

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 1ST DAY OF OCTOBER 2015/9TH ASWINA, 1937

WP(C).No. 14854 of 2015 (F)

PETITIONER(S):

SURESH KUMAR T AGED 47 YEARS NO.90091085 ASI/GD, 200 BATTALLION
CENTRAL RESERVE POLICE FORCE CRPF GC CAMPUS
YELAHANKA BANGALOREPERMANENTLY RESIDING AT : SUJEESH
BHAVANAM
CHENNITHALA SOUTH P.O., MAVELIKARA.

BY ADVS.SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SRI.MANU SEBASTIAN
SMT.PARVATHY NAIR

RESPONDENT(S):

1. THE ADDITIONAL DIRECTOR GENERAL OF POLICE
SOUTHERN ZONE, CRPF, OFFICE OF THE ADGP
HYDERABAD-500 005.
 2. THE INSPECTOR GENERAL OF POLICE,
SOUTHERN SECTOR HQR, CRPF
OFFICE OF INSPECTOR GENERAL OF POLICE, ROAD NO.10C
JUBILEE HILLS, HYDERABAD-500 033.
 3. THE DEPUTY INSPECTOR GENERAL OF POLICE-
CUM ESTATE OFFICER, RECRUIT TRAINING CENTRE, CRPF
PERINGOME, KANNUR-670 354.
 4. THE DEPUTY INSPECTOR GENERAL OF POLICE,
200 BATTALLION, GC, CRPF
CAMPUS, YELAHANKA, BANGALORE-560 064.
 5. COMMANDANT,
200 BATTALLION CRPF, YELAHANKA, BANGALORE-560 064
- R1,R2,R3&5 BY ADV. SRI.SUVIN R.MENON, CGC
R BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
01-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

EXTP1 - A TRUE COPY OF ORDER NO.A.II.1/2014-15-RTC-PGM(QTRS) DATED 07.01.2014

EXT.P2 - A TRUE COPY OF THE REPRESENTATION DATED 20.02.2014
SUBMITTEDBEFORE THE 2ND RESPONDENT.

EXT.P3 - A TRUE COPY OF THE REPRESENTATION DATED 31.05.2014 SUBMITTED
BEFORE THE 1ST RESPONDENT BEFORE THE 2ND RESPONDENT.

EXT.P4 - A TRUE COPY OF THE COMMUNICATION NO.A-II-1/2013-14-Q/200 DATED
21.02.2014 MADE BY THE 5TH RESPONDENT TO THE 3RD RESPONDENT.

EXT.P5 - A TRUE COPY OF THE COMMUNICATION NO.A-II-1/2013-14-Q/200 DATED
31.05.2014 MADE BY THE 5TH RESPONDENT TO THE 3RD RESPONDENT.

EXTP6 - TRUE COPY OF THE HALL TICKET ISSUED TO THE DAUGHTER OF
PETITIONER.

EXT.P7 - A TRUE COPY OF THE COMMUNICATION NO.A.II-1/2014-15/RTC PGM(QTRS)
DATED 27.03.2015 MADE BY THE 3RD RESPONDENT TO THE 4TH RESPONDENT.

EXT.P8 - A TRUE COPY OF THE VACATION CERTIFICATE DATED 25.04.2015

EXT.P9 - A TRUE COPY OF THE PAY SLIP OF THE PETITIONER.

EXT.P10 - A TRUE COPY OF THE RELEVANT PROVISIONS OF CRPF FAMILY
ACCOMMODATION RULES 2008

RESPONDENT(S)' EXHIBITS: NIL

TRUE COPY

P.A TO JUDGE

jma

K. VINOD CHANDRAN, J

W.P(C) No. 14854 of 2015

Dated this the 01st day of October, 2015

J U D G M E N T

The petitioner is aggrieved with Ext.P1 order, which he alleges to be a composite order under Section 5 and under Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as the Act of 1971) and bad for that reason alone.

2. The petitioner admittedly was in occupation of a quarters when he was transferred from Peringome, Kannur to Tripura on 10.03.2012. The petitioner sought for retention of the quarters but no such request is produced nor is a sanction/permission evidenced. Admittedly the petitioner continued in the quarters and going by the recitals in Ext.P1 order the petitioner was issued with a notice dated 18.03.2013 to vacate the quarters since his request for retention was rejected. Subsequently the petitioner was issued with Ext.P1 order, after issuance of show cause notices dated 19.10.2013

and 21.12.2013, which he refused to respond to. A reading of Ext.P1 would indicate that the show cause notices dated 19.10.2013 and 21.12.2013 were notices under Section 4, 5 and 7, for vacation of quarters and the imposition of damage rent.

3. By Ext.P1 the petitioner was issued with an order directing recovery of damage rent at the rate of Rs.6968/- per month from 01.04.2014 till the date of vacation of the Government Family accommodation. The petitioner contends that there is no separate order issued for eviction; and hence the same has to be considered as a composite order of eviction and damages; which is not permissible under the Act of 1971. The petitioner admittedly did not vacate the premises even after that.

