

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE**

**FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936**

**WP(C).No. 23038 of 2013 (D)**  
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**PETITIONER(S):**  
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**K.P.PAUL, AGED 63 YEARS,  
S/O PAILY, PROPRIETOR, PAULSON MEDICALS,  
RESIDING AT "PAULS VILLA", ARPOOKKARA EAST P.O.,  
GANDHI NAGAR, KOTTAYAM, PIN:686 008.**

**BY SRI.RAJU JOSEPH, SENIOR ADVOCATE  
ADV. SRI.J.JULIAN XAVIER**

**RESPONDENT(S):**  
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- 1. THE DISTRICT COLLECTOR (APPELLATE AUTHORITY  
UNDER KERALA PUBLIC BUILDINGS  
(EVICTION OF UNAUTHORIZED OCCUPANTS) ACT 1968,  
KOTTAYAM, PIN:686 001.**
- 2. THE SUPERINTENDENT,  
MEDICAL COLLEGE HOSPITAL, GANDHI NAGAR P.O.,  
GANDHI NAGAR, KOTTAYAM, PIN:686 008.**
- 3. THE KERALA HEALTH RESEARCH AND WELFARE SOCIETY (KHRWS),  
GENERAL HOSPITAL CAMPUS, RED CROSS ROAD,  
THIRUVANANTHAPURAM, PIN:695 035,  
REPRESENTED BY ITS MANAGING DIRECTOR.**

**R1 & R2 BY SENIOR GOVERNMENT PLEADER SRI.C.S.MANILAL  
R3 BY ADV. SRI.M. AJAY, SC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
20-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**msv/**

**APPENDIX**

**PETITIONER(S)' EXHIBITS**  
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**EXHIBIT P1: TRUE COPY OF THE DRUGS LICENSE.**

**EXHIBIT P2: TRUE COPY OF THE REQUEST MADE BY THE PETITIONER TO THE  
3RD RESPONDENT DATED 12.12.1975.**

**EXHIBIT P3: TRUE COPY OF THE LETTER DATED 28.12.1975 ISSUED BY THE  
3RD RESPONDENT TO THE PETITIONER.**

**EXHIBIT P4: TRUE COPY OF THE JUDGMENT IN A.S.NO.262/82 DATED 16.12.83.**

**EXHIBIT P5: TRUE COPY OF THE JUDGMENT DATED 26.9.1985 IN S.A.NO.417/85.**

**EXHIBIT P6: TRUE COPY OF THE JUDGMENT DATED 5.8.1998 IN O.S.NO.112/96.**

**EXHIBIT P7: TRUE COPY OF THE ORDER DATED 3.4.2013 ISSUED BY THE  
2ND RESPONDENT.**

**EXHIBIT 8: TRUE COPY OF THE APPEAL NO.H5-21109/13 DATED 11.4.2013.**

**EXHIBIT P9: TRUE COPY OF THE ORDER DATED 12.8.2013 ISSUED BY THE  
1ST RESPONDENT.**

**EXHIBIT P10: TRUE COPY OF THE LETTER DATED 10.9.2013 ISSUED BY THE  
2ND RESPONDENT.**

**RESPONDENT(S)' EXHIBITS:**  
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**EXT. R3(a): A TRUE COPY OF THE G.O.(MS) NO.146/73/HD DTD.19.6.1973.**

**EXT.R3(b): A TRUE COPY OF THE SRO NO.2045/93 ISSUED BY THE KERALA HEALTH  
AND FAMILY WELFARE DEPARTMENT DTD.29.12.1993.**

**//TRUE COPY//**

**P.S.TO JUDGE**

**A. MUHAMED MUSTAQUE, J.**

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**W.P.(C) No.23038 of 2013**

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**Dated this the 20<sup>th</sup> day of March, 2015**

**JUDGMENT**

This writ petition is filed challenging orders passed under the Kerala Public Buildings (Eviction of Unauthorised Occupants) Act, 1968 (hereinafter referred to as the Act 25 of 1968).

