

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

THURSDAY, THE 6TH DAY OF AUGUST 2015/15TH SRAVANA, 1937

WP(C).No.14699 of 2010 (J)

PETITIONER :

K.P.SALEEM,
MENS HUT,
CHITTARIKKANDY PARAMBA, FRANCIS ROAD, KOZHIKODE.

BY ADV. SRI.K.ABDUL JAWAD

RESPONDENTS :

1. THE SECRETARY,
RAMANATTUKARA GRAMA PANCHAYAT,
RAMANATTUKARA,
KOZHIKODE DT.
2. OMBUDSMAN FOR LOCAL SELF GOVERNMENT INSTITUTIONS,
THIRUVANANTHAPURAM.
3. POTTANIKKAL MOIDEEN,
POTTANIKKAL HOUSE,
KODINHI.P.O., MALAPPURAM DISTRICT- 676 309.
4. K.P.RIYAS,
ROSE MAHAL,
RAMANATTUKARA,
KOZHIKODE - 673 336.

R1 BY SRI.E.NARAYANAN - SC

R1 BY ADV. SRI.K.MURALEEDHARAN

R3 BY ADV. SRI.JAMSHEED HAFIZ

BY SR.GOVERNMENT PLEADER SRI.SOJAN JAMES

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :-

- EXT.P1 : COPY OF THE TELEPHONE BILL FOR THE MONTH OF JULY-AUGUST 2001 AND THE RECEIPT.
- EXT.P2 : COPY OF THE TELEPHONE BILL FOR THE MONTH OF SEPTEMBER-OCTOBER 2007 AND THE RECEIPT.
- EXT.P3 : COPY OF THE CERTIFICATE OF VERIFICATION DT.23.3.05.
- EXT.P4 : COPY OF THE LICENCE DTD.18.5.08.
- EXT.P5 : COPY OF THE ORDER DTD.24.3.10.
- EXT.P6 : COPY OF THE NOTICE DTD.28.4.10.

RESPONDENTS' EXHIBITS:-

- EXT.R3(a) : COPY OF THE JUDGMENT IN O.S.392/2007 BEFORE THE ADDL.MUNSIFF COURT, KOZHIKODE DTD.31.3.2010.
- EXT.R3(b) : COPY OF THE COMPLAINT FILED BY THE RESPONDENT HEREIN DTD.26.2.09.

True copy

P.A to Judge

ANIL K.NARENDRA, J.

W.P.(C)No.14699 of 2010

Dated this the 6th day of August, 2015

JUDGMENT

The petitioner, who is the occupant of two shop rooms owned by the 3rd respondent, has approached this Court in this Writ Petition seeking a writ of certiorari to quash Ext.P5 order passed by the Ombudsman for Local Self Government Institutions dated 24.3.2010 in Complaint No.1708/2009 and for other consequential reliefs.

2. Going by the averments in the Writ Petition, since April, 2001, the petitioner is in occupation of two shop rooms in a building owned by the 3rd respondent, on the strength of a licence agreement executed with the erstwhile owner of that building after paying an advance amount of ₹ 4,00,000/-, and being continued under the 3rd respondent, on a monthly rent of ₹4,500/-. On the strength of Exts.P1, P2 and P3 the petitioner would contend that he is conducting business in the name and style 'Highway Plywoods and Glasses' in the shop rooms in question and that the 4th respondent is only his Manager. The 3rd respondent filed O.S.No.392 of 2007 before the Additional Munsiff's Court-II, Kozhikode, against the 4th respondent, seeking mandatory injunction to stop using the shop rooms in question and for other reliefs. When the petitioner

came to know about the suit, he got himself impleaded in the suit as additional 2nd defendant and later the suit was dismissed by Ext.R3(a) judgment dated 31.3.2010. During the pendency of the suit, the 1st respondent issued Ext.P4 licence dated 18.5.2008, in the name of the petitioner, for running business in the shop rooms in question.

3. The grievance of the petitioner is that, on a complaint filed by the 3rd respondent before the Ombudsman for Local Self Government Institutions, alleging that the petitioner is doing business in the shop rooms in question without obtaining necessary licence from the 1st respondent, the learned Ombudsman passed Ext.P5 order dated 24.3.2010 directing the 1st respondent, who is the Secretary of the Grama Panchayat, to take necessary steps to stop the business conducted in the shop rooms in question, after issuing notice to the petitioner and the 4th respondent and report compliance by 26.5.2010. In Ext.P5 order passed in Complaint No.1708 of 2009, the learned Ombudsman found that the 4th respondent has not obtained any licence from the 1st respondent to conduct business in the shop rooms in question. Based on Ext.P5 order, the 1st respondent issued Ext.P6 notice dated 28.4.2010, by which the petitioner was asked to stop the business in the shop rooms in question, within 15 days from the date of receipt of notice. It was in such

circumstances, the petitioner has approached this Court in this Writ Petition seeking various reliefs.

4. By order dated 11.5.2010 this Court stayed all further proceedings pursuant to Ext.P5 order passed by the learned Ombudsman and Ext.P6 notice issued by the 1st respondent, for a period of one month. The said order was extended until further orders, on 18.2.2011.

5. A counter affidavit has been filed on behalf of the 3rd respondent, contending, inter alia, that the petitioner is a total stranger to the 3rd respondent as well as to his predecessor-in-interest. The predecessor-in-interest of the 3rd respondent neither executed any agreement with the petitioner for leasing out the shop rooms in question nor accepted an advance amount of ₹4,00,000/-. According to the 3rd respondent, the petitioner has trespassed into the shop rooms in question and conducting business therein, without obtaining necessary licence from the Panchayat. The 3rd respondent has also produced Ext.R3(a) judgment of the Civil Court in O.S.No.392 of 2007 and also Ext.R3(b) complaint filed before the learned Ombudsman, which resulted in Ext.P5 order and Ext.P6 notice.

