

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

WP(C).No.20166 of 2010 (U)

PETITIONER :

T.R.ASHOKAN, S/O.T.RAMAN,
MANAGING PARTNER, M/S.SUPER TRADE WEIGH BRIDGE,
OPPOSITE MGF AUTO, MALSAPURU.P.O, MATTANCHERY HALT,
WILLINGTON ISLAND, KOCHI-29.

BY ADVS.SRI.PHILIP T.VARGHESE
SRI.RAJESH VIJAYENDRAN
SRI.THOMAS T.VARGHESE
SMT.ACHU SUBHA ABRAHAM
SRI.S.SARATH
SMT.P.J.JINIMOL

RESPONDENTS :

1. COCHIN PORT TRUST,
REPRESENTED BY ITS SECRETARY, WILLINGDON ISLAND,
KOCHI-682 009.
2. THE CHAIRMAN, COCHIN PORT TRUST,
WILLINGDON ISLAND, KOCHI-682 003.
3. THE DEPUTY SECRETARY (ESTATE),
COCHIN PORT TRUST, ESTATE DIVISION,
GENERAL ADMINISTRATION DEPARTMENT, WILLINGDON ISLAND,
KOCHI-682 009.

R1 TO 3 BY SR.ADV. SRI.K.ANAND – SC, COCHIN PORT TRUST
R1 TO 3 BY ADV. SMT.LATHA KRISHNAN
BY SRI.B.S.KRISHNAN(SR.), SC, PORT TRUST

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
13-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :-

EXT.P1	:	COPY OF THE LETTER DTD.19.6.91 ISSUED BY THE 3RD RESPONDENT.
EXT.P2	:	COPY OF HANDING OVER/TAKING OVER CERTIFICATE DTD.19.6.91.
EXT.P3	:	COPY OF LICENCE DEED DTD.29.5.92.
EXT.P4	:	COPY OF LEASE DEED DTD.4.10.95.
EXT.P5	:	COPY OF ORDER DTD.2.12.08 ISSUED BY 3RD RESPONDENT.
EXT.P6	:	COPY OF CHALAN DTD.18.12.08 ISSUED BY 1ST RESPONDENT.
EXT.P7	:	COPY OF CORRIGENDUM LETTER DTD.8.1.2009 OF 3RD RESPONDENT.
EXT.P8	:	COPY OF HANDING OVER/TAKING OVER STATEMENT.
EXT.P9	:	COPY OF ORDER DTD.4.5.09 OF THE 3RD RESPONDENT.
EXT.P10	:	COPY OF LETTER DTD.29.7.09 OF THE DEPUTY CE, CPT.
EXT.P11	:	COPY OF LETTER DTD.20.4.10 OF THE 3RD RESPONDENT.
EXT.P12	:	COPY OF BILL DTD.1.10.09 ISSUED BY 1ST RESPONDENT.
EXT.P13	:	COPY OF LETTER DTD.7.12.09 ISSUED BY SBI.
EXT.P14	:	COPY OF LOAN SANCTIONING LETTER DTD.22.12.09 OF THE LIC.
EXT.P15	:	COPY OF LOAN SANCTIONING LETTER DTD.22.12.09 OF THE LIC.
EXT.P16	:	COPY OF ORDER DTD.24.2.10 OF THE 3RD RESPONDENT.
EXT.P17	:	COPY OF NOTICE DTD.9.3.10 OF THE 3RD RESPONDENT.
EXT.P18	:	COPY OF BILL DTD.3.4.10 ISSUED BY 1ST RESPONDENT.
EXT.P19	:	COPY OF CHALAN DTD.8.4.10 ISSUED BY 1ST RESPONDENT.
EXT.P20 SERIES:		PHOTOGRAPHS OF THE NEWLY CONSTRUCTED WEIGH BRIDGE.
EXT.P21	:	COPY OF STAMPING CERTIFICATE DTD.26.4.10 ISSUED BY LMD.
EXT.P22	:	COPY OF REPRESENTATION DTD.12.3.10 OF THE PETITIONER.
EXT.P23	:	COPY OF REPRESENTATION DTD.23.3.10 OF THE PETITIONER.

