

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

WP(C).No. 28494 of 2014 (J)

PETITIONER:

ABDUL FATHAH V.K.,
VALIYADATH HOUSE, VENMENAD, PAVARATTI P.O.,
THRISSUR.

BY ADVS.SRI.K.MOHANAKANNAN
SMT.A.R.PRAVITHA

RESPONDENTS:

1. THE DEPUTY DIRECTOR OF PANCHAYATH,
THRISSUR 680 001
2. THE PAVARATTI GRAMA PANCHAYATH,
THRISSUR, REPRESENTED BY ITS SECRETARY 680 507
3. THE PAVARATTI GRAMA PANCHAYATH COMMITTEE,
REPRESENTED BY ITS PRESIDENT 680 507, THRISSUR

R2 BY ADV. SRI.RAJIT
R BY SMT. C.K. SHERIN, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
11-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S' EXHIBITS :

EXHIBIT P1 TRUE COPY OF THE COMMUNICATION NO A1-466/2014
DATED 21-03-2014 TO THE PETITIONER.

EXHIBIT P2 TRUE COPY OF THE NOTICE ISSUED BY THE 3RD RESPONDENT TO
THE PETITIONER DATED 07-05-2014.

EXHIBIT P3 TRUE COPY OF THE COMMUNICATION SENT BY THE 3RD
RESPONDENT DATED 16-06-2014.

EXHIBIT P4 TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER BEFORE
THE 1ST RESPONDENT DATED 26-06-2014.

EXHIBIT P5 TRUE COPY OF THE COMMUNICATION DATED 04-07-2014.

EXHIBIT P6 TRUE COPY OF THE COMMUNICATION DATED 08-07-2014.

EXHIBIT P7 TRUE COPY OF THE REPRESENTATION DATED 16-07-2014.

EXHIBIT P8 TRUE COPY OF THE ORDER DATED 25-07-2014.

EXHIBIT P9 TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER BEFORE
THE 1ST RESPONDENT ON 30-07-2014.

EXHIBIT P10 TRUE COPY OF THE RECEIPT OF ACKNOWLEDGEMENT
DATED 30-07-2014 OF THE 1ST RESPONDENT.

EXHIBIT P11 TRUE COPY OF THE LETTER DATED 04-08-2014.

EXHIBIT P12 TRUE COPY OF THE COMMUNICATION SENT BY THE 3RD
RESPONDENT DATED 13-08-2014.

EXHIBIT P13 TRUE COPY OF THE OBJECTION DATED 16-08-2014.

EXHIBIT P14 TRUE COPY OF THE NOTICE DATED 24-10-2014.

EXHIBIT P15 TRUE COPY OF THE COMMUNICATION ISSUED BY THE 3RD
RESPONDENT TO THE PETITIONER DATED 06.01.2015.

RESPONDENTS' EXHIBITS :

EXHIBIT R2(a): TRUE COPY OF THE REQUISITION SUBMITTED BY THE
IMPLEMENTING OFFICER TO THE PANCHAYATH FOR RELEASE OF FUNDS FOR THE
SAID PURPOSE.

EXHIBIT R2(b): TRUE COPY OF THE LETTER ADDRESSED BY THE SUB JUDGE,
CHAVAKKAD, WHO IS THE CHAIRMAN OF THE TALUL LEGAL SERVICES
COMMITTEE BEARING NO.D NO.158/14 DATED 13.10.2014.

EXHIBIT R2(c): TRUE COPY OF THE LEGAL OPINION GIVEN TO THE PANCHAYATH
DATED 17.11.2014.

//TRUE COPY//

P.A. TO JUDGE

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 28494 of 2014

Dated this the 11th day of February, 2015.

JUDGMENT

The petitioner, a tenant, apart from being ex-office bearer of the respondent Grama Panchayath, seeks to resist the efforts of the Grama Panchayath to evict him from the leased shop room.

2. Briefly stated, the petitioner, being the former Vice President of the respondent Grama Panchayath, took a particular shop room in the shopping complex owned by the Panchayath on lease in 1995. As the petitioner continued to be the lessee, the respondent Grama Panchayath issued Ext.P1 proceedings dated 21.03.2014 enhancing the licence fee by 50%. Later, through Ext.P2, dated 07.05.2014, it decided to apply the rentals based on the rates fixed by the Public Works Department. Accordingly, the Grama Panchayath demanded enhanced rent not only from the petitioner, but also from the other lessees.

3. When the petitioner has not remitted any amounts based on the enhanced rent and also when he did not come forward to

execute the renewed lease agreement, the respondent Grama Panchayath issued Ext.P3 proceedings directing the petitioner to vacate and hand over the vacant shop rooms.

4. At this juncture, on 26.06.2014, the petitioner filed Ext.P4 complaint before the first respondent alleging that the Grama Panchayath discriminated against the shop owners in fixing the enhanced rent; similarly, the petitioner also submitted Ext.P5 representation before the 3rd respondent, the Committee of the Grama Panchayath, seeking a clarification how the petitioner is required to remit the rent, whether based on Ext.P1 or Ext.P3.

