting any one of the provisions therein, the Secretary may make a provisional order requiring the owner or the person for whom the work is done, to demolish the work done or so much of it, as in the opinion of the Secretary, has been unlawfully executed, or to make such alterations as may, in the opinion of the Secretary, be necessary to bring the work in conformity with the provisions of the Act, rules or bye-laws. Sub section (2) provides that the Secretary shall serve a copy of the provisional order made under sub section (1) on the owner or the person for whom such work is done, together with a notice requiring him to show cause within a reasonable time, to be specified in such notice, why the order should not be confirmed. Sub section (3) further provides that where the owner or the person for whom the work

is done fails to show cause to his satisfaction, the Secretary may confirm the order issued under section 406(1) or modify the same to such extent as he may think fit to make, and such order shall then be binding on the owner or the person for whom the work is done. It is also provided that on non compliance of the order, the Secretary may himself cause the building or part thereof demolished and the expenses thereof shall be recoverable from the owner or such person.

15. This provision also shows that the Secretary is required to pass a provisional order as provided under section 406(1) and only if the owner or the person for whom the work is done who is served with the provisional order together with a notice requiring him to show cause within a reasonable time why the order should not be confirmed, fails to show cause to the satisfaction of the Secretary, then and then alone can the Secretary confirm the order under sub section (3). If the owner fails to comply with such an order under sub section (3), it is only then,

the Secretary is authorised to demolish the building or the part thereof.

16. Admittedly, before demolishing the structure of the appellants on 24.10.2013, none of these statutory provisions were complied with by the 6th respondent Corporation. Apparently realising the difficulty in wriggling out of this situation, learned senior counsel for the Corporation attempted to take refuge under section 372(a) of the Act. Section 372 provides that the Secretary may, without notice, remove the encroachment. Section 369 and 372, being relevant in this context, are extracted below for reference:

"369. Prohibition of structures or fixtures which cause obstruction in public streets- No person shall except with the written permission of a Municipality erect or set up within a municipal area any wall, fence, rail, post, step, booth or other structures or fixtures in or upon any public street or upon or over any open channel, well or tank in any street so as to form an obstruction, or an encroachment upon or a projection over, or to

occupy any portion of such street, channel, drain, well or tank."

"372. Secretary may without notice remove encroachment- Notwithstanding anything contained in this Act, the Secretary may, without notice, cause to be removed-

(a) Any wall, fence, rail, step, booth or other structure or fixture which is erected or set up in contravention of the provisions of section 369;

(b) any stall, chair, bench, box, ladder, bale, or any other thing whatsoever, placed or deposited in contravention of section 370;

(c) Any article, whatsoever, hawked or exposed for sale in any public place or in any public street in contravention of section 371 and any vehicle, package, box, board, shelf or any other thing in or on which such article placed or kept for the purpose of sale."

17. Reading of section 372 shows that it starts with a non obstante clause and clause (a) authorises the Secretary to cause to be removed, without notice, any structure or fixture which is erected or set up in contravention of the provisions under section 369. Language of section 369 shows that this provision is

attracted only if any structure is erected or set up "in or upon" any public street or upon or over any open channel, well or tank in any street so as to form an obstruction, or an encroachment upon or a projection over, or to occupy any portion of such street, channel, drain, well or tank.

18. The power under section 372 being a drastic one, such power can be exercised only in extremely emergent situations. Secondly a provision of this nature will have to be construed strictly and should be invoked only in cases where all requirements of this provision are made out. This therefore means that the Corporation has failed to establish that they could have legitimately taken action under section 372 of the Act. If the facts on record are appreciated in the context of this provision, it is evident that none of the ingredients of section 369 of the Act are in existence in this case, justifying initiation of proceedings under section 372 of the Municipality Act. In the statement filed by the Corporation, it is only stated that the puramboke land forms part of the drainage road. Further

Ext.P22, the order passed by the District Collector states that there are underground pipe line passing below the property. All this therefore establish beyond any shadow of doubt that the demolition of the structures in the property in the possession of the appellants, which, admittedly, was carried out by the 6th respondent Corporation on 24.10.2013, is clearly illegal and arbitrary and there is no justification whatsoever for this highhanded action.

