

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936

WP(C).No. 23396 of 2014 (Y)

PETITIONER(S):

**SREEDHARAN.N,
SITHARA, PARIPPALLY P.O, KOLLAM DISTRICT.**

**BY ADVS.SRI.M.BALAGOVINDAN
SRI.S.SHIBU KUMAR**

RESPONDENT(S):

- 1. KALLUVATHUKKAL PANCHAYATH,
RERPESENTED BY ITS SECRETARY, KALLUVATHUKKAL P.O
KOLLAM DISTRICT 691578.**
- 2. PRESIDENT
REPRESENTED BY THE PANCHAYAT EXECUTIVE COMMITTEE
KALLUVATHUKKAL PANCHAYATH, KALLUVATHUKKAL P.O
KOLLAM DISTRICT 691578.**
- 3. USHA,
USHA LAB CENTRE, NEW BUILDING
PANCHAYAT SHOPPING COMPLEX, PARIPPALLI P.O,
KOLLAM 691574.**

**R1-R2 BY ADVS. SRI.G.BHAGAVAT SINGH
SRI.S.R.ANIL KUMAR**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 21-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

WP(C).No. 23396 of 2014 (Y)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE COMMUNICATION OF THE FIRST RESPONDENT
DATED 19-06-2014**
- EXHIBIT P2 TRUE COPY OF THE ORDER OF INJUNCTION IN I.A NO 527 OF 2014 IN
O.S NO 136/2014 OF THE MUNSIFF COURT, PARAVOOR**
- EXHIBIT P3 TRUE COPY OF THE ORDER DATED 18-08-2014**
- EXHIBIT P4 TRUE COPY OF THE REPORT OF THE COMMISSIONER DATED 3-4-14**
- EXHIBIT P5 TRUE COPY OF THE AGREEMENT ENTERED BY THE PETITIONER
WITH THE RESPONDENT PANCHAYAT SECRETARY IN 2013**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

C.R.

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 23396 of 2014

Dated this the 21st day of January, 2015

JUDGMENT

Heard the learned counsel for the petitioner and the learned counsel for the respondents, apart from perusing the record. Since the issue lies in a narrow compass, this Court proposes to dispose of the writ petition at the admission stage itself.

2. Briefly stated, the petitioner, a lessee of a shop room from the first respondent Grama Panchayat, applied for renewal of the lease for the year 2014-2015. The respondent Grama Panchayat, however, refused to renew the lease and the decision is said to have been communicated through the Secretary of the Grama Panchayat as could be seen from Exhibits P1 and P3. Assailing Exhibits P1 and P3 on the ground that instead of the Secretary, the competent authority, the committee of the Grama Panchayat has taken a decision concerning the

non-renewal of the lease, the petitioner filed the present writ petition.

3. The learned counsel for the petitioner has drawn my attention to Sections 185 B, 236(3) and 276 of the Kerala Panchayat Raj Act, 1994, and has contended that the Secretary of the Grama Panchayat is the primary authority to take a decision in terms of Section 236 and that his mere repetition or reproduction of the decision said to have been taken by the committee of the Grama Panchayat is nothing but an abdication of the administrative power conferred on him.

4. The learned counsel for the Grama Panchayat has strenuously opposed the claims and contentions of the petitioner. He has submitted that the petitioner violated the lease conditions by subletting the property and that in response to a show cause notice issued earlier, the very petitioner submitted a reply admitting his violating the lease condition. He has further contended that the Secretary is only an agent of the Grama Panchayat carrying out the instructions of the Grama Panchayat. In other words, there is no material difference whether the decision not to renew

the lease is taken either by the committee of the Grama Panchayat or the Secretary, inasmuch as it is the decision of the Grama Panchayat, to whom the property belongs.

5. This Court does not intend to go into the merits of the issue whether there is any violation of the lease conditions. It is, however, to be held that there is sufficient force in the contention of the learned counsel for the petitioner that the Secretary of the Grama Panchayat is the primary authority who has got statutory responsibility of taking a decision on the issue of either granting the lease or renewing it. In fact, the Grama Panchayat could at best be the appellate authority under Section 276 of the Act *vis-a-vis* the decisions rendered by the Secretary or any other official in the Grama Panchayat.

6. It is trite to observe that once the statute mandates that a particular power is to be exercised in a certain manner, either it ought to be exercised in that manner or not at all. This Court has observed in *Cochin College v. Ajith Kumar*, I.L.R. 2014 (4) Kerala 532 (DB), thus:

“In *A.K. Janardhanan v. Joint Registrar of Co-operative Societies and Ors.* (1990 (1) KLJ 477), the court, repeating judicial dictum of vintage

value, beginning with *Taylor v. Taylor* (1876 (1) Ch D 426), having found its way to India in *Nazir Ahmad v. King Emperor* (AIR 1936 PC 253), emphasised to the effect that it is also well established that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Even if there be no negative words, that shall not be done in any other way. Other modes of performance are necessarily forbidden.”

7. On the issues of abdication and dictation, in his treatise ‘Administrative Law’ (9th edition, Oxford), the noted jurist Sir Willaim Wade, under a Chapter entitled ‘Surrender, Abdication and Dictation’ has commended thus:

“Closely akin to delegation, and scarcely distinguishable from it in some cases, is any arrangement by which a power conferred upon one authority is in substance exercised by another. The proper authority may share its power with someone else, or may allow someone else to dictate to it by declining to act without their consent or by submitting to their wishes or instructions. The effect then is that the discretion conferred by Parliament is exercised, at least in part, by the wrong authority, and the resulting decision is ultra vires and void. So strict are the courts in applying this principle that they condemn some

administrative arrangements which must seem quite natural and proper to those who make them. In this class might be included the case of the cinema licensing authority which, by requiring films to be approved by the British Board of Film Censors, was held to have surrendered its power to control and also the case of the Police Complaints Board, which acted as if it were bound by a decision of the Director of Public Prosecutions when only required to 'have regard' to it. This doctrine has even been applied to voting by local councillors."

8. In fact, the Hon'ble Supreme Court in **Amirudhsinhji v. State of Gujarat** [AIR 1995 SC 2390] has quoted the said paragraph with approval. In **State of U.P. v. Dharmander Prasad Singh** [AIR 1989 SC 997] a Division Bench of the Hon'ble Supreme Court has held that any interference by a person or body extraneous to the power would plainly be contrary to the nature of the power conferred upon the authority.

9. Thus, going by the above judicial dicta, it is a clear case of abdication of administrative powers of the Secretary or, in other words, the usurpation of powers on the part of the Gram Panchayat.

In the facts and circumstances, since Exhibit P3 has not been passed by the Secretary, the primary authority, by applying his mind on the issue, they cannot be sustained in the eye of law. Accordingly, Exhibit P3 is set aside. It is further made clear that the Secretary of the Grama Panchayat shall take an independent decision on the issue of either granting renewal or the refusal thereof concerning the lease in favour of the petitioner and communicate the same to the petitioner, if necessary, after providing an opportunity of personal hearing to him, as expeditiously as possible, at any rate, within a period of three weeks from the date of receipt of a copy of this judgment. It is further made clear that while taking a decision on the issue of renewal of lease, the Secretary is entitled to take all aspects into account, including the allegation of violation of the lease conditions by the petitioner.

With the above observation, writ petition stands disposed of. No order as to costs.

DAMA SESHADRI NAIDU
JUDGE

DMR/-