

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 23RD DAY OF NOVEMBER 2015/2ND AGRAHAYANA, 1937

WP(C).No. 24961 of 2012 (U)

PETITIONER(S):

- 1. GURUVAPPA, AGED 42 YEARS,
S/O.CHUKRA, RESIDING AT AJILADKA, ENMAKAJE VILLAGE,
P.O.PERLA, KASARAGOD DISTRICT. 671 552.**
- 2. N.DEVAPPA NAIK, AGED 48 YEARS,
NADUMANE, NALKA, P.O.PERLA ,
ENMAKAJE VILLAGE, KASARAGOD DISTRICT. 671 552.**
- 3. MOHAMMED KUNHI, AGED 48 YEARS,
S/O.HASSAINAR, RESIDING AT KUREADKA, P.O.PERLA,
ENMAKAJE VILLAGE, KASARAGOD DISTRICT. 671 552.**

**BY ADVS.SRI.K.SHRIHARI RAO
SMT.N.SHOBHA
SRI.K.S.BALAKRISHNAN**

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY, REVENUE DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM. 695 039.**
- 2. THE DISTRICT COLLECTOR,
CIVIL STATION, VIDHYANAGAR, P.O.VIDHYANAGAR,
KASARAGOD DISTRICT-671 123.**
- 3. THE TAHSILDAR,
KASARAGOD TALUK, KASARAGOD DISTRICT. 671 121.**
- 4. THE VILLAGE OFFICER,
ENMAKAJE VILLAGE, P.O.PERLA-671 552.**
- 5. THE ASSISTANT EXECUTIVE ENGINEER,
ROADS SECTION, PWD, BADIADKA.P.O
KASARAGOD DISTRICT-671 541.**
- 6. THE ENKAKAJE GRAMA PANCHAYAT
REPRESENTED BY ITS SECRETARY, P.O.PERLA,
KASARAGOD DISTRICT. 671 552.**
- 7. THE SUB INSPECTOR OF POLICE,
BADIADKA POLICE STATION, P.O.BADIADKA,
KASARAGOD DISTRICT-671 541.**

R1-R5,R7 BY GOVERNMENT PLEADER SRI.T.J.MICHAEL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS

P1- TRUE COPY OF THE JUDGMENT DATED 7.9.2005 IN OP.NO.8123/97 OF THIS COURT.

**P2- TRUE COPY OF THE COUNTER AFFIDAVIT DATED 23.5.98 OF THE 5TH
RESPONDENT IN OP NO.8123/97.**

P3- TRUE COPY OF ORDER DATED 1.3.2011 OF THE 2ND RESPONDENT.

**P4- TRUE COPY OF LEGAL NOTICE DATED 1.10.2012 SENT TO 2ND,3RD,4TH AND 6TH `
RESPONDENTS HEREIN.**

RESPONDENTS' EXHIBITS : NIL

OKB

True copy

P.A. to Judge

K.HARILAL, J.

W.P.(C) No.24961 of 2012

Dated this the 23rd day of November, 2015.

JUDGMENT

The petitioners are petty shop owners in Perla town in Kasaragod. Their shops are situated on the side of the PWD road and they put up the same on the Government land, without any permission of the authorities concerned. While so, the respondents initiated proceedings to evict them from the Government land. Aggrieved by the eviction proceedings, they approached this Court by filing O.P.No.8123/97 and this Court disposed of the said O.P. directing the 2nd respondent District Collector to take appropriate action on the representation filed by them. Thereafter, the 2nd respondent passed Ext.P3 order stating that the claim for assignment is not justified as they have encroached upon the Government land. If they submit applications in format observing the provisions of the Act and Rules for assigning AW land, not required for public purpose

and suitable for rehabilitation, would be considered and processed expeditiously. Meanwhile, the occupied land could be given to the petitioners, on lease, for three years, renewable for further periods, till suitable land could be assigned to them. The Village Officer should submit the lease proposals within 14 days. If the petitioners reluctant to possess the land on lease, the Tahsildar, Kasaragod will observe the provisions of the KLC Act and Rules. The grievance of the petitioners is that, in spite of the direction in Ext.P3 granting leasehold to the petitioners, the respondents proceeded in derogation of the said order and evicted them from the place which they have occupied. Hence the petitioners prayed for issuing a writ of mandamus or any other appropriate writ or order, directing the respondents, to restore the petty shops occupied by the petitioners, in their original position, at their own costs.

2. Heard the learned counsel for the petitioners and the learned Government Pleader.

3. The learned counsel for the petitioners advanced arguments in support of the grounds raised

in this writ petition.

4. Per contra, the learned Government Pleader, on instruction, submits that even though the petitioners were allowed to continue there for three years on condition that they shall execute a lease for three years, they have not executed the lease deed as directed by the District Collector. Therefore, in compliance with the default clause stated in Ext.P3 the respondents initiated eviction proceedings and the petitioners were evicted accordingly from the Government land.

5. Admittedly, the petitioners are occupying Government land without permission and they have no vested right to continue there. Going by Ext.P3, it is seen that the 2nd respondent District Collector, after arriving at a finding that they have no right to continue there and to occupy the Government land there, allowed to submit application in form, observing the provisions of the KLC Act and Rules for assigning AW land not required for public purposes and suitable for their rehabilitation and in the meantime they were further directed to execute land agreements

for three years, till suitable land could be assigned to them. But, the petitioners have no case that they have complied with the said direction issued by the 2nd respondent. Therefore, as rightly submitted by the learned Government Pleader, it could be reasonably presumed that the petitioners have not complied with the directions in Ext.P3. If that be so, as per Ext.P3 itself they are liable to be evicted from the Government land and they have no right to claim that they are not liable to be evicted from the Government land.

In the above view, I find that there is no circumstance warranting interference under the writ jurisdiction and the petitioners have failed to establish their vested right to continue there. In the absence of any vested right, no restoration can be allowed in favour of the petitioners. This writ petition is devoid of merits and is dismissed accordingly.

K. HARILAL, JUDGE

okb.