

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

TUESDAY, THE 11TH DAY OF AUGUST 2015/20TH SRAVANA, 1937

WP(C).No. 22135 of 2014 (N)

PETITIONER:

P. ALI AGED 66 YEARS
S/O.ISMAIL, SOUDANA MANZIL, UGRAPURAM
AREACODE, MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENTS:

1. THE AREACODE GRAMA PANCHAYATH
REPRESENTED BY ITS SECRETARY, AREACODE
MALAPPURAM DISTRICT, PIN 673639.
2. THE SECRETARY
AREACODE GRAMA PANCHAYATH, AREACODE
MALAPPURAM DISTRICT, PIN 673639.

R1,R2 BY ADV. SRI.M.A.ABDUL HAKHIM
R1,R2 BY ADV. SRI.JOSEPH GEORGE (KANNAMPUZHA)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 22135 of 2014 (N)

APPENDIX

PETITIONERS' EXHIBITS

EXHIBIT-P1: TRUE COPY OF THE LICENCE ISSUED TO THE PETITIONER BY THE 2ND
RESPONDENT DATED, 31.3.2014.

EXHIBIT-P2: TRUE COPY OF THE NOTIFICATION PUBLISHED IN THE DESHABHIMANI
DAILY DATED, 16.3.2009.

EXHIBIT-P3: TRUE COPY OF THE RENT AGREEMENT ENTERED INTO BETWEEN THE
PETITIONER AND THE SECOND RESPONDENT DATED, 29.10.2009.

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

P.A.TO JUDGE

ANU SIVARAMAN, J.
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W.P.(C).No.22135 of 2014
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Dated this the 11th day of August, 2015

JUDGMENT

This writ petition is filed seeking the following reliefs:-

- "i) Issue a writ of mandamus or any other appropriate writs, orders or directions commanding the respondents not to insist for additional security deposit from the petitioner, for occupying the same area which he occupies now in Room No.VII/393, in the event of reconstruction of the building;
- ii) Issue a writ of mandamus or any other appropriate writs, orders or directions commanding the respondents not to back out from the obligation of giving the same area which the petitioner occupies in Room No.VII/393, in the event of reconstruction of the building by the Panchayath."

2. The case of the writ petitioner is that he was conducting a bakery in a shop room, in a building owned by the first respondent Grama Panchayat and has been in possession of the said room since 1974. In 2009, the Panchayat decided to demolish the building and to construct a new building having 26 shop rooms. It is urged that the petitioner and other tenants were assured that they would be given shop rooms in the newly constructed building belonging to the Panchayath on preferential

terms. Apprehending that the Panchayat would back out of their agreement, the writ petition was filed.

3. On 11.11.2014 an interim order was passed directing the Panchayat to keep one room vacant subject to further orders in the writ petition. The Panchayat thereafter filed counter affidavit dated 22.11.2014 stating that the newly constructed shopping complex consisted of 33 rooms and that 9 of these rooms have been allotted for existing tenants at reduced rates. It was stated that the other rooms were being auctioned in an auction to be held on 26.11.2014. It was also stated in the counter affidavit that the Panchayat had conducted a meeting with the existing tenants for fixation of rent and advance payable by them and that the petitioner alone had refused to abide by the terms reached in the meeting. Thereafter the Panchayat had decided that one shop room in the ground floor of the building would be kept vacant as directed by this Court. However, the petitioner had filed an affidavit contending that the said room was only a staircase room and was in a corner of the building and did not have any of the facilities of the rooms which had been allotted to the other existing tenants or the rooms which

had been auctioned by the Panchayat. The Panchayat had thereupon, been directed by this Court to produce the details of the room kept vacant pursuant to the interim order.

4. A further affidavit had been filed by the Panchayat dated 25.01.2015 stating that the number of the room is A.P.VII/713 and that it is not make-shift room under the staircase. The decision of the Panchayat Committee dated 28.11.2014 showing the number of the room as A.P. VII/713 was also produced along with the affidavit. The petitioner had again filed an affidavit along with the petition to accept the additional documents and produced photographs of the building as well as the room now kept vacant to accommodate the petitioner. It is clear from the photograph produced that the room No.AP VII/713 now allotted to the petitioner is a corner room, abutting a staircase of the building and has no frontage or access from the main corridor in front of the building. The access to the shop room is from the corridor in front of the staircase and it clearly is a corner room.

5. Heard Smt.Smitha Sukumaran, learned counsel appearing for the appellant and Sri.M.A.Abdul Hakhim, learned

standing counsel for the Panchayat. Learned counsel for the Panchayat had made available auction notice dated 29.10.2014 wherein all but nine rooms which were allotted to the other existing tenants except the petitioner was put to auction. It is seen from the notice that room No.AP VII/713, the room which is said to be reserved for handicapped, has a lower amount of deposit as well as rent notified against it. This is the shop room which admittedly is now kept apart to accommodate the petitioner. The only question is with regard to the amount of deposit and basic rent to be paid by the petitioner for allocation of this room. It is not in dispute that the petitioner was a tenant of the old building of the Panchayat which has since been demolished. It is also not in dispute that the other existing tenants of the building have been allotted rooms in the newly constructed building belonging to the Panchayat at considerably lower rates of deposit as well as rent. It has been stated by the learned counsel for the Panchayat in his counter affidavit that all the other existing tenants had been allotted shop rooms in the new building at the reduced rate of Rs.3,00,000/- as deposit and Rs.7,500/- as rent.

6. From a perusal of the photographs produced in the case by the petitioner as well as the respondent Panchayat, it is clear that the room now left vacant for the petitioner is not identically situated as the rooms which have been allotted to the existing tenants nine in number. Since all the other tenants have been given preferential treatment in the matter of allotment of shop rooms as well as reduction in the amounts of security deposit as well as rent, I am of the opinion that the petitioner who is also similarly situated is entitled to get the same benefits. It is the case of the Panchayat that it was only because of the petitioner did not agree to the terms that he was not allotted a room as the other tenants were. However, since the petitioner had approached this court and was prosecuting his claim before this court, I am of the opinion that such a contention cannot be taken by the Panchayat to defeat the petitioner's rights. In view of the location of the room now left over after allotting to existing tenants as well as to auction purchasers, I am of the opinion that the petitioner is entitled for further reduction of the amount of the security deposit as well as rent. This is more so because in the auction notice itself, amount of deposit as well as rent for the

shop room in question is considerably lower than in the case of other shop rooms of identical dimensions situated in the ground floor. This is clearly because of the unfavourable location of the shop room in question.

In the above circumstances, this writ petition is disposed of directing the first respondent to allot to the petitioner shop room No.AP VII/713 in the newly constructed building on rent, accepting a security deposit of Rs.2,00,000/- and at a monthly rent of Rs.5,000/-. The petitioner shall execute an agreement as required by the Panchayat in this regard at the above amount of deposit and rent and incorporating the other conditions as contained in the agreements executed by other existing tenants within a period of one month from the date of receipt of a copy of this judgment. If the petitioner executes the agreement as stated above, the shop room shall be allotted to the petitioner and he shall be allowed to take possession of the same within two weeks thereafter. Writ petition is disposed of as above.

Anu Sivaraman, Judge

sj