

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

MONDAY, THE 6TH DAY OF APRIL 2015/16TH CHAITHRA, 1937

WP(C).No. 10947 of 2015 (P)

PETITIONER(S):

1. **SHIJU.T**
S/O.THULASEEDHARAN
(BUNK NO.2 OF VARKALA MUNICIPALITY)
RESIDING AT MELATHIL VILA VEEDU, KALLAMKONAM
VARAKALA P.O., THIRUVANANTHAPURAM.
2. **SASIDHARAN NAIR**
(BUNK NO.38 OF VARKALA MUNICIPALITY)
RESIDING AT G.S.P. MANDIRAM, 305A (15/377)14 VARKALA
VARKALA MUNICIPALITY.
3. **SREEDHARAN P.**
(BUNK NO.12 OF VARKALA MUNICIPALITY), CHERUNNIYOOR
M VARAKALA.
4. **SAJEEV J.**
(BUNK NO.12 OF VARKALA MUNICIPALITY)
RESIDING AT PLAVILA VEEDU, MAITHANAM, VARAKALA.
5. **MEERAN M.**
(BUNK NO.4 OF VARKALA MUNICIPALITY), ELAPPAVILAKAM
NEAR THIRUMUKKU, EDAVA DESOM, VARAKALA
THIRUVNANTHAPURAM.
6. **MUBARAK**
(BUNK NO.3 OF VARKALA MUNICIPALITY)
PERUNNAVILA HOUSE, ERAVIPURAM, KOLLAM.
7. **JAYA M.R.**
(BUNK NO.35 OF VARKALA MUNICIPALITY)
RESIDING AT JAYA BHAVAN, VARKALA.

BY ADV. SRI.K.SUBASH CHANDRA BOSE

RESPONDENT(S):

1. **STATE OF KERALA**
REPRESENTED BY THE CHIEF SECRETARY, SECRETARIAT
THIRUVANANTHAPURAM-695 001.
2. **VARKALA MUNICIPALITY**
REPRESENTED BY ITS SECRETARY, VARKALA MUNICIPALITY
VARAKALA-695 141.
3. **THE SECRETARY**
VARKALA MUNICIPALITY, VARAKALA-695 141.

WP(C).No. 10947 of 2015 (P)

**4. THE ESTATE OFFICER/ADDL.DIVISIONAL RAILWAY MANAGER
DIVISIONAL OFFICE, WORKS BRANCH, SOUTHERN RAILWAY
THIRUVANANTHAPURAM-695 001.**

BY SRI.C.S.DIAS

BY SRI.JOSEPH GEORGE, SR.GOVERNMENT PLEADER

BY SRI.M.R.RAJESH, SC, VARKALA MUNICIPALITY

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
06-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT.P1.TRUE COPY OF THE CONSENT DEED EXECUTED IN FAVOUR OF THE MUNICIPAL SECRETARY.

EXHIBIT.P1(A).TRUE COPY OF THE TRANSLATION OF EXHIBIT P.1.

EXHIBIT.P2.TRUE COPY OF THE DEATH CERTIFICATE ISSUED FROM THE ADITHYANELOOR GRAMA PANCHAYATH DATED 14/8/2008.

EXHIBIT.P3.TRUE COPY OF THE LICENSE ISSUED FOR CONDUCTING BUSINESS IN BUNK NO.2 DATED 19/5/1989.

EXHIBIT.P4.TRUE COPY OF THE RECEIPT SHOWING THE REMITTANCE OF BUNK RENT.

EXHIBIT.P4(A).TRUE COPY OF THE TRANSLATION OF EXHIBIT P.4

EXHIBIT.P5.TRUE COPY OF THE RECEIPT SHOWING THE REMITTANCE OF PROFESSIONAL TAX REMITTED IN THE NAME OF THE 1ST PETITIONER'S FATHER.

EXHIBIT.P5(A).TRUE COPY OF THE TRANSLATION OF EXHIBIT P.5

EXHIBIT.P6.TRUE COPY OF THE RECEIPT SHOWING THE REMITTANCE OF BUNK RENT DURING 6/2005 TO 11/2005 AND 12/2005 TO 6/2006.

EXHIBIT.P6(A).TRUE COPY OF THE TRANSLATION OF EXHIBIT P.6

EXHIBIT.P7.TRUE COPY OF THE ELECTRICITY BILL REMITTED IN THE NAME OF THE SECRETARY OF VARKALA MUNICIPALITY DATED 27/2/2015.