19.Once it is concluded that the action of the Corporation is totally unjustified, the further question is what are the consequences that should follow. Before we proceed further, we may refer to two judgments of the Apex Court in this context. The first one is the judgment in Lucknow Development Authority v. M.K.Gupta [(1994) 1 SCC 243], where the Apex Court has held that public authorities acting in violation of the constitutional or statutory provisions oppressively are accountable for their behaviour before courts entrusted with responsibility of maintaining the rule of law and that when sufferance is due to malafide or oppressive or

capricious acts of a public servant, the injured is entitled to be compensated. The above principle has been explained by the following:

"The jurisdiction and power of the courts to indemnify a citizen for injury suffered due to abuse of power by public authorities is founded as observed by Lord Hailsham in *Cassell & Co. Ltd v. Broome* on the principle that 'an award of exemplary damages can serve a useful purpose in vindicating the strength of law'. An ordinary citizen or a common man is hardly equipped to match the might of the State or its instrumentalities. That is provided by the rule of law. It acts as a check on arbitrary and capricious exercise of power. In *Rookes v. Barnard*, it was observed by Lord Devlin, 'the servants of the Government are also the servants of the people and the use of their power must always be subordinate to their duty of service.' A public functionary if he acts maliciously or oppressively and the exercise of power results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it. He who is responsible for it must suffer it. Compensation or damage as explained earlier may arise even when the officer discharges his duty honestly and bona fide. But when it arises due to arbitrary or capricious behaviour then it loses its individual character and assumes social

significance. Harassment of a common man by public authorities is socially abhorring and legally impermissible. It may harm him personally but the injury to society is far more grievous. Crime and corruption thrive and prosper in the society due to lack of public resistance. Nothing is more damaging than the feeling of helplessness. An ordinary citizen instead of complaining and fighting succumbs to the pressure of undesirable functioning in offices instead of standing against it. Therefore the award of compensation for harassment by public authorities not only compensates the individual, satisfies him personally but helps in curing social evil. It may result in improving the work culture and help in changing the outlook. Wade in his book Administrative Law has observed that it is the credit of public authorities that there are simply few reported English decisions on this form of malpractice, namely misfeasance in public offices which includes malicious use of power, deliberate maladministration and perhaps also other unlawful acts causing injury. One of the reasons for this appears to be development of law which, apart, from other factors succeeded in keeping a salutary check on the functioning in the Government or semi-government offices by holding the officers personally responsible for their capricious or even ultra vires action resulting in injury or loss to a citizen by awarding damages against them. Various decisions rendered from time to time have been referred to by Wade on

Misfeasance by Public Authorities. We shall refer to some of them to demonstrate how necessary it is for our society. In *Ashby v. White* the House of Lords invoked the principle of 'ubi jus ibi remedium' in favour of an elector who was wrongfully prevented from voting and decreed the claim of damages. The ratio of this decision has been applied and extended by English Courts in various situations. In *Roncarelli v. Duplessis* the Supreme Court of Canada awarded damages against the Prime Minister of Quebec personally for directing the cancellation of a restaurant-owner's liquor licence solely because the licensee provided bail on many occasions for fellow members of the sect of Jehovah's Witnesses, which was then unpopular with the authorities. It was observed that, 'what could be more malicious than to punish this licensee for having done what he had an absolute right to do in a matter utterly irrelevant to the Alcoholic Liquor Act ? Malice in the proper sense is simply acting for a reason and purpose knowingly foreign to the administration, to which was added here the element of intentional punishment by what was virtually vocation outlawry'. In *Smith v. East Elloe Rural District Council* the House of Lords held that an action for damages might proceed against the clerk of a local authority personally on the ground that he had procured the compulsory purchase of the plaintiff's property wrongfully and in bad faith. In *Farrington v. Thomson*, the Supreme Court of Victoria awarded damages for exercising

a power the authorities knew they did not possess. A licensing inspector and a police officer ordered the plaintiff to close his hotel and cease supplying liquor. He obeyed and filed a suit for the resultant loss. In *Wood v. Blair*, a dairy farmer's manageress contracted typhoid fever and the local authority served notices forbidding him to sell milk, except under certain conditions. These notices were void, and the farmer was awarded damages on the ground that the notices were invalid and that the plaintiff was entitled to damages for misfeasance. This was done even though the finding was that the officers had acted from the best motives.

