

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

WP(C).No. 9743 of 2015 (P)

PETITIONERS :-

1. SHAJI S., AGED 49 YEARS,
S/O.SIVADASAN, AISWARYA, ALTHARAMOODU,
KADAKKAL P.O., PULIPARA, KOLLAM DISTRICT.
2. JAYALAL, LAKSHMI,
OPP. POLICE STATION, KADAKKAL P.O.,
KOLLAM DISTRICT.
3. SHAJAHAN, SHANI MANZIL,
KAITHODE P.O., NILAMEL,
KOLLAM DISTRICT.
4. FIROS KHAN, M S MANZIL,
VAKKAL, KAITHODE P.O.,
NILAMEL, KOLLAM DISTRICT.
5. ARUNA, S/O.NARAYANA PILLA,
ASAMANDIRAM, KUTTIKKAD,
KADAKKAL, KOLLAM DISTRICT.

BY ADV.SRI.LATHEESH SEBASTIAN

RESPONDENTS: -

1. THE NILAMEL GRAMA PANCHAYAT,
NILAMEL P.O., KOLLAM DISTRICT,
REPRESENTED BY ITS SECRETARY – 691 535.
2. THE SECRETARY,
NILAMEL GRAMA PANCHAYAT, NILAMEL P.O.,
KOLLAM DISTRICT – 691 535.

R1-R2 BY ADV. SRI.T.M.ABDUL LATHEEF

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
09-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS : -

- EXT.P1 : TRUE COPY OF THE RENT DEED DATED 25/06/2005.
- EXT.P2 : TRUE COPY OF THE RENT DEED OF THE 1ST PETITIONER FOR THE FINANCIAL YEAR 2014 – 2015.
- EXT.P2(a): TRUE COPY OF THE RENT DEED OF THE 2ND PETITIONER FOR THE FINANCIAL YEAR 2014 – 2015.
- EXT.P2(b) : TRUE COPY OF THE RENT DEED OF THE 3RD PETITIONER FOR THE FINANCIAL YEAR 2014 – 2015.
- EXT.P2(c) : TRUE COPY OF THE RENT DEED OF THE 4TH PETITIONER FOR THE FINANCIAL YEAR 2014 – 2015.
- EXT.P2(d) : TRUE COPY OF THE RENT DEED OF THE 5TH PETITIONER FOR THE FINANCIAL YEAR 2014 – 2015.
- EXT.P3 : TRUE COPY OF THE LICENSE OF THE 1ST PETITIONER.
- EXT.P3(a) : TRUE COPY OF THE LICENSE OF THE 2ND PETITIONER.
- EXT.P3(b) : TRUE COPY OF THE LICENSE OF THE 3RD PETITIONER.
- EXT.P3(c) : TRUE COPY OF THE LICENSE OF THE 4TH PETITIONER.
- EXT.P3(d) : TRUE COPY OF THE LICENSE OF THE 5TH PETITIONER.
- EXT.P4 : TRUE COPY OF THE NOTICE OF THE 2ND RESPONDENT DATED 05/02/2014 TO THE 2ND PETITIONER.
- EXT.P5 : TRUE COPY OF THE NOTICE OF THE 2ND RESPONDENT DATED 01/01/2015 TO THE 1ST PETITIONER.
- EXT.P5(a) : TRUE COPY OF THE NOTICE OF THE 2ND RESPONDENT DATED 01/01/2015 TO THE 2ND PETITIONER.
- EXT.P5(b) : TRUE COPY OF THE NOTICE OF THE 2ND RESPONDENT DATED 01/01/2015 TO THE 4TH PETITIONER.
- EXT.P5(c) : TRUE COPY OF THE NOTICE OF THE 2ND RESPONDENT DATED 01/01/2015 TO THE 5TH PETITIONER.
- EXT.P6 : TRUE COPY OF THE REPRESENTATION OF THE 1ST PETITIONER.

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EXT.P6(a) : TRUE COPY OF THE REPRESENTATION OF THE 3RD PETITIONER.

EXT.P6(b) : TRUE COPY OF THE REPRESENTATION OF THE 4TH PETITIONER.