EXHIBIT.P7(A).TRUE COPY OF THE TRANSLATION OF EXHIBIT P.7

EXHIBIT.P8.TRUE COPY OF THE VOTER IDENTITY CARD

EXHIBIT.P9.TRUE COPY OF THE IDENTITY CARD ISSUED FROM THE FOOD SAFETY AND STANDARDS AUTHORITY OF INDIA

EXHIBIT.P10.TRUE COPY OF THE RECEIPT SHOWING THE REMITTANCE OF LICENCE FEES.

EXHIBIT.P11.TRUE COPY OF THE NOTICE RECEIVED FROM THE 1ST RESPONDENT MUNICIPALITY DIRECTING THE 2ND PETITIONER TO REMIT THE RENT OF RS.1,194/-.

EXHIBIT.P11(A).TRUE COPY OF THE TRANSLATION OF EXHIBIT P.11

EXHIBIT.P12.TRUE COPY OF THE RECEIPT SHOWING THE REMITTANCE OF RENT FOR THE BUNK NO.38 ON FEBRUARY 4/2/2015.

EXHIBIT.P13.TRUE COPY OF THE RECEIPT SHOWING THE REMITTANCE OF BUNK RENT DATED 9/12/2014.

WP(C).No. 10947 of 2015 (P)

EXHIBIT.P14.TRUE COPY OF THE ELECTRICITY RECEIPT DATED 24/6/2014.

EXHIBIT.P14(A).TRUE COPY OF THE TRANSLATION OF EXHIBIT P.14

EXHIBIT.P15.TRUE COPY OF THE IDENITY CARD DATED 5/2/2013.

EXHIBIT.P16.TRUE COPY OF THE REGISTRATION CERTIFICATE ISSUED IN THE NAME OF THE 4TH PETITIONER DATED 5/2/2013.

EXHIBIT.P17.TRUE COPY OF THE RECEIPT SHOWING THE REMITTANCE OF RS.2000/- AS DEPOSIT BY P.SUKUMARAN ON 31/8/1995.

EXHIBIT.P17(A).TRUE COPY OF THE TRANSLATION OF EXHIBIT P.17

EXHIBIT.P18.TRUE COPY OF THE RECEIPTS SHOWING THE REMITTANCE OF BUNK RENT DATED 4/11/2004.

EXHIBIT.P18(A).TRUE COPY OF THE TRANSLATION OF EXHIBIT P.18

EXHIBIT.P19.TRUE COPY OF THE DEED SHOWING THE TRANSFER OF LEASE RIGHT IN FAVOUR OF THE 5TH PETITIONER

EXHIBIT.P19(A).TRUE COPY OF THE TRANSLATION OF EXHIBIT P.19

EXHIBIT.P20.TRUE COPY OF THE BILL SHOWING THE REMITTANCE OF ELECTRIC CHARGES DATED 11/2/2015.

EXHIBIT.P21.TRUE COPY OF THE REGISTRATION CERTIFICATE ISSUED UNDER THE FSS ACT 2006 FOR CONDUCTING BUSINESS IN TEA AND SNACKS IN BUNK NO.4 DATED 5/2/2013.

EXHIBIT.P22.TRUE COPY OF THE IDENITY CARD ISSUED UNDER THE FSS ACT IN FAVOUR OF THE 5TH PETITIONER

EXHIBIT.P23.TRUE COPY OF THE RECEIPTS DATED 27/2/2015.

EXHIBIT.P24.TRUE COPY OF THE RECEIPTS SHOWING THE PAYMENT OF RENT FOR THE BUNK BY THE 5TH PETITIONER IN THE NAME OF SUKUMARAN.

EXHIBIT.P25.TRUE COPY OF THE DEED IN FAVOUR OF RADHAKRISHNAN EXECUTED BY SUSHI ON 28/2/1994.

EXHIBIT.P25(A).TRUE COPY OF THE TRANSLATION OF EXHIBIT P.25

EXHIBIT.P26.TRUE COPY OF THE AGREEMENT DATED 10/9/1999 EXECUTED BY RADHAKRISHNAN IN FAVOUR OF MUBARAK.

EXHIBIT.P26(A).TRUE COPY OF THE TRANSLATION OF EXHIBIT P.26

EXHIBIT.P27.TRUE COPY OF THE RECEIPTS SHOWING THE RENT REMITTED BY SUSHI FOR BUNK NO.3 AND THE LICENSE ISSUED IN FAVOUR OF SUSHI ON 15/4/1994 AND THE RECEIPTS DATED 15/3/1995, 16/1/1995 ETC.