Today the issue thus is not only of award of compensation but who should bear the brunt. The concept of authority and power exercised by public functionaries has many dimensions. It has undergone tremendous change with passage of time and change in socio-economic outlook. The authority empowered to function under a statute while exercising power discharges public duty. It has to act to sub serve general welfare and common good. In discharging this duty honestly and bona fide, loss may accrue to any person. And he may claim compensation which may in circumstances be payable. But where the duty is performed capriciously or the exercise of power results in harassment and agony then the responsibility to pay the loss determined should be whose ? In a modern society no authority can

arrogate to itself the power to act in a manner which is arbitrary. It is unfortunate that matters which require immediate attention linger on and the man in the street is made to run from one end to other with no result. The culture of window clearance appears to be totally dead. Even in ordinary matters a common man who has neither the political backing nor the financial strength to match the inaction in public oriented departments gets frustrated and it erodes the credibility in the system. Public administration, no doubt involves a vast amount of administrative discretion which shields the action of administrative authority. But where it is found that exercise of discretion was mala fide and the complainant is entitled to compensation for mental and physical harassment then the officer can no more claim to be under protective cover. When a citizen seeks to recover compensation from a public authority in respect of injuries suffered by him for capricious exercise of power and the National Commission finds it duly proved then it has a statutory obligation to award the same. It was never more necessary than today when even social obligations are regulated by grant of statutory powers. The test of permissive form of grant is over. It is now imperative and implicit in the exercise of power that it should be for the sake of society. When the court directs payment of damages or compensation against the State the ultimate sufferer is the common man. It is the tax payers' money which is paid for inaction of those who are

entrusted under the Act to discharge their duties in accordance with law. It is, therefore, necessary that the Commission when it is satisfied that a complainant is entitled to compensation for harassment or mental agony or oppression, which finding of course should be recorded carefully on material and convincing circumstances and not lightly, then it should further direct the department concerned to pay the amount to the complainant from the public fund immediately but to recover the same from those who are found responsible for such unpardonable behaviour by dividing it proportionately where there are more than one functionaries."

20. Again, in N.Nagendra Rao & Co. v. State of A.P. [(1994) 6 SCC 205], the Apex Court has held thus in paragraphs 25 and 27:

"No civilized system can permit an executive to play with the people of its country and claim that it is entitled to act in any manner as it is sovereign. The concept of public interest has changed with structural change in the society. No legal or political system today can place the State above law as it is unjust and unfair for a citizen to be deprived of his property illegally by negligent act of officers of the State without a remedy. From sincerity, efficiency and dignity of State as

a juristic person, propounded in nineteenth century as sound sociological basis for State immunity the circle has gone round and the emphasis now is more on liberty, equality and the rule of law. The modern social thinking of progressive societies and the judicial approach is to do away with archaic State protection and place the State or the Government on a par with any other juristic legal entity. Any watertight compartmentalization of the functions of the State as "sovereign and non-sovereign" or "Governmental and nonGovernmental" is not sound. It is contrary to modern jurisprudential thinking. The need of the State to have extraordinary powers cannot be doubted. But with the conceptual change of statutory power being statutory duty for sake of society and the people the claim of a common man or ordinary citizen cannot be thrown out merely because it was done by an officer of the State even though it was against law and negligent. Needs of the State, duty of its officials and right of the citizens are required to be reconciled so that the rule of law in a Welfare State is not shaken. Even in the "financial instability of the infant American States rather than to the stability of the doctrine's theoretical foundation", or because of "logical and practical ground", or that "there could be no legal right as against the State which made the law" gradually gave way to the movement from, "State irresponsibility to State responsibility". In Welfare State, functions of the State are not