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EXT.P24 : COPY OF REPRESENTATION DTD.19.6.10 OF THE PETITIONER.
EXT.P25 : COPY OF THE POSTAL RECEIPTS DTD.21.6.10.
EXT.P26 : COPY OF THE JUDGMENT IN W.P.(C)No.12343/14 DTD.13.5.14.
EXT.P27 : COPY OF THE CHALAN ISSUED BY THE 1ST RESPONDENT
DTD.30.7.12.
EXT.P27(a) : COPY OF THE CHALAN ISSUED BY THE 1ST RESPONDENT
DTD.8.1.13.

RESPONDENTS' EXHIBITS :-

EXT.R1(a) : COPY OF THE RELEVANT PART OF THE MODEL ALIGNMENT FOR
THE PROPOSED ROB.

True copy

P.A to Judge

ANIL K.NARENDRA, J.

W.P.(C).No.20166 of 2010

Dated this the 13th day of July, 2015

JUDGMENT

The petitioner is running an electronic weigh bridge in Willingdon Island, Kochi on the strength of Ext.P5 provisional order dated 2.12.2008, in an area having an extent of 21.25 cents (680 sq.mt.) near the old National Highway. He has approached this Court in this writ petition seeking a writ of certiorari to quash Ext.P16 order dated 24.2.2010 of the 3rd respondent and also Ext.P17 notice dated 9.3.2010 issued by the said respondent. He is also seeking a declaration that Ext.P16 order and P17 notice violate his fundamental rights and is in violation of the principles of natural justice. He is also seeking a writ of mandamus commanding the respondents to execute lease deed for the property to which Weigh Bridge has been relocated as per Ext.P5 order, as modified by Ext.P9 order, for the entire period as specified in Ext.P3 licence deed. In the alternative, he has also sought a writ of mandamus commanding the respondents to pass orders on Exts.P22, P23 and P24 representations within a specified time, after giving him an opportunity of being heard.

2. On 29.6.2010, while admitting this writ petition, this Court has granted an interim stay of the operation of Ext.P16 order and Ext.P17 notice, pending disposal of the Writ Petition, which order is still in force.

3. Going by the averments in the writ petition the petitioner was initially allotted an extent of 21.50 cents of land in Sy.No.2578/4 of Thoppumpady Village near MURAF area in Willingdon Island, which was licensed to him on payment of prescribed monthly licence fees for a period of 2 years from the date of taking over the land, within which the construction of the Weigh Bridge was to be completed. Ext.P1 is the allotment letter dated 19.6.1991 issued by the 3rd respondent in favour of M/s.Super Trade, in which the petitioner is stated to be the Manager and Partner. As evident from Ext.P2, the land in question was handed over to the petitioner on 19.6.1991. The petitioner has also executed Ext.P3 licence deed dated 29th May, 1992 with the Trustees of the first respondent. Clause 6 of Ext.P3 deed of licence reads thus:

"6. If the licensee has completed the construction of the building as provided in the first schedule hereto, the licensor agrees to grant a lease of the property mentioned in the second schedule for a period of 28 years as per the draft of the lease deed mentioned in the fourth schedule hereto, if the licensee does not comply with such terms and conditions or does not execute the lease deed within six months from the date when the licensee is called upon to execute the same, the licensor shall be at liberty to terminate the licence and thereupon the licensee shall remove the structures erected or other improvements made by him without any claim to compensation whatever and restore the premises to its original condition, within such time as directed by the licensor. If the licensee does not remove the building and fixtures or restore the premises to its original condition as required and within the time prescribed the licensor shall have the right to remove the said buildings and fixtures and restore the said premises to its original condition and the cost of such removal and restoration shall be realised from the sale of materials and the balance, if any, from the licensee. In case there is any amount left from the sale price of the materials so removed, after realisation of the cost of removal and restoration referred to herein, the same may be utilised by the licensor for recovery of any other amounts that may be due to the licensor from the licensee."