2. The Government of Kerala formulated a scheme for construction of pay wards in Medical college hospitals and District hospitals with the aid of bank loan. This scheme was formed in the year 1973 by G.O.No.146/73. Scheme was implemented by a Society established under Travancore-Cochin Literar, Scientific and Charitable Societies Registration Act. This Society is named as the Kerala Health Research and Welfare Society (KHRWS). By the aforesaid Government Order, the Government made available the land required for constructing pay ward building. As it appears from the Government Order itself that creation of the society was for the purpose of obtaining bank loan to construct pay ward in the hospital. Accordingly, the society constructed a pay ward in the

premises of the Government Medical College Hospital, Kottayam.

3. The Society inducted the petitioner herein in occupation of a room. This was on 14.02.1976. The period of permission was for three years from the date of agreement. The petitioner seems conducting a medical shop in the premises ever since the induction.

4. The society instituted a suit for mandatory injunction as O.S.No.278/1980 before the Sub Court, Kottayam praying for a mandatory injunction to remove all the articles and belongings of the petitioner from the building, as the period of license was over. The suit was decreed in favour of the society. The petitioner thereupon filed appeal before the District Court. In the appeal accepting the contentions of the petitioner that he had constructed a substantial permanent structure and the license was coupled with interest entitling him protection under Section 60(b) of the Easement Act, the appeal was allowed. Thereafter, the society preferred Second Appeal before this Court as S.A.No.417/1985 with delay. This was dismissed consequent upon the dismissal of petition to condone the delay.

5. The Government through Superintendent of Medical

College initiated action against the petitioner under Act 25 of 1968. This resulted in Exts.P9 and P10 proceedings. These orders are under challenge before this Court on the ground that the Superintendent of Medical College has no authority to initiate action against the petitioner. Secondly on the ground that premises exclusively belonged to the Society and petitioner's right has been protected by the judgment referred as above, hence he cannot be evicted from the premises. Thirdly, it is contended that judgment of the Civil Court is also binding upon the Government. Lastly it was also raised by the petitioner that the present dispute is beyond the scope of decision under Act 25 of 1968.

6. To understand the nature of the dispute it is necessary to advert the relationship of the Government with the society. It is stated in the counter affidavit that pay ward building was constructed by the Society under the built on transfer basis during 1974 with a condition that the same shall be handed over to the Government. It is the case of the Government that ownership of the land has not been transferred and the society was only entrusted with the construction of the building and

after the construction the entire building is vested with the Government and the Society, except for the management, has nothing to do with the constructed building. It is further contended that the Society has no authority to lease or grant license in respect of building belongs to the Government. Along with the counter filed by the society, relevant Government Order also has been produced. This Government Order clearly indicates the nature of relationship of Society with the Government. It shows that the Society is fully owned by the Government and creation of the society was only as a special purpose vehicle to obtain loan for the purpose of constructing pay wards after obtaining loan from the bank.

7. Ext.R3(b) produced by the 3<sup>rd</sup> respondent is a notification issued by the Government appointing Superintendent of Medical College as Estate officer for the purpose of Act 25 of 1968. In view of the fact that pay ward belongs to Government, I am of the view that Estate Officer has necessary authority to proceed against unauthorised occupation in terms of Act 25 of 1968.

8. The next point which has to be considered is whether the premises exclusively belongs to the Society or not. The creation of the Society is based on the Government Order. The Government is having control in regard to its working. The functions of the society has to be consistent with the Government Order. The Society cannot extend the scope of its business beyond the mandate of the Government Order by which it was created. It is to be noted that State Bank of India, the prime lender for the Government, insisted creation of non-profit making body as a suitable agency for taking loan for undertaking construction and administration of the pay ward. This is how the society was created. The very constitution of the society was itself for taking loan for undertaking the construction. Administration of pay ward does not create in itself the right, interest or title of the land belonging to the Government in favour of the Society. At the most the society can be described only as special purpose vehicle created for implementation of the Government's project. Therefore the pay ward constructed by the society does not belong to the society itself. The petitioner who is occupant of the premises from the society cannot claim

better title to the society than they possess. Thus, I am of the view, pay ward does not belong to Society and it belongs to the Government.

9. The next important question arising in the context of judgment relied by the petitioner. The judgment has become final. In this judgment the Government was not a party. As adverted above, the Government has superior title over the property. License is an authority to use a premise and in the absence of authority, such use will become unlawful. The essence of license is the right flows from permission given by a person who has right to give such license. License can be expressed or implied. In this matter, society which has duty for administration has given license and that the license has been found irrecoverable by the Civil Court. The question is whether the Government who has paramount title on the land can proceed against petitioner ignoring the binding judgment between licensor and licensee.

