

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 27TH DAY OF MARCH 2015/6TH CHAITHRA, 1937

WP(C).No. 9497 of 2015 (J)

PETITIONER(S):

1. P.M. FAZALUDEEN, PLAVILA VEEDU,
OYOOR P.O, KOLLAM.
2. M. FAZALUDEEN, HARIS MANZIL,
MEYANNA P.O, OYOOR, KOLLAM.
3. S. SHARAFUDEEN, BISMILLAH MANZIL,
KANNANALLOOR P.O, KOLLAM.
4. O. SUBAIRKANNU, PARANGIMAMVILA VEEDU,
OYOOR P.O, KOLLAM.
5. M. SHAHUL HAMEED, KUZHAMTHADATHIL VEEDU,
OYOOR P.O, KOLLAM.
6. V. RAMACHANDRAN, PALAYATH VEEDU,
MARUTHAMONPALLI, POOYAPPALLY P.O., KOLLAM.
7. M.K. SANTHOSH, VANDANA,
KARINGANNOOR P.O, OYOOR, KOLLAM.

BY DR.K.P.SATHEESAN, SENIOR ADVOCATE.
ADVS. SRI.M.R.JAYAPRASAD,
SRI.P.MOHANDAS (ERNAKULAM),
SRI.ANOOP.V.NAIR,
SRI.S.VIBHEESHANAN.

RESPONDENT(S):

1. VELINALLOOR GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY,
OYOOR P.O., KOLLAM- 691 510.
2. THE SECRETARY,
VELINALLOOR GRAMA PANCHAYAT,
OYOOR P.O., KOLLAM- 691 510.

BY SMT.BINDU SREEKUMAR, SC.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 27-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT P1. COPY OF THE NOTICE NO.A3 2369/09 DATED 01.01.2015 ISSUED BY THE FIRST RESPONDENT TO THE THIRD RESPONDENT.
- EXHIBIT P1(A). COPY OF ENGLISH TRANSLATION OF EXT.P1.
- EXHIBIT P2. COPY OF THE NOTICE NO.A3.2369/09 DATED 08.01.2015 ISSUED TO THE 3RD PETITIONER.
- EXHIBIT P2(A). COPY OF ENGLISH TRANSLATION OF EXT.P2.
- EXHIBIT P3. COPY OF THE LETTER NO.A3.2369/09 DATED 16.02.2015 WRITTEN BY THE 2ND RESPONDENT ALONG WITH A COPY OF THE DECISION OF THE FIRST RESPONDENT ON 29.10.2014 AS ITEM NO.IV(2).
- EXHIBIT P3(A). COPY OF ENGLISH TRANSLATION OF EXT. P3.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 9497 of 2015

Dated this the 27th day of March, 2015

JUDGMENT

Heard the learned counsel for the petitioners and the learned Standing Counsel for the respondents, apart from perusing the record. Since the issue lies in a narrow compass, this Court proposes to dispose of the writ petition at the admission stage itself.

2. The petitioners, who are the occupants of stall Nos. 2 to 8 in the shopping complex owned by the first respondent Grama Panchayat, have approached this Court with a grievance that they should not be evicted from their respective shop rooms until and unless the actual demolition of the building commences.

3. To elaborate ever so briefly, it is to be observed that the petitioners are said to have been tenants of the Grama Panchayat for the last 2 to 3 decades without any rental arrears. The building which contains the tenements being a very old structure, the respondent Grama Panchayat

has decided to demolish the same and construct a new one in its place. As could be seen from Exhibit P3, the Grama Panchayat has had the initial rounds of consultation with the tenants and decided to re-accommodate them once the new structure is raised.

4. The singular grievance of the petitioners, as has been expressed through their learned counsel, is that the issue of constructing a new building is only at a proposal stage and it may take any amount of time before it actually fructifies. In elaboration, the learned counsel for the petitioners, fairly though, has submitted that the petitioners do not have any manner of objection for vacating the tenements, but in all fairness they should be allowed to carry on with their business, as they are petty tradesmen, till the project finally takes off in the form of actual demolition of old building. According to him, it is not uncommon that from the date of the proposal, the fructification of the project takes inordinate amount of time and in the meanwhile the petitioners should not go without any business.