4. As per Clause-6 of Ext.P3 deed of licence, the 1st respondent has agreed to grant a lease for 28 years. Clause 7 of Ext.P3 deed of licence deals with cancellation of licence. Clause 7 of Ext.P3 deed of licence reads thus:-

7. It is agreed between the parties that notwithstanding any other provisions herein contained, the licensor shall be entitled to cancel the licence either in respect of the whole land covered by the licence or any part thereof, with the improvements, if any thereon before the period specified herein if such land or part thereof, if any, is required for the port's own purposes and in that event, the licensee shall be entitled to corresponding remission of the licence fee where applicable and compensation at a rate mutually agreed upon in respect of buildings and fixtures, if any, which at any time during the currency of the licence may have been erected or affixed by the licensee upon the said land, provided, however, that in case of any dispute between the parties hereto regarding the rate of quantum of compensation payable under the aforesaid provision, the decision of the Board shall be final and binding."

5. Going by the averments in the writ petition, on the strength of Ext.P3 deed of licence, the petitioner commissioned 60 ton weigh bridge during the extended period of licence. Following this, Ext.P4 lease deed dated 4.10.1995 was executed for a period

upto 30.6.1996. The petitioner would contend that, Ext.P4 lease deed was renewed for subsequent periods and thus he was enjoying possession of the land, on payment of escalated licence fee though there was no formal order extending the period of lease. While so, the petitioner was issued with Ext.P5 provisional order directing him to surrender the land covered by Ext.P4 lease deed where the weigh bridge was functioning and relocate the same to another piece of land belonging to the first respondent, which is near the old National Highway, measuring about 860 sq.mt.

6. A reading of Ext.P5 would show that, by the aforesaid provisional order a alternate land was allotted to the petitioner on a licence basis for the period of 11 months from the date of taking over, to relocate the existing weigh bridge, subject to the acceptance of the attached terms and conditions and payment of licence fee/security deposit and vacation of the land then under his occupation. In Ext.P5 the licence fee for the open space was fixed at the rate of ₹247/- per 10 sq.m. per month or part thereof with annual escalation @ 2% and the monthly licence fee for 680 sq.m. was fixed at ₹16,796/-. Vide Ext.P6 challan dated 18.12.2008 the

petitioner remitted a total sum of ₹1,48,694/-, in terms of Ext.P5 provisional order. Later, the 3rd respondent issued Ext.P7 corrigendum in partial modification of Ext.P5 provisional order, stating that, the area allotted should be read as 860 sq.mt and accordingly the petitioner was directed to pay monthly licence fee of ₹21,242/- and a further sum of ₹1,48,694/- towards security deposit. Ext.P8 would show that, the open space in question measuring 860 sq.m. was also handed over to the petitioner on 24.3.2009.

7. After relocating the weigh bridge the petitioner was issued with Ext.P9 order of the 3rd respondent granting licence for the period from 24.3.2009 to 31.1.2010. Ext.P10 is the permission granted by the 3rd respondent for carrying out necessary construction in the alternate land allotted to the petitioner. Thereafter, the petitioner was issued with Ext.P11 communication of the 3rd respondent by which he was informed that the permission granted to occupy the land in question was extended for a period upto 30.04.2010, subject to the condition that no further extension will be granted under any circumstances. Along with the Writ

Petition, the petitioner has produced various documents in order to show that he had already made huge investment in the land in question for erecting an electronic weigh bridge.

8. While the petitioner was conducting business in the said premises he was issued with Ext.P16 order of the 3rd respondent stating that, the temporary licence granted for the occupation of the 860 sq.mt. open space in the old National Highway for weigh bridge is extended for a further period from 1.2.2010 to 30.6.2010 only, subject to adherence of the existing terms and conditions and payment of monthly licence fee for the allotment of open space in the Willingdon Island. It was also made clear in Ext.P16 that, under any circumstance no further extension beyond 30.6.2010 will be granted and as such the area shall be surrendered to the Surveyor, Cochin Port Trust, on or before 30.6.2010. Ext.P16 was followed by Ext.P17 notice issued by the 3rd respondent, which reads thus:-

“The present land policy guidelines of the Government does not permit allotment of open space on licence for long duration on nomination basis. Accordingly, the Port has decided to float tenders for all available open space in Willingdon Island on assessing demand from Port users.

Therefore, it is informed that the open space measuring 860 sq.m. allotted to you on licence for weighbridge can be considered only upto 30.6.2010 or till the date of expiry of the licence period granted from this office, whichever is earlier and no request for extension beyond 30.6.2010 will be considered. The above area shall be handed over to the Surveyor, Cochin Port Trust in its original condition at the close of the allotted period or 30.6.2010, whichever is earlier.

The above area will be tendered out well before 30.6.2010 so as to finalise the tender before this date. You may also take part in the tender as and when the tenders are floated, if interested."

9. On receiving Ext.P16 order and Ext.P17 notice, the petitioner submitted Exts.P22, P23 and P24 representations before the 2nd and 3rd respondents requesting that, since he had already made huge investments for setting up electronic weigh bridge, he should be permitted to continue in occupation, otherwise it will cause serious prejudice to him. Immediately thereafter, the petitioner has approached this Court in this writ petition seeking a writ of certiorari to quash Exts.P16 and P17 and for various consequential reliefs.

10. A counter affidavit has been filed on behalf of the respondent contending that, since the period of licence was not renewed after 30.6.2010, the petitioner is in occupation of the aforesaid public premises without any authority or law and in which event proceedings under Public Premises (Eviction of Un-authorised Occupants) Act, 1971 can be initiated against him. The respondents had also taken a contention that, in view of Section 9 of the aforesaid Act, which provides for efficacious remedy, the present writ petition is not maintainable. In the counter affidavit the respondent had also stated that, the land in question measuring 21.5 cents has been allotted on lease to the petitioner for installation of weigh bridge for a period of 5 years. The same was renewed for a period of 5 years from 1.7.1996 to 30.6.2001 and thereafter for a further period of 5 years from 1.7.2001 to 30.6.2006. On expiry of this period, the request for renewal of lease for a further period was not considered due to various reasons mentioned in Ext.P17 and also due to congestion in the area. It was accordingly the petitioner was directed to surrender the land and the first respondent had identified an alternative site for relocation of the weigh bridge, measuring an

extent of 680 sq.m. which was given on licence basis vide Ext.P5 for a period of 11 months from the date of taking over and this was accepted by the petitioner.

11. According to the respondents, as per the present land policy and guidelines of the Government of India, allotment of open space for long duration on nomination basis is not permitted. It was accordingly that the first respondent decided to float tenders for all available open spaces in Willingdon Island on assessing demand from Port users. Thus the petitioner was informed by Ext.P16 that no further extension of the period of licence beyond 30.6.2010 will be granted.

12. On 2.6.2015, the respondents have also moved I.A.No.7235 of 2015 seeking an order to vacate the interim order of stay granted by this Court on 29.6.2010, pointing out that, it was not just the petitioner who was requested to surrender vacant possession, but other licensees who are occupying the open space were also directed to surrender their respective lands, in accordance with the policy guidelines of Government of India. It has also been stated in the affidavit accompanying to the said application that, the

land in question is urgently required by the respondents for developmental activities and that the petitioner has been enjoying the possession of the premises from 30.6.2010 based on the interim order passed by this Court.