4. The petitioner also did not challenge Ext.P1 order. The petitioner's salary was directed to be deducted with Rs.6968/- regularly with effect from 01.04.2015 by Ext.P7. At that point the petitioner vacated the quarters on 25.04.2015. The certificate of

vacation is produced at Ext.P8. The petitioner then approached this Court challenging Ext.P1 order, which is an order issued under Section 7 of the Act of 1971.

5. The petitioner contends that a composite order as is seen at Ext.P1 cannot be issued and that there is clear violation of principles of natural justice since no notice as contemplated under Section 7(3) are issued. The petitioner would contend that the appellate remedy is not efficacious insofar as there being only 12 days prescribed for filing an appeal and the petitioner also has contentions with respect to the order being vitiated on the ground of illegality and violation of principles of natural justice which goes to the root of the matter in which event, the extra-ordinary remedy can be invoked under Article 226 of the Constitution of India.

6. The first contention of Ext.P1 being a composite order cannot be countenanced since on a plain reading, Ext.P1 does

not order eviction from the premises. Though the order was issued on 7.1.2014, the petitioner had continued till April 2015. Further even Ext.P7 communication dated 27.03.2015 indicates that a request was to be made to the individual to vacate the quarters immediately and otherwise to order forceful eviction as per law and on other procedure or instruction on the subject. Hence no eviction order had been passed by the authority, but in any event, the same is no more relevant since the petitioner admittedly had vacated the premises, as is seen at Ext.P8 on 25.04.2015. In such circumstance, Ext.P1 cannot be said to be a composite order of eviction and imposition of damages. Though Sections 4 and 5 of the Act of 1971 is noticed in the order; the operative portion deals only with the imposition of damages and the order is one under Section 7 of the Act of 1971.

7. The petitioner's contention that no notice was issued, is belied by the fact that the order itself shows that two show

cause notices were issued on 19.10.2013 and 21.12.2013 directing him to show cause, as to why damage rent should not be imposed. As was noticed the petitioner was informed as early as on 18.03.2013 that the request for retention of quarters was rejected. The petitioner's family continued there and it was hence proceedings were taken under Section 7. The notice also need not be served on the petitioner personally since the petitioner's family was in continued occupation of quarters and a service effected there would be sufficient. In such circumstances, there can be no finding of violation of principles of natural justice going to the root of the matter. The contention that the petitioner had only 12 days to approach the appellate authority and that the petitioner was in Bangalore cannot be countenanced; since the proviso to Section 9(2) provides for an appeal even after the expiry of the limitation period prescribed, if the appellate authority is satisfied of sufficient cause, made out by the appellant, for such delay

occasioned. The further contention that the damages ought to have been with reference to the house rent allowance has to be raised before the authority, if at all.

8. In such circumstances, this Court is not inclined to exercise discretion under Article 226. The well recognized exceptions to the doctrine of exhaustion of statutory remedies as laid down in *State of Himachal Pradesh v. Gujarat Ambuja Cements Ltd.* (AIR 2005 (SC) 3936) are (i) when proceedings are taken under a provision of law which is ultravires (ii) when order is in violation of principles of natural justice (iii) where there is an allegation of violation of fundamental rights and (iv) in the event of total lack of jurisdiction. None of these grounds exist in the present case.

9. Further it is to be noticed that the order impugned herein itself was on 07.01.2014, the petitioner continued the unauthorised occupation even after the said order and eventually

vacated the premises on 25.04.2015. The petitioner did not challenge Ext.P1 by way of an appeal nor did the petitioner approach this Court under Article 226 within a reasonable time. The petitioner waited for more than 1½ years before he vacated the premises, voluntarily, on 25.4.2015 and then after vacation, came before this Court to challenge the damages imposed. This Court is not inclined to exercise the extra ordinary jurisdiction for the further reason of the delay occasioned. It is also to be noticed that the writ petition was not admitted and notice was issued before admission and interim stay was granted. The respondents have raised the objection of maintainability on grounds of existence of alternate remedy. In such circumstances, the writ petition is dismissed and discretionary remedy is denied.

10. However, the remedy of the petitioner to approach the appellate officer under Section 9 of the Act of 1971 would be left open. The petitioner shall do that within a period of one

month from the date of receipt of a certified copy of this judgment, in which event, the condonation of delay would be left to the discretion of the appellate officer. However, it is made clear that the period when the writ petition was pending before this Court from 20.05.2015 shall not be computed for determining the delay. It is also made clear, the mere fact that this Court had taken note of the delay, as one of the grounds to deny the discretionary remedy under Article 226, need not deter the appellate officer from considering the explanation of the delay occasioned, to his own satisfaction. It is made clear that the recovery shall be stayed for a period of one month and if an appeal is filed then the recovery shall depend upon the orders passed.

Writ petition is dismissed. No costs.

Sd/-

(K. VINOD CHANDRAN, JUDGE)

jma

[true copy]