5. In the face of the petitioner's disinclination to pay the enhanced rent, the Grama Panchayath issued Ext.P6 notice directing the petitioner to vacate the shop room. Notwithstanding the petitioner's subsequent complaint through Ext.P7 to the Secretary of the respondent Grama Panchayath, it issued Ext.P8 proceedings, dated 25.07.2014, informing the petitioner that the possession was taken, which according to the petitioner, is symbolic in nature. Under these circumstances, once again, the petitioner filed Ext.P9 complaint before the first respondent against the respondent Grama Panchayath making

various allegations touching upon what is said to be the maladministration on the part of the office bearers of the Grama Panchayath.

6. At any rate, through Ext.P12, the Grama Panchayath directed the petitioner to remove the movables, assailing which direction the petitioner filed Ext.P13 objections. After considering those objections, the respondent Grama Panchayath, it appears, has decided to auction the movables kept in the licensed premises. Consequently, it issued Ext.P14 to the petitioner notifying its intention to auction the movables kept by the petitioner in the leased premises despite the eviction and taking over of possession. Aggrieved thereby, the petitioner has filed the present writ petition questioning Exts.P3, P8, P12 and P14.

7. The learned counsel for the petitioner has submitted that the petitioner, being the Vice-President of the Grama Panchayath, had been a lessee for the past 20 years without committing any default till recently. He has submitted that the petitioner could not pay the enhanced rent from 01.04.2014 only because the Grama Panchayath issued two directions – through Exts.P1 and P2 – which are at cross purposes. Expatiating on his submissions, the learned counsel would

contend that Ext.P1 proceedings of the Grama Panchayath have mandated that there should be an enhancement of rent by 50%; on the other hand, Ext.P2 has directed that the enhanced rent shall be as per the rates fixed by the PWD. According to the learned counsel, though the petitioner submitted representations to the authorities concerned seeking clarification, since they have not responded in that regard, the petitioner is said to have been constrained to commit default, if at all it can be termed thus, only on the ground of lack of clarity in the directions of the respondent Grama Panchayath.

8. The learned counsel for the petitioner has repeatedly stressed that the petitioner has been victimised in view of the fact that he has chosen to question the illegalities allegedly committed by the office bearers of the respondent Grama Panchayath. In this regard, he has drawn my attention to Exts.P4 and P9, both of which were submitted to the first respondent, who, according to the petitioner, is yet to take a decision in that regard.

9. The learned counsel has also submitted that the petitioner has so far not been evicted; only a symbolic possession was taken by the Grama Panchayath. Under these circumstances, the learned counsel

has submitted that the petitioner is willing to pay the entire arrears of the rent, non-payment of which cannot be treated as any default, and that there may be a suitable direction to the respondent Grama Panchayath to allow the petitioner to continue as a tenant after his paying the enhanced lease amount.

10. Per contra, the learned counsel for the respondent Grama Panchayath has strenuously opposed the claims and contentions of the petitioner. He has submitted that though the petitioner took the shop room on lease 20 years ago, he did not choose to conduct any business therefrom. According to him, the D & O licence, which is mandatory for carrying on any business, was taken by the petitioner only twice i.e., for the year 2005–2006 for running a toy shop and later for the year 2009–2010 for running an export–import trade. In expatiation of his submissions, the learned counsel would contend that during the rest of the years, the petitioner did not carry on any business. To underline the said aspect of keeping the shop room idle, the learned counsel for the Grama Panchayath would contend that the Grama Panchayath had to spend about ₹ 9,000/– to replace the shutter of the shop room which became totally rusty and unusable.

11. It is the specific contention of the learned counsel that the Grama Panchayath has never discriminated against anybody, and that it has raised the rent uniformly across the board. He has further submitted that despite repeated notices from the Grama Panchayath, the petitioner persisted with his refusal to pay the rents, which eventually compelled the respondent Grama Panchayath to initiate proceedings for evicting the petitioner. According to the learned counsel, now the proceedings stand concluded, because the possession has already been taken over by the Grama Panchayath. Had it not been for the interim direction given subsequently by this Court, the Grama Panchayath could have put the property to better use by letting it out for establishing a Legal Services Authority as desired by the learned Sub Judge of Chavakkad.

12. The learned counsel has also drawn my attention to Rule 7 of the Kerala Panchayath Raj (Acquisition and Disposal of Property) Rules, 2005 (for short 'the Rules'). According to him, all the proceedings have been carried out and implemented strictly in accordance with Rule 7 of the Rules.

13. Summing up his submissions, the learned counsel for the

respondent Grama Panchayath has submitted that the petitioner has not made out any ground to invoke the public law remedy under Article 226 of the Constitution of India, especially in a contractual matter of lease. Accordingly, he has urged this Court to dismiss the writ petition.

14. Heard the learned counsel for the petitioner and the learned counsel for the respondent Grama Panchayath, apart from perusing the record.

15. The issues to be determined in this writ petition are whether the petitioner has been subjected to any discriminatory treatment either while the Grama Panchayath fixed the lease amount or subsequently while it evicted the petitioner; whether the respondent Grama Panchