

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

FRIDAY, THE 30TH DAY OF JANUARY 2015/10TH MAGHA, 1936

WP(C).No. 350 of 2015 (P)

PETITIONER(S) :

- 1. NAVAS, AGED 49 YEARS,
S/O.KAMALUDEEN, NOUSHAD NIVAS, KOTTIYAM,
AADHICHANALLOOR VILLAGE, KOLLAM.**
- 2. JALALDHEEN,
S/O.SHAHUL HAMEED, ULLAS NIVAS, KOTTIYAM,
AADHICHANALLOOR VILLAGE, KOLLAM.**

**BY ADVS.SRI.C.RAJENDRAN
SMT.R.S.SREEVIDYA**

RESPONDENT(S) :

- 1. THE STATE OF KERALA,
REPRESENTED BY SECRETARY TO PUBLIC WORKS DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.**
- 2. THE ASSISTANT ENGINEER,
PUBLIC WORKS DEPARTMENT, ROAD SECTION, CHATHANNOOR,
KOLLAM DISTRICT - 691 572.**
- 3. THE DISTRICT COLLECTOR,
KOLLAM, COLLECTORATE, KOLLAM DISTRICT- 691 572.**
- 4. THE AADICHANALLOOR GRAMA PANCHAYATH,
AADICHANALLOOR, KOLLAM DISTRICT - 691 573,
REPRESENTED BY ITS SECRETARY.**
- 5. THE DIRECTOR,
KOTTIYAM HOLLY CROSS HOSPITAL, ADICHANALLOOR,
KOTTIYAM P.O, KOLLAMDISTRICT - 691 571.**

R1 TO R3 BY SR.GOVERNMENT PLEADER SRI.K.C.VINCENT

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 30-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: A TRUE PHOTOCOPY OF THE JUDGMENT IN W.P.(C).NO.28874/11
DATED 28.10.2011 OF THIS HONOURABLE COURT.**
- EXT.P2: A TRUE PHOTOCOPY OF THE JUDGMENT IN W.P.(C).NO.12290/14
DATED 23.05.2014 OF THIS HONOURABLE COURT**
- EXT.P3: A TRUE PHOTOCOPY OF THE OBJECTION DATED 07.05.2014
SUBMITTED BY THE PETITIONERS BEFORE THE 2ND RESPONDENT**
- EXT.P4: A TRUE PHOTOCOPY OF THE NOTICE DATED 19.11.2014 ISSUED BY
THE 2ND RESPONDENT TO THE PETITIONERS.**
- EXT.P5: TRUE PHOTOGRAPH OF THE SHOPS OF THE PETITIONERS.**
- EXT.P6: TRUE PHOTOGRAPHS SHOWING THE CLOSE VIEW OF THE SHOPS OF
THE PETITIONERS.**
- EXT.P7: TRUE PHOTOGRAPH SHOWING THE ROAD AND THE AREA WHERE
THE PRELIMINARY WORKS WERE DONE BY THE 2ND RESPONDENT.**
- EXT.P8: TRUE PHOTOGRAPH OF THE FORT GATE OF THE HOLLY CROSS
HOSPITAL, KOTTIYUM, KOLLAM.**

RESPONDENT(S)' EXHIBITS

- EXHIBIT R2(A): TRUE COPIES OF THE ACKNOWLEDGEMENT CARD
EVIDENCING THE RECEIPT OF THE SAME BY THE
PETITIONERS AND OTHER ENCROACHERS.**
- EXHIBIT R2(B): A TRUE COPY OF THE LETTER WRITTEN BY
THE ENCROACHERS.**
- EXHIBIT R2(C): A TRUE COPY OF THE PROCEEDINGS DATED 15.12.2014.**
- EXHIBIT R2(D): A TRUE COPY OF THE PHOTOGRAPH SHOWING THE
TEMPORARY SHED CONSTRUCTED ON THE AREA WHERE THE
PETITIONERS SHOPS WERE SITUATED.**

//TRUE COPY//

P.A.TO JUDGE.

Msd.

P.R. RAMACHANDRA MENON, J.

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W.P.(C). No. 350 of 2015

Dated this the 30th day of January, 2015

JUDGMENT

The petitioners have approached this Court seeking for the following reliefs:

- i) To call for the records leading to Exhibit P4 and other similar notices issued to the petitioners and quash the same by the issuance of a writ in the nature of Certiorari or any other appropriate writ, order or direction.
- ii) To declare that the 2nd respondent has no right or authority to initiate steps under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971
- iii) To issue a writ in the nature of MANDAMUS or any other appropriate writ order or direction compelling and commanding the 2nd respondent to take a decision on merit on Exhibit P3 and other similar show cause notices issued to petitioners and to take a decision after giving them an opportunity of being heard and to give copy of the decisions to the petitioners
- iv) To issue a writ in the nature of MANDAMUS or any other appropriate writ order or direction compelling and commanding the 2nd respondent not to evict the petitioners from their petty shops till their remedies available under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and the Land Conservancy Act are exhausted
- vi) To grant such other reliefs this Hon'ble court may deem fit and proper in the interest of justice.

2. The main case projected by the petitioners is that the respondents have taken the law into their hands and are seeking to evict the petitioners without any regard to the

directions given by this Court as per Ext.P1 judgment passed on an earlier instance, directing the respondents to give an opportunity of hearing and to pass appropriate orders in accordance with the steps for eviction, if at, all any encroachment was there. It is mentioned that Ext.P4 notice was issued as directed by this Court in W.P(C)No.12290/2014, whereas no such direction was there in the said case as evident from Ext.P2 judgment, whereby the writ petition was dismissed. It was in the said circumstance that an interim order of 'status quo' was passed by this Court on 6-1-2015 in the following terms:

“ It is seen hat Ext.P4 notice has been issued with reference to the so called direction issued by this Court vide Ext.P2 judgment under the Kerala Land Conservancy Act, but Ext.P2 judgment refers to provisions of Section 4(2) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. ”

3. A counter affidavit has been filed by the 2nd respondent pointing out the relevant facts and figures. It is brought to the notice of this Court that the petitioners have put up various sheds on the side of the road, making virtually a trespass/encroachment. The road at the relevant spot was having a sharp curve on the western side and hence immediate steps were to be taken for facilitating maximum width of the road and

to have free flow of traffic, avoiding accidents. The steps taken by the concerned respondents are discernible from paragraph 2 of said counter affidavit which is extracted below:

"The writ petition is filed challenging the proceedings initiated by the respondents 1 to 3 for eviction of the encroachers in the Kottiyam-Ottaplamoodu Road which comes under the PWD Road Section, Chathannoor. In the area near the Holy Cross Hospital, Kottiyam there is a sharp curve on the western side of the road and the insight of this curve has been occupied by the petitioners and some other encroachers, hindering the minimum site distance for the motor drivers. There was causing a great threat to the free flow of traffic in the area and accidents were ever common. Within a distance of 1km , two schools, one Polytechnic, one ITC, one church and the Holy Cross Hospital are situated and it is an area with heavy traffic and pedestrian movements at all time of the day. Hence it is necessary to maintain the road and so many steps were taken for widening the road as per the norms laid down by the MORTH and specifications of the IRC. The petitioners and 5 others were encroachers on this road and as per the direction of this Hon'ble Court in W.P(C) No.28874/11 dated 28-10-2011. Steps were taken to hear the petitioners and pass appropriate orders considering the objection filed by the petitioners and 5 others who were the petitioners in the writ petition as per the directions of this Hon'ble Court. Accordingly sufficient notices were issued to all the encroachers by this respondent and five among them gave statement expressing willingness to vacate. But petitioner herein did not turn up. The petitioners herein challenged the same in W.P(C) No.12290/2014 also and vide the judgment dated 23-5-2014 in W.P(C)NO.12290/2014 this Hon'ble Court directed the petitioners to file objections to the notice impugned therein. The petitioners filed objections and this respondent did not proceed on the notice any further. During the pendency of KLC proceedings, on the basis of a judgment of this Hon'ble Court, notice under Public Premises (Eviction of Unauthorized Occupants) Act, another notice was issued. Subsequently as per Ext.P4, sufficient notices were issued to the encroachers including the petitioners herein on 19-11-2014 asking them to show

cause why they should not be evicted. They were asked to submit their explanation or reply on 8-12-2014 this notice were sent to all the encroachers by Registered post acknowledge due. The petitioners have received them on 27-11-2014."