10. In legal context the petitioner has to establish either grant was express or implied or as to establish that, judgment

otherwise is binding on the Government. The petitioner has no case at any point of time that there is an implied consent for occupation of the building from the Government. In the absence of any express license, it is bounden duty of the petitioner to plead that his occupation was with the implied consent of the Government. I have adverted to the memorandum of appeal produced by the petitioner as Ext.P8. The petitioner has not raised any plea based on implied license. In the absence of any such plea, the claim of Government has to be seen independently of the judgment. The question arise whether judgment of the competent civil court is binding on the Government, eventhough the Government was not party to such litigation. It is apposite to refer to Section 11 of Civil Procedure Code . Section 11 refers to binding nature of an issue which was directly and substantial issue in the former suit. As has been noted that the Government's claim is independent of the claim made by the society and there was no common issue decided among the parties. It is also to be noted that the Government is not claiming under the Society, so as to bind the judgment on the Government. The judgment of civil court is not binding to

preclude the Government from proceeding under the Act 25 of 1968. The right of the Government to proceed under Article 25 of 1968 is based on the paramount title and ownership of the land.

11. The last point which was canvassed is in regard to the scope of exercising power under Act 25 of 1968 in the light of alleged bona fide dispute of right, interest or title of the premises. Act 25 of 1968 defines 'unauthorised occupation' under Section 2(f) which is as follows:-

“unauthorised occupation”, in relation to any public building, means the occupation by any person of the building without authority for such occupation and includes the continuance in occupation by any person of the public building after the authority (whether by way of lease or any other mode of transfer) under which he was allowed to occupy the building has expired or has been determined for any reason whatsoever.”

In the light of nature of the dispute espoused by the petitioner, the question is whether the authorities under the Act 15 of 1968 could determine the issue regarding unauthorised occupation. The authority exercising power under the Act 25 of 1968 is exercising a quasi-judicial

function based on existence of jurisdiction relating to factum of unauthorised occupation of premises belonged to the Government. When there is a bona fide dispute regarding title or interest in the property, the authority cannot resolve such dispute. In such circumstance, parties have to be relegated to the civil court to resolve the dispute. The very action that can be initiated by the authority is only when there are established evidence to term the occupation as unauthorised. If a person is in a legal possession of the building, the authority cannot invoke the provisions of Act 25 of 1968. The occupation denotes the use of the building and possession denotes legal interest in the building. The very jurisdiction therefore with authority to proceed under the Act is rest jurisdictional factum of the occupation as unauthorized. Thus the authority has to establish there exist jurisdictional fact; to exercise power in terms of Act 25 of 1968. Jurisdictional fact in so far as to exercise the power is concerned, is to establish that there exist unauthorized occupation of the premises. If it cannot be established

occupation as unauthorised, the arbiter of such dispute has to be civil court or any other competent court. The Government cannot decide its own cause by becoming arbiter of the dispute. Therefore it requires to be examined whether power exist for the authorities to invoke powers under the Act 25 of 1968.

13. The petitioner was put in occupation by the society. The society's duty is only to administer the building; it has no interest or right over the building. The petitioner failed to establish implied consent on the part of the Government. The authority to occupy the premises legally must flow from the person or entity which has power to grant such permission. The very foundation of the licence is based on such permission. In the absence of such permission, any occupation as against the interest of the Government is unlawful, illegal and is unauthorized. The petitioner's occupation as against the interest of administrator may be valid in the light of judgment however same remains unauthorized as against the Government who has paramount

interest and title over the land.

14. In the absence of an authority from the Government, the occupation as against the interest of the Government is nothing but unauthorized. In that view of the matter, without any further discussion, it can be easily concluded that jurisdictional fact exists for initiating eviction of the petitioner from the pay wards at Kottayam Medical College.

In that view of the matter, I do not find any merit in the writ petition. Accordingly the writ petition stands dismissed. No costs. However, considering the facts and circumstances, the petitioner is given one month's time from today to surrender the premises.

**A. MUHAMED MUSTAQUE, JUDGE**

sj