13. The aforesaid interim application was followed by an affidavit filed by the first respondent dated 9.7.2015. Paragraphs 5, 6 and 7 of the aforesaid affidavit read thus:-

"5. It is respectfully submitted that petitioner has not remitted the licence fee and other dues for the land from 1.1.2012. Thus viewing from this angle also, petitioner's occupancy of the premises is without a valid licence or lease and also without making any payment for the occupation of the premises. The dues from the petitioner to the first respondent on account of licence fee comes to Rs.15,46,204/-. The petitioner has not effected payment of a single Rupee ever since 1.1.2012. The respondent had issued notices to the petitioner directing him to make the payments, which has not been honoured by the petitioner. Notices were issued to the petitioner on 20.4.2012, 3.8.2012, 18.9.2012, 14.11.2012, 19.8.2013, 19.8.2014 and 1.1.2015 directing the petitioner to remit the licence fee, which the petitioner has not honoured till date.

6. It is respectfully submitted that the land unauthorisedly occupied by the petitioner is required for

the construction of railway overbridge at Vathuruthy by the Roads and Bridges Development Corporation of Kerala Ltd. The Railway Over Bridge (hereinafter ROB) coming at Vathuruthy is for a public purpose and the land of the Cochin Port Trust, including the land occupied by the petitioner is required for the construction of railway over bridge. Meetings were held regarding the planning and necessity of the ROB, Vathuruthy by the State Government Officials, Head of Southern Naval Command, Head of Cochin Port Trust, Mayor of Cochin, GCDA Officials and KITCO officials. The model alignment for the ROB was finalised and forwarded by the Roads and Bridges Development Corporation of Kerala Ltd. The land for construction of the ROB is given by the Cochin Port Trust for the envisaged public purpose. A true copy of the relevant part of the model alignment for the proposed ROB prepared by the Roads and Bridges Development Corporation of Kerala Ltd. is produced herewith and marked as **Exhibit.R1(a)**.

7. It is respectfully submitted that the petitioner's unauthorised occupancy is stalling the ROB project. There is an interim order granted by this Hon'ble Court staying eviction of petitioner, based on which the petitioner is still continuing."

14. The petitioner has also filed a reply affidavit dated 13.7.2015. A reading of the aforesaid reply affidavit would make it

explicitly clear that after the interim order passed by this Court, except the payment of ₹2,00,000/- made on 30.7.2012 and a further payment of ₹2,00,000/- made on 8.1.2013, vide Exts.P27 and P27(a) respectively, the petitioner has not made any payment towards the monthly licence fee payable to the respondents. Relying on Ext.P26 judgment of this Court, the learned counsel for the petitioner would contend that, it was only due to the acute financial crisis he could not remit the entire amount in time. In paragraph 5 of the reply affidavit the petitioner has also stated that, the proposed railway over bridge is only a proposal and it has not been finalised and that, the first respondent has not even taken any decision to hand over any land for the proposed project till date. Further, no proceedings for acquisition for the purpose of the said project has been initiated till date. Therefore, the petitioner would contend that the requirement projected by the respondents that, the land in question is required for the purpose of constructing a railway over bridge is absolutely without any basis.

15. I heard the arguments of the learned counsel for the petitioner and also the learned Standing Counsel for the

respondents.

16. The sole issue that arises for consideration in this writ petition is as to the legality or otherwise of Ext.P16 order and Ext.P17 notice issued by the 3rd respondent by which the petitioner was informed that, the licence in respect of the land in question allotted to him shall not be extended beyond 30.6.2010.

17. Admittedly the petitioner is in occupation of the land owned by the Cochin Port Trust, as a licensee. Though, relying on Ext.P3 deed of licence the petitioner would contend that, he was originally granted licence for a period of 28 years, it is an admitted fact that the petitioner is not in occupation of the land covered by Ext.P3, since he was allotted with an alternate land vide Ext.P5 order. A reading of Ext.P5 provisional order issued by the 3rd respondent as well as the subsequent correspondences between the parties make it explicitly clear that, the said allotment was only for a period of 11 months, on licence basis. Though the period of licence was renewed from time to time, based on various communications between the parties, the 3rd respondent issued Ext.P16 notice in which it was made clear that no further extension beyond 30.6.2010

will be granted under any circumstance. This was followed by Ext.P17 notice issued by the 3rd respondent stating that, going by the present land policy guidelines of the Government of India, allotment of open space on licence for long duration on nomination basis, is impermissible and it was in such circumstance, the respondents have decided to float tenders for all available open space in Willingdon Island.

