

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

WP(C).No.31712 of 2004 (A)

PETITIONER :

KURAVILANGAD GRAMA PANCHAYAT,
KURAVILANGAD, REPRESENTED BY ITS SECRETARY.

BY ADV. SRI.V.G.ARUN

RESPONDENTS :

1. THE OMBUDSMAN FOR LOCAL SELF GOVERNMENT INSTITUTIONS,
TRIVANDRUM, REPRESENTED BY ITS SECRETARY.

2. JAMES THOMAS KANDATHIL,
KATTAMPAK P.O., VAIKOM, KOTTAYAM.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No.31712 of 2004 (A)

APPENDIX

PETITIONER'S EXHIBITS :-

- EXT.P1 : COPY OF THE AUCTION NOTICE DTD.1.4.01.
- EXT.P2 : COPY OF THE PETITION FILED BY THE 2ND RESPONDENT DTD.23.10.01.
- EXT.P3 : COPY OF THE PETITION FILED BY THE 2ND RESPONDENT BEFORE THE FIRST REESPONDENT DTD.13.6.2002.
- EXT.P4 : COPY OF THE OBJECTION DTD.25.2.03.
- EXT.P5 : COPY OF THE ORDER DTD.23.8.04 IN O.P.338/02.

RESPONDENTS' EXHIBITS :- NIL.

True copy

P.A to Judge

ANIL K.NARENDRA, J.

W.P.(C)No.31712 of 2004

Dated this the 22nd day of July, 2015

JUDGMENT

The petitioner Panchayat conducted an auction of the stalls in the Panchayat market, for the period from 1.4.2001 to 31.3.2002, pursuant to Ext.P1 auction notice. The 2nd respondent was the highest bidder in respect of Stall No.DF-2. He took the said stall on a monthly rent of ₹1,310/- and remitted security deposit of ₹10,000/-. The 2nd respondent occupied the room on 16.4.2001. On 7.6.2001 he remitted ₹655/- towards monthly rent for the period from 16.4.2001 to 30.4.2001 together with interest for the delayed payment. At the time of execution of the agreement, the 2nd respondent had remitted an advance amount of ₹3,930/- for a period of three months, to be adjusted at the end of the lease period.

2. On 23.10.2001 the 2nd respondent submitted Ext.P2 application before the Panchayat stating that he is vacating the room due to loss in the business and also due to death of his father.

In Ext.P2 the 2nd respondent has also requested the Panchayat to take immediate steps to release the amount withheld. Later the 2nd respondent approached the Ombudsman for Local Self-Government Institutions in Ext.P3 petition, to which the petitioner submitted Ext.P4 objection. After hearing both sides, the learned Ombudsman passed Ext.P5 order by which the petitioner was directed to re-fund the security amount to the 2nd respondent, within two weeks from the date of the order, failing which appropriate disciplinary proceedings will be initiated against the Secretary of the Grama Panchayat. It is aggrieved by Ext.P5 order passed by the learned Ombudsman, the petitioner Grama Panchayat is before this Court in this Writ Petition seeking a writ of certiorari to quash Ext.P5 order passed by the learned Ombudsman.

3. I heard the arguments of the learned Standing Counsel for the petitioner Grama Panchayat and also the learned Senior Government Pleader appearing for the 1st respondent. In spite of service of notice none appeared for the 2nd respondent.

4. The sole issue that arises for consideration in this Writ Petition is as to the legality or otherwise of Ext.P5 order passed by

the learned Ombudsman in O.P.No.338 of 2002 filed by the 2nd respondent. The fact that the 2nd respondent, who occupied the shop room in question based on auction conducted by the Panchayat for the period from 1.4.2001 to 31.3.2002 has vacated the said premises on 23.10.2001, after submitting Ext.P2 application, is not in dispute. The auction conducted by the petitioner on 31.3.2001 was governed by the terms and conditions contained in Ext.P1 auction notice. It is relying on Clause 10 of Ext.P1 the petitioner is contending that, the 2nd respondent is liable to pay the rent for the shop room in question till 31.3.2002. Going by Clause 10 of Ext.P1 tender notice, if the 2nd respondent vacates the shop room before the expiry of the period, he is liable to pay rent for the shop room till the petitioner Grama Panchayat conducts re-auction for the aforesaid shop room. Further any loss sustained by the petitioner Grama Panchayat shall also be borne by the 2nd respondent.

5. A reading of Ext.P4 objection submitted by the petitioner Grama Panchayat before the learned Ombudsman would show that, though the Panchayat received Ext.P2 request made by the 2nd respondent that he is vacating the shop room in question by

23.10.2001, the Panchayat has not taken any steps to conduct re-auction of the said shop room for the remaining period, i.e., till 31.3.2002. The fact that no decision was taken by the Panchayat Committee to conduct re-auction for the period from 23.10.2001 to 31.3.2002 is admitted in Ext.P4 objection filed before the learned Ombudsman. It was after considering Ext.P4 objection filed by the petitioner, the learned Ombudsman in Ext.P5 order concluded that, the petitioner Grama Panchayat has to refund the security amount to the 2nd respondent within a period of two weeks from the date of the order. The reasoning in Ext.P5 order passed by the learned Ombudsman is neither perverse nor patently illegal, warranting an interference of this Court.

In the result, the Writ Petition fails and the same is dismissed.
No order as to costs.

ANIL K.NARENDRAN, JUDGE

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