only defence of the country or administration of justice or maintaining law and order but it extends to regulating and controlling the activities of people in almost every sphere, educational, commercial, social, economic, political and even marital. The demarcating line between sovereign and non-sovereign powers for which no rational basis survives has largely disappeared. Therefore, barring functions such as administration of justice, maintenance of law and order and repression of crime etc. which are among the primary and inalienable functions of a constitutional Government, the State cannot claim any immunity. The determination of vicarious liability of the State being linked with negligence of its officers, if they can be sued personally for which there is no dearth of authority and the law of misfeasance in discharge of public duty having marched ahead, there is no rationale for the proposition that even if the officer is liable the State cannot be sued. The liability of the officer personally was not doubted even in Viscount Canterbury. But the Crown was held immune on doctrine of sovereign immunity. Since the doctrine has become outdated and sovereignty now vests in the people, the State cannot claim any immunity and if a suit is maintainable against the officer personally, then there is no reason to hold that it would not be maintainable against the State.

A law may be made to carry out the primary or inalienable functions of the State. Criminal

Procedure Code is one such law. A search or seizure effected under such law could be taken to be an exercise of power which may be in domain of inalienable function. Whether the authority to whom this power is delegated is liable for negligence in discharge of duties while performing such functions is a different matter. But when similar powers are conferred under other statute as incidental or ancillary power to carry out the purpose and objective of the Act, then it being an exercise of such State function which is not primary or inalienable, an officer acting negligently is liable personally and the State vicariously. Maintenance of law and order or repression of crime may be inalienable function, for proper exercise of which the State may enact a law and may delegate its functions, the violation of which may not be sueable in torts, unless it trenches into and encroaches on the fundamental rights of life and liberty guaranteed by the Constitution. But that principle would not be attracted where similar powers are conferred on officers who exercise statutory powers which are otherwise than sovereign powers as understood in the modern sense. The Act deals with persons indulging in hoarding and black marketing. Any power for regulating and controlling the essential commodities and the delegation of power to authorised officers to inspect, search and seize the property for carrying out the object of the State cannot be a power for negligent exercise of which the State can claim immunity. No

constitutional system can, either on State necessity or public policy, condone negligent functioning of the State or its officers."

21. This, therefore, means that when a citizen of this Country has suffered on account of the oppressive and capricious acts of a public authority which is vested with the powers, to be discharged for the benefit of the public, such citizen is entitled to have his injuries remedied appropriately.

22. From the facts that we have discussed, it is evident that without any justification whatsoever and in a most capricious and arbitrary manner, the Corporation has demolished the homestead where the appellants were residing. By demolishing the roof under which the appellants lived and slept, their precious rights under Article 21 of the Constitution of India, which guarantees the right to life to any citizen of this Country, has been mercilessly violated. Right to life is not a mere right for an animal existence but is the right to lead a meaningful life. In our view, that right for a meaningful life has been deprived of

by the Corporation in the instant case. We are therefore satisfied that this is a case where the appellants are entitled to have their injuries remedied.

23. We, therefore, set aside the judgment of the learned single Judge and dispose of this appeal declaring that the act of the 6th respondent Corporation in demolishing the portion of the residential building where the appellants were residing without any notice is most illegal, capricious and arbitrary. As a consequence, we issue a writ of mandamus directing the 6th respondent Corporation to restore the demolished portion of the appellants' residential building as it was before its demolition on 24.10.2013. If, for any reason, the Corporation fails to restore the structure in the manner as ordered above within three months from the date of receipt of a copy of this judgment, the Corporation will, at any rate within 2 weeks thereafter, pay to the appellants Rs.2 lakhs for restoration of the demolished portion of the building. Appellants will thereupon be entitled to

restore the demolished portion of the building and in case they incur any amount in addition to Rs.2 lakhs paid to them, the appellants will be entitled to recover the balance amount from the Corporation in accordance with law. For the highhanded and oppressive action of the 6th respondent, we direct the Corporation to pay an amount of Rs.1 lakh as compensation to the appellants which shall be paid within 4 weeks from the date of receipt of a copy of this judgment. It is made clear that it will be open to the Corporation to fix liability on any officer who is responsible for the illegality and to recover the amounts paid by it to the appellants from such officer concerned in accordance with law.

The judgment of the learned single Judge is set aside and the appeal is disposed of as above.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
P.V.ASHA, Judge.

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/True copy/

PS to Judge