5. The learned Standing Counsel for the respondent Grama Panchayat has, however, produced before the Court continuous material to establish that the entire project has been completed and the Contractor, who has been assigned the work, is all set to demolish the old building, but for the insistence of the petitioners to continue in the building, which is, indisputably old and dilapidated. She has placed before the Court the project estimate for the construction of shopping complex prepared by LBS Centre for Science and Technology, Trivandrum, a Government consultancy. That apart, the learned Standing Counsel has submitted that on 13.02.2015 the Grama Panchayat issued tender notification, and on 05.03.2015 passed a resolution assigning the civil work to the successful bidder, who has been directed by the Grama Panchayat to commence the work of demolition and re-construction by the second week of April, 2015.

6. The learned Standing Counsel has also drawn my attention to the proceedings dated 05.12.2014 issued by the Directorate of Panchayat, which is in vernacular. At any rate, going by the submissions of the learned Standing Counsel for the respondent Grama Panchayat, which has not

been contradicted by the learned counsel for the petitioners, the Grama Panchayat seems to have had the necessary permission for constructing a new building in the place of the old one. Accordingly, the learned Standing Counsel for the respondent Grama Panchayat has urged this Court to dismiss the writ petition.

7. Indeed, it is not in dispute that the petitioners are the tenants. Going by Exhibit P3, the Grama Panchayat has taken the petitioners into confidence, discussed the issue with them and eventually decided to proceed with the work of constructing a new building by demolishing the old one, with an express promise that all the existing tenants including the petitioners would be re-accommodated in the new building. Though there is an apprehension on the part of the petitioners that the fructification of the project may take inordinate time and that in the meanwhile they should not be allowed to suffer without any justification.

8. At any rate, based on the material placed before this Court by the learned Standing Counsel for the respondent Grama Panchayat, I do not have any manner of doubt that the project is not at a proposal stage, but, on the

contrary, it is all set to commence. I do not see any specific ground to disbelieve the contention of the learned Standing Counsel for the respondent Grama Panchayat that the successful bidder, who has been assigned the work, is to begin the demolition of the building by the second week of April, 2015.

9. It may be ingenious to contend that the petitioners should be continued with their business in the building, which is about to be demolished, until the demolition actually takes place. The Contractor, who has been assigned the task, may need to have a vacant possession of the building to have a proper planning of demolition and re-construction. At any rate, it is not in the adjudicatory realm of this Court to examine and ascertain when the petitioners should actually be asked to vacate. Suffice it to observe that the petitioners' interest has been well protected and it is only an extra legal demand to insist that they should not be evicted until the day when the building is to be demolished.

10. The administrators are to be given necessary leverage in conducting their affairs for the welfare of the

general public. Unless the petitioners establish the defeat of any of their indefeasible rights, this Court cannot exercise its jurisdiction under Article 226 for mere asking. In sum and substance, I am constrained to conclude that the claim of the petitioners is unfounded and there can be no judicial interdiction against the respondent Grama Panchayat in proceeding with its project of constructing a market place in the place of the old one.

11. It is only fair to acknowledge the assistance rendered by the learned Standing Counsel for the Grama Panchayat by placing all the necessary material before the Court within a couple of days, thereby enabling this Court to dispose of the matter expeditiously.

12. In the light of the above observations, I do not see any merit in the writ petition, and accordingly dismisses it. At this juncture, the learned counsel for the petitioners has made a representation, strange as it may sound, that for whatever unforeseen reasons there is any change of mind on the part of the respondent Grama Panchayat in not proceeding with the project expeditiously, the petitioners may have their right preserved to approach this Court once

again. It is made clear that if there is a change in circumstances and that provides a fresh cause, even without any observation from this Court, the right of the petitioners for remedial legal measures remains intact.

No order as to costs.

DAMA SESHADRI NAIDU
JUDGE

DMR/-