4. Pursuant to the proceedings taken against the petitioners and other encroachers, the petitioners had approached this Court earlier by filing W.P.(C) No.28874/2011, which was disposed of as per Ext.P1 judgment dated 28-10-2011, whereby it was observed that an opportunity of hearing was to be given to the petitioners before coercive actions were taken. It was accordingly, that the proceedings were ordered to be kept in abeyance, till a final decision was taken, after affording an opportunity of hearing.

5. Subsequently, a notice was issued to the petitioners under Section 4(2) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. This was ought to be challenged by the petitioners by filing W.P.(C) No.12290/2014, joining hands with some other similarly situated persons (encroachers). Observing that the impugned proceeding was only a show-cause notice, interference was declined and the writ petition was dismissed as per Ext.P2 judgment dated 23-5-2014 . It is stated that the respondents however did not

proceed with further steps under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Subsequently, in conformity with the directions given by this Court as per Ext.P1 judgment, fresh notice was issued to the petitioners and other encroachers, also by registered post, which was served to all encroachers, as evident from Ext.R2(a) postal acknowledgement card. 5 encroachers out of total 7 (ie, except the petitioners) have turned up and conceded the encroachment, requesting for some breathing time to effect vacant surrender. Accordingly, they effected vacant surrender and the road has been cleared, facilitating free flow of traffic.

6. In the case of the petitioners herein, they neither did turn up pursuant to the notice, nor did effect vacant surrender. In the said circumstance, the proceedings were finalised and eviction orders were passed, issuing notice to the petitioners as borne by Ext.R2(c) dated 15-12-2014. In the course of further steps, the petitioners were evicted from the side of the road in the morning on 6-1-2015, which process was completed by 10 am. It was thereafter, that the petitioners approached this Court by filing the writ petition as a "today item" which was taken up in the afternoon, wherein the interim order of 'status

quo' was passed by this Court. After getting the interim order of 'status quo', the learned Government Pleader points out, that the petitioners took the law into their hands and unauthorisedly put up a fresh shed in the premises in the night of 6-1-2014, also affixing a copy of the order of 'status quo' on the sheet covering the shed . A photograph of the said shed is produced as Ext.R2(d) along with the counter affidavit. The photographs of the original shed put up by the petitioners have already been produced by the petitioners as Exts.P5 and P6. The shed now stated as put up by the petitioners as borne by Ext.R2(d) is entirely different from the shed that appears in Exts.P5 and P6.

7. Despite the specific assertion made by the second respondent in the counter affidavit, referring to the sequence of events, the petitioners have not chosen to file any reply affidavit so far. Three adjournments were given to the petitioners in this regard. No satisfactory explanation is forthcoming. This Court finds that there is absolutely no merit or bonafides in the writ petition and that the course pursued by the petitioners cannot but be deprecated. The interim order of 'status quo' was ordered to be maintained by both the parties . It did not give any green card to the petitioners to put up a new

fresh shed, after the same was demolished by the respondents in the forenoon on 6-1-2015. The action pursued by the petitioners is a clear instance of contempt, liable to be proceeded against, in view of the law declared by the Apex Court in ***Dhananjay Sharma vs State of Haryana and Others (AIR 1995(3) SCC 757)***.

Considering the persuasive submissions made by the learned counsel for the petitioners, no proceedings under Contempt of Court Act are taken, but for dismissing the writ petition with a cost of Rs.5,000/- to be paid by each of the petitioners, to the Kerala State Mediation and Conciliation Centre within 'one month'; failing which, it will be open for the Registrar General to issue necessary certificate to the beneficiary. A copy of the judgment shall be given to the Director of the Mediation and Conciliation Centre.

**P.R. RAMACHANDRA MENON,
JUDGE.**

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