18. Relying on Section 60(b) of Easements Act, 1882, the learned counsel for the petitioner would contend that, since the petitioner had already constructed permanent structures on the strength of the licence granted by the respondent, it would change the nature of licence to an irrevocable licence and the petitioner is entitled for the benefits under Section 60(b) of the aforesaid Act. I am unable to agree with the aforesaid contention raised by the learned counsel for the petitioner. Clause (b) of Section 60 of the Easements Act, 1882 provides that a licence may be revoked by the granter unless the licensee, acting upon the licence has executed a work of a permanent character and incurred expenses in the execution. Ext.P10 is the permission granted to the petitioner for

constructing necessary buildings/structures for relocating the weigh bridge. Ext.P20 is the photograph of the construction undertaken by the petitioner for that purpose. The construction carried out by the petitioner on the strength of Ext.P10 permission, which is evident from Ext.P20 photograph would not fall within the sweep of "work of a permanent character" occurring in Clause (b) of Section 60. In such circumstances, I find absolutely no merit in the contention raised by the learned counsel for the petitioner that the licence granted by the 1st respondent is an irrevocable one in view of Clause (b) of Section 60 of the Easements Act.

19. The stand originally taken by the respondents in Ex.P17 for not granting any extension of the period of licence to the petitioner is the new land policy guidelines issued by the Government of India, as per which, the respondents have decided to float tender for all available space in Willingdon Island. Subsequently, it was brought on record that, the land in question is required for a construction of a railway over bridge. The specific stand to that effect taken by the respondents in their additional affidavit filed on 9.7.2015 is not specifically denied by the petitioner

in his reply affidavit dated 13.7.2015, except by stating that no acquisition proceedings have been initiated till date. The petitioner has also not disputed the model alignment of the railway over bridge produced along with the affidavit as Ext.R1(a). On a comparison of Ext.R1(a) sketch along with annexure of Ext.P5 provisional order would make it explicitly clear that the construction of the railway over bridge is virtually over the property allotted to the petitioner on the strength of Ext.P5. When the land in question is required for a public purpose, which is not seriously disputed by the petitioner who is only a licensee of the said land, the challenge made against non-renewal of lease can only be repelled. Admittedly, the land in question is owned by the respondents. When as per the new land policy of the Government of India, licence for long duration is impermissible, the respondents cannot be found fault in issuing Ext.P17 notice stating that the licence issued in favour of the petitioner shall not be renewed for a further period. In such circumstances, the challenge made in this writ petition against Exts.P16 and P17 cannot be sustained.

20. I also notice that, the petitioner who was continuing in occupation of the land in question on the strength of the interim order passed by this Court has also defaulted payments of monthly licence fee. Going by the averments in the affidavit dated 9.7.2015 filed by the respondents the total arrears comes to ₹15,46,204/-. Though the petitioner in his reply affidavit would contend that he had remitted a sum of ₹2,00,000/- each on 30.7.2012 and 8.1.2013 respectively, vide Ext.P27 and P27(a) challans, the fact remains that, a substantial amount towards the monthly licence fee is still in arrears. Since the petitioner is in unauthorised occupation of the land with effect from 30.6.2010, he is liable to be evicted under the provisions of the Public Premises (Eviction of Un-authorised Occupants) Act, 1971. In view of the interim order passed by this Court in this Writ Petition the respondents could not invoke the provisions under the aforesaid Act against the petitioner and he continued in occupation, even without payment of licence fee from 1.1.2012.

21. In such circumstances, I find absolutely no merit in the writ petition. The petitioner could not make out any valid ground to

interfere with Ext.P16 order passed by the 3rd respondent and also Ext.P17 notice issued by the said respondent.

In the result, the writ petition fails and the same is dismissed.

No order as to costs.

ANIL K.NARENDRA, JUDGE

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