

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

WP(C).No. 24329 of 2015 (M)

PETITIONER :

**ABOOBACKER
S/O. PADIPPURA MOIDEENKUTTY,
AGED 82, PADIPURA HOUSE
PERINTHALMANNA - 679 322.**

**BY ADVS.SRI.P.B.KRISHNAN
SRI.P.M.NEELAKANDAN
SRI.P.B.SUBRAMANIAN**

RESPONDENT(S) :

- 1. THE DEPUTY TRANSPORT COMMISSIONER
CENTRAL ZONE-1, TRICHUR - 680 001.**
- 2. THE DISTRICT REGIONAL TRANSPORT OFFICER,
MALAPPURAM - 676 505.**
- 3. THE JOINT REGIONAL TRANSPORT OFFICER,
PERINTHALMANNA - 679 322.**
- 4. THE DISTRICT COLLECTOR,
MALAPPURAM - 676 505.**

R1 TO R4 BY GOVT. PLEADER SRI. MANOJ P. KUNJACHAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Mn

...2/-

WP(C).No. 24329 of 2015 (M)

APPENDIX

PETITIONERS' EXHIBITS :

- EXT.P1 TRUE COPY OF THE LETTER COUNTER -SIGNED BY THE JOINT R.T.O.,
PERINTHALMANNA, DATED 15-1-2009.**
- EXT.P2 DATED 12-06-2009, TRUE COPY OF THE INTERIM ORDER IN W.P(C)
NO. 14331 OF 2009-J.**
- EXT.P3 DATED 23-1-2012,TRUE COPY OF THE ORDER IN R.C.P NO. 1 OF 2010,
MUNSIFF-MAGISTRATE'S COURT, PERINTHALMANNA.**
- EXT.P4 DATED 17-12-2014, TRUE COPY OF THE JUDGMENT IN
R.C.A NO. 15 OF 2012, RENT CONTROL APPELLATE AUTHORITY,
MANJERI**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

A.MUHAMED MUSTAQUE, J.

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W.P.(C).No. 24329 of 2015

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Dated this the 14th day of October, 2015

J U D G M E N T

The petitioner is the owner of a building Nos. 483 and 484 of Perinthalmanna Municipality.

2. This was leased out to motor vehicles department. It is admitted that the 3rd respondent office is functioning in the above premises.

3. According to the petitioner the lease commenced from n from 1.4.2009 onwards and no rent was paid so far.

4. It appears that on account of the reason that the rent was not determined, it was not paid.

5. The petitioner approached this Court in W.P.C No.14331 of 2009. This Court passed following order.

“Admit. Govt. Pleader takes notice, Respondent/shall, within three weeks from the date of receipt of a copy of this order, fix the rent in respect of the building belonging to the petitioner, which is used as the office of the Joint Regional Transport Officer, Perinthalmanna, the second respondent, in consultation with the competent authority of the Public Works Department. Once the rent is fixed arrears calculated at

the said rate shall be disbursed to the petitioner within one week thereof. Fixation of the rent shall be without prejudice to the petitioner's claim in this regard.”

6. The PWD fixed the rate of rent at Rs.3,471/-. The petitioner dissatisfied with fixation by the PWD approached the Rent Control Court. Rent control Board as per Ext.P3 judgment fixed the fair value @ Rs.10,000/- per month.

7. The petitioner as well as the Government preferred an appeal and the order was modified to the effect that the rate fixed has been reckoned with effect from 10.2.2010. Both appeals were disposed in the light of above .

8. Therefore now as based on the fixation by the PWD Department and fixation of fair value by the Rent control Board the petitioner is entitled for following rent.

1. From 1.4.2009 to 9.2.2010 @ Rs. 3,471 /-

2. From 10.2.2010 to 10.07.2015 @ Rs.10,000/-

9. The petitioner submits that the respondents are liable to pay the above amount.

10. The learned Government Pleader on instructions submits that the petitioner's rent was fixed by the Rent Control Court. Therefore the petitioner's remedy is to approach civil court to

recover the amount and cannot bypass such remedy to approach the High Court under article 226 of the Constitution of India.

11. It is to be noted that the petitioner entered into the contract taking note of the fact that Government office has to be housed in the premises and the officials of Government would act in responsible manner to pay the rent on time.

12. The Government cannot withhold the payment of rent. Any withholding of the payment of the Government could be termed as arbitrariness and illegal. The breach of contract or violation of the terms of the contract is different from the action of the Government which could be distinguished with reference to the action of the Government either terming as arbitrariness or unfair. Therefore it is not a mere breach in terms of the contract and it is arbitrary action on the part of the Government withholding payment. As such, the writ petition is maintainable and there is no dispute regarding the quantum of rent payable. Accordingly the writ petition is allowed. The respondents are directed to clear the arrears of rent within 3 months from the date of receipt of the copy of this judgment.

sd/-

sab

A.MUHAMED MUSTAQUE, JUDGE