RESPONDENTS' EXHIBITS : -

EXHIBIT R2(a) : TRUE COPY OF THE RESOLUTION NO. IV (1) DATED 27.09.2014
(ALONG WITH ENGLISH TRANSLATION).

EXHIBIT R2(b) : TRUE COPY OF THE NOTICE No. A5 3288/14 DATED 01.02.2015
(ALONG WITH ENGLISH TRANSLATION).

EXHIBIT R2(c) : TRUE COPY OF THE LETTER DATED NIL ISSUED BY ASSISTANT
ENGINEER TO THE 2nd RESPONDENT (ALONG WITH ENGLISH
TRANSLATION).

EXHIBIT R2(d) : TRUE COPY OF THE RESOLUTION No. V DATED 24.04.2014
(ALONG WITH ENGLISH TRANSLATION).

EXHIBIT R2(e) : TRUE COPY OF THE LIST OF THE TENANTS.

// TRUE COPY //

P.A. TO JUDGE

DMR/-

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 9743 of 2015

Dated this the 09th day of April, 2015

JUDGMENT

The petitioners, tenants under the respondent Grama Panchayat, were asked to vacate their respective shop rooms in view of the fact that the respondent Grama Panchayat decided to effect certain repairs as part of their maintenance of the building. That apart, the respondent Grama Panchayat has desired to put the property in public auction, once the repairs are effected. Questioning the wisdom of the policy decision taken by the respondent Grama Panchayat to vacate the tenants including the petitioners, before public auction could take place, the petitioners have filed the present writ petition.

2. The learned counsel for the petitioners has strenuously contended that the repairs the respondent Grama Panchayat desires to undertake are only minor in nature, such as painting the building. According to him, since the petitioners have been carrying on the business for

the past 10 years, it is not required in actual terms to have them vacated before the repairs could be effected. It is the singular contention of the learned counsel for the petitioners that until the public auction takes place and the successful bidders are assigned the shop rooms, the petitioners should be allowed to continue in the business.

3. The learned counsel for the respondent Grama Panchayat has strenuously opposed the claims and contentions of the petitioners. He has submitted that there is a government policy that 10 % of the shop rooms should be let out to the people belonging to Scheduled Caste and Scheduled Tribe communities. Initially when the petitioners were inducted, as there were no readily available candidates for those communities, the shop rooms were leased out to persons belonging to other communities.

4. The learned counsel contends that in the first place, the Panchayat has decided to effect repairs for which they need vacant position; secondly in terms of the Governmental policy of 10% reservation of shop rooms to the downward communities, it is essential that the existing tenancies should come to an end and the fresh leasehold rights shall

be subject to the public auction.

5. Heard the learned counsel for the petitioners and the learned counsel for the respondent Grama Panchayat, apart from perusing the record.

6. Indeed, it is the policy wisdom of the respondent Grama Panchayat, a Local Self Government, to have its tenants vacated for the purpose of effecting necessary repairs for the upkeep of the building. That apart, the Grama Panchayat has gone on record saying that there should be a public auction only to subserve the public purpose and also ensure compliance with the statutory scheme of providing 10% reservation to the people of the downward communities.

7. Under the above circumstances, this Court cannot find any substantial cause to find fault with the decision taken by the respondent Grama Panchayat. Though the learned counsel for the petitioners has repeatedly urged this Court that the petitioners be allowed to continue with their business in their respective shop rooms until the public auction actually takes place, I am afraid the said submission cannot be countenanced. So long as the respondent Grama

Panchayat has not discriminated against the petitioners and so long as it is not going to allot the shop rooms without conducting public auction, in which the petitioners are at liberty to participate, this Court cannot interdict what is essentially a policy decision on the part of the respondent Grama Panchayat.

8. In the facts and circumstances, I find no justification to interfere with the decision taken by the respondent Grama Panchayat. At any rate, the fact remains that the petitioners have been continuing with their business for the past about one decade; it is only fair that the respondent Grama Panchayat may provide two weeks' time for the petitioners to vacate their respective shop rooms.

In the facts and circumstances, this writ petition stands disposed of with the above direction. It is made clear that, if the petitioners do not vacate within two weeks, the respondent Grama Panchayat is at liberty to effect the eviction process with the necessary police assistance.

**DAMA SESHADRI NAIDU
JUDGE**

DMR/-