

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 20TH DAY OF FEBRUARY 2015/1ST PHALGUNA, 1936

WA.No. 1928 of 2014 () IN WP(C).29436/2014

**AGAINST THE JUDGMENT IN WP(C) 29436/2014 of HIGH COURT OF KERALA
DATED 11.11.2014**

APPELLANT/PETITIONER:

**KHEMCO & CO. PVT. LTD.,
REPRESENTED BY BRANCH MANAGER, P.F.KAMATH
S/O.LATE PADMANABHA KAMMATH, H.NO.4/717
KRISHNAN NAIR LANE, NORTH CHERLAI, COCHIN-2.**

**BY ADVS.SRI.N.N.SUGUNAPALAN (SR.)
SRI.S.SUJIN**

RESPONDENTS/RESPONDENTS:

- 1. COCHIN PORT TRUST,
WILLINGDON ISLAND, REPRESENTED BY ITS CHAIRMAN
COCHIN-682003.**
- 2. THE CHAIRMAN,
COCHIN PORT TRUST, WILLINGDON ISLAND, COCHIN-682003.**
- 3. UNION OF INDIA,
REP. BY THE SECRETARY
MINISTRY OF SHIPPING AND TRANSPORT
NEW DELHI-110001.**

**R3 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R1 & 2 BY SRI.V.ABRAHAM MARKOS**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 20-02-2015,
ALONG WITH W.A. NOS. 1951 & 1960/2014 THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**

JJJ

ASHOK BHUSHAN, Ag. C.J.

&

A.M. SHAFFIQUE, J

W.A. Nos. 1928, 1951 & 1960 of 2014

Dated this the 20th day of February, 2015

J U D G M E N T

A.M. Shaffique, J.

These appeals have been filed by the writ petitioners against the common judgment dated 11.11.2014 in W.P.(C) Nos.29436, 27972 and 29830 of 2014.

2. In Writ Appeal No.1928/2014, which arises from W.P.(C) No.29436/2014, the appellant/writ petitioner is a lessee of Cochin Port Trust, whose lease agreement was valid till 2020. By notice dated 27.10.2014 issued by the Cochin Port Trust, the lease was cancelled by giving six months' notice, which came to be challenged on different grounds. The learned Single Judge, having found that the Cochin Port Trust is entitled to cancel the lease, disposed the Writ Petition by issuing certain direction.

3. As far as the petitioners in W.P.(C) Nos. 27972 and 29830 of 2014 are concerned, they are lessees whose lease period has expired and communication has been sent by the Cochin Port Trust calling upon them to vacate the premises, by which they were told that if they don't vacate the premises, proceedings will be initiated under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as 'the Act' for short). At this stage, the Writ Petitions have been filed.

4. The learned Single Judge, by a common Judgment, observed that the petitioners' having put up the building and having remained in occupation for long years, a decision has to be taken to rehabilitate them in the Port Trust area consistent with the Land Management Policy. Hence, a direction was issued to the Port Trust to rehabilitate the lessees and also sub-lessees and a decision

in that regard has to be taken within a period of one month after affording an opportunity of hearing to the petitioners.

5. Heard the learned senior counsel, Sri. N.N. Sugunapalan and Sri. P. Raveendran appearing on behalf of the appellants in the above cases and the learned senior counsel Sri. Abraham Markos appearing on behalf of the respondent - Cochin Port Trust.

6. These Writ Petitions were filed at a time when, the Cochin Port Trust claimed that they had cancelled the lease with reference to the petitioner in W.P.(C) No. 29436/2014 and has informed the other Writ Petitioners that they have to surrender possession of the premises after demolishing the structures, since the said area is required for the purpose of the Port.

7. The petitioners contended that they were carrying on business in the Port area for quite a long number of years and suddenly if they are shifted, it will cause

irreparable loss and hardship. They have also taken up a contention that the Port Trust cannot cancel the lease and that they cannot refuse renewal of lease.

8. Apparently, eviction proceedings can be taken by the Cochin Port Trust only by resorting to the provisions of the Act. It is now mentioned by the learned senior counsel Sri.P.Ravindran appearing on behalf of the 7th appellant in W.A. No.1960/2014 that they have been served with a notice under section 4 of the Act, which they have challenged by filing a writ petition.

9. Learned senior counsel appearing for the Cochin Port Trust submits that, so far, no steps has been taken for evicting the petitioners other than issuing notice to the 7th appellant in W.A. No. 1960/2014.

10. The question that arises for consideration in these cases would be whether the occupation of the petitioners are authorised or unauthorised. If a lessee has a case that

the cancellation of lease deed and the attempt to resume the lease premises is not in accordance with the terms of the contract and is illegal, it is always open for such lessee to agitate the said issue at the time when proceedings are initiated against the said lessee, under the provisions of the Act. In fact, a consideration of the validity or otherwise of the notice issued for cancellation of the lease deed was premature at this stage.

11. As far as the time expired leases are concerned, they are entitled to take such contentions as may be permissible under law when proceedings are initiated under the provisions of the Act.

12. Learned senior counsel appearing for the Cochin Port Trust submits that, in regard to providing alternate premises, the Port Trust generally considers it when a request for providing alternate space is made by the lessees concerned and depending upon the availability of space,

suitable orders could be passed. However, the discretion to be exercised for providing alternate land will be made only to the lessees who genuinely requires the space/premises.

13. We are of the view that as far as the allotment of alternate land is concerned, it is always open for the lessees, who are served with resumption notices to approach the Port Trust and depending upon the availability of alternate land and other relevant factors, the Port Trust shall consider the same in accordance with the procedure prescribed. To that extend we do not think that any direction is required to be passed.

14. But, since the lessees has a contention that their occupation is authorised and the cancellation, if any, is not in accordance with the provisions of the contract, or if there is any illegality, it is always open for them to raise appropriate defence at the time when proceedings are initiated against them under the provisions of the Act. The

said right of the appellants are left open to be decided in accordance with law, in the proceedings to be initiated under the provisions of the Act.

In the light of the above observation we do not think that any further direction is required to be passed. Accordingly these appeals are disposed, reserving the right of the appellants to agitate their claims, when proceedings are initiated by Cochin Port Trust under the provisions of the Act.

Sd/-
ASHOK BHUSHAN,
ACTING CHIEF JUSTICE.

Sd/-
A.M. SHAFFIQUE,
JUDGE.

//TRUE COPY//

P.A. TO JUDGE

JJJ