EXHIBIT.P27(A).TRUE COPY OF THE TRANSLATION OF EXHIBIT P.27

WP(C).No. 10947 of 2015 (P)

EXHIBIT.P28.TRUE COPY OF THE REGISTRATION CERTIFICATE UNDER FSS ACT IN FAVOUR OF 6TH PETITIONER FOR CONDUCTING BUSINESS IN BUNK NO.3 DATED 5.2.2013.

EXHIBIT.P29.TRUE COPY OF THE IDENITY CARD ISSUED UNDER THE FSS ACT

EXHIBIT.30.TRUE COPY OF THE NOTICE ISSUED IN THE NAME OF SUSHI FOR REMITTING THE ARREARS OF BUNK RENT FOR A PERIOD OF 6 MONTHS FROM JANUARY 2014 TO JUNE 2014.

EXHIBIT.P30(A).TRUE COPY OF THE TRANSLATION OF EXHIBIT P.30

EXHIBIT.P31.TRUE COPY OF THE RECEIPT SHOWING THE PAYMENT OF RENT FOR THE BUNK NO.3 IN THE NAME OF HIS PREDECESSOR SUSHI DATED 24/11/2014 AND 26/8/2014.

EXHIBIT.P32.TRUE COPY OF THE REGISTRATION CERTIFICATE AND IDENTITY CARD ISSUED UNER FSS ACT.

EXHIBIT.P33.TRUE COPY OF THE RECEIPT ISSUED BY THE VARKALA MUNCIPALITY FOR PAYING THE RENT AND LICENCE FEES DATED 20/3/2015.

EXHIBIT.P34.TRUE COPY OF THE IDENITY CARD OF 7TH PETITIONER

EXHIBIT.P35.TRUE COPY OF THE NOTICES RECEIVED BY THE PETITIONERS ON 25/3/2015 WHICH WAS DATED AS 5/3/2015.

EXHIBIT.P36.TRUE COPY OF THE CETTIFICATE ISSUED BY THE KERALA VYAPARI VYAVASAYI EKOPANA SAMITHY STATING THAT THEY ARE THE OWNERS OF BUNK NO.38, 4, 35,12, 2 AND 3.

EXHIBIT.P37.TRUE COPY OF THE SKETCH SHOWING THE LOCATION OF BUNKS OCCUPIED BY PETITIONERS.

RESPONDENT(S)' EXHIBITS

NIL

R.AV

//TRUE COPY//

PATO JUDGE

P.R. RAMACHANDRA MENON, J.

.....
W.P.(C)No.10947 OF 2015
.....

Dated this the 6th April, 2015

J U D G M E N T

The petitioners have approached this Court with the following prayers:

"i) call for the records leading to Exhibit P35 notices and quash the same by issuing a writ in the nature of certiorari or any other appropriate writ, direction or order;

ii) to issue a writ in the nature of mandamus or any other appropriate writ, direction or order directing the respondents to desist from removing the bunk of the petitioners from the present place of location without framing a scheme for rehabilitating the petitioners to locate their bunk in suitable place for earning a livelihood for themselves and their family;

iii) to declare that the actions initiated by the 4th respondent in pursuance to Exhibit P35 and the recovery of penalty from the petitioners are arbitrary, illegal unfair and unconstitutional;

iv) to award costs;

v) to grant such other reliefs as this Hon'ble Court may deem fit and proper to grant."

2. The learned Counsel for the petitioners submits that the steps being taken by the respondents for causing the petitioners to be evicted from the bunks situated on the side of the property is per se wrong and illegal in all respects. It is also stated that, though Ext.P35 is styled as a notice, it in fact is an 'order' and further that, the same was served to the petitioner only on 25.03.2015. As per Ext.P35, the petitioners were required to remove the structure/building on or before 23.03.2015. Immediately, the petitioners rushed to the office of the respondents, but entry was denied and no opportunity of hearing was given, at the same time coercive proceedings are going on, which made the petitioners to approach this Court.

3. Heard the learned Standing Counsel for the 4th respondent/Southern Railways as well.

4. After hearing both the sides, this Court finds that an opportunity has to be given to the petitioners to put forth their version, if the submission made by the learned Counsel for the petitioners as to the date of service of notice is true. In the said circumstance, the petitioners are set at liberty to file objections

in response to Ext.P35, which shall be done within two weeks from the date of receipt of a copy of the judgment. On submission of the objection as above, the same shall be considered and finalised after affording an opportunity of hearing to the petitioners and the respondent- Municipality, within one month thereafter. 'Status quo' shall be maintained till such time.

The writ petition is disposed of. The petitioners shall produce a copy of the judgment along with a copy of the writ petition before the concerned respondent for further steps.

P.R.RAMACHANDRA MENON
JUDGE

/k