6. I heard the arguments of the learned counsel for the petitioner, the learned Standing Counsel for the 1st respondent Panchayat,

the learned Government Pleader appearing for the 2nd respondent and also the learned counsel for the 3rd respondent.

7. The specific stand taken by the petitioner is that, it was without issuing him any notice whatsoever, the learned Ombudsman passed Ext.P5 order. The learned counsel for the petitioner would point out that, the specific averment in this regard made in paragraph 6 of the Writ Petition is not denied in the counter affidavit filed by the 3rd respondent. The learned counsel would also submit that, though the petitioner has made an application for licence, for the period subsequent to Ext.P4 licence, no orders are passed by the 1st respondent.

8. Per contra, the learned counsel for the 3rd respondent would contend that, the 3rd respondent has already filed another suit before the competent Civil Court against the petitioner for recovery of possession of the shop rooms in question and the same is pending consideration. The learned counsel would also point out that, the petitioner is in occupation of the shop rooms in question even without payment of monthly rent at the rate of ₹4,500/-. The learned counsel would point out further that, in the Writ petition the petitioner has admitted the rate of rent.

9. The learned Standing Counsel for the Panchayat would submit that, it was in view of the specific direction contained in Ext.P5 order

passed by the Ombudsman, the Panchayat has issued Ext.P6 notice.

10. As borne out from the pleadings and documents on record, the 3rd respondent had approached the learned Ombudsman in Ext.R3(b) complaint seeking an order to cancel the licence issued in favour of the petitioner for conducting business in the shop rooms in question. In the said complaint, the petitioner herein is arrayed as the 3rd respondent. Neither the 1st respondent nor the 3rd respondent has got a case that, Ext.P5 order passed by the learned Ombudsman is with notice to the petitioner herein, who is arrayed as the 3rd respondent in the complaint. A reading of paragraph 8 of the counter affidavit filed by the 3rd respondent in this Writ Petition makes it explicitly clear that, on receipt of the complaint, the learned Ombudsman took instructions from the 1st respondent Secretary of the Panchayat and issued Ext.P5 order directing him to take necessary steps to stop the business conducted in the shop rooms in question, after issuing notice to the petitioner and the 4th respondent and report compliance by 26.5.2010. In Ext.P5 order, based on the report of the Deputy Director of Panchayat and the statement filed by the 1st respondent Secretary of the Panchayat, the learned Ombudsman concluded that the 4th respondent herein has not obtained any licence to conduct business in the shop rooms in question. It was

based on Ext.P5 order, the 1st respondent issued Ext.P6 notice dated 28.4.2010, by which the petitioner was asked to stop the business in the shop rooms in question, within 15 days from the date of receipt of notice.

11. Rule 16 of the Ombudsman for Local Self Government Institutions (Inquiry of Complaints and Service Conditions) Rules, 1999 (hereinafter referred to as 'the Rules') provides that, the respondent of the compliant shall be served with a notice in Form 'D' by the Ombudsman after registering a complaint and giving acknowledgment receipt to the complainant along with a copy of the complaint and copies of the relevant documents intimating that a written statement of his averments on that and documents connected with which are to be submitted within fifteen days of receipt of the notice and if it is not submitted, the complaint will be disposed of ex parte. In the case on hand, the fact that Ext.P5 order passed by the learned Ombudsman is one without notice to the petitioner, who is arrayed as the 3rd respondent in Ext.R3(b) complaint filed before the learned Ombudsman, is not in dispute. If that be so, Ext.P5 order passed by the learned Ombudsman and also the consequential notice, i.e., Ext.P6 notice issued by the 1st respondent Secretary of the Panchayat cannot be sustained in law. Therefore, Ext.P5 order passed by the learned Ombudsman and Ext.P6 consequential notice issued by the 1st respondent

are set aside and the learned Ombudsman is directed to consider Complaint No.1708 of 2009 afresh, with notice of the petitioner herein, who is the 3rd respondent in the said complaint, and also to the other respondents in that complaint, and pass appropriate orders, as expeditiously as possible, at any rate, within a period of four months from the date of production of a certified copy of this judgment.

12. As I have already noticed, one of the specific contentions raised by the learned counsel for the 3rd respondent is that, the petitioner is occupying the shop rooms in question even without payment of the admitted rent of ₹4,500/-. When this was pointed out, the learned counsel for the petitioner would submit that, though the petitioner was prepared to pay the monthly rent, the 3rd respondent refused to accept the same. Then the learned counsel for the 3rd respondent would submit that, without prejudice to the contentions taken in the suit pending before the competent Civil Court for recovery of possession of the shop rooms in question, the 3rd respondent is prepared to accept payment of rent by the petitioner.

13. The fact that, the petitioner is in occupation of the shop rooms in question without payment of the admitted monthly rent of ₹4,500/- is not disclosed in the Writ Petition. The petitioner has also not chosen to

file reply affidavit, denying the specific allegation made in the counter affidavit filed by the 3rd respondent that, he is occupying the shop rooms in question even without paying any rent. Therefore, the conclusion is irresistible that, on the strength of the interim order passed by this Court, the petitioner continued occupation of the shop rooms in question, without payment of even the admitted monthly rent. In such circumstances, the petitioner is directed to pay the arrears of rent as on date to the 3rd respondent, within a period of three months from the date of receipt of a certified copy of this judgment, and shall continue to pay the same during the pendency of Complaint No.1708 of 2009.

The Writ Petition is disposed of as above. No order as to cost.

Sd/-
ANIL K.NARENDRAN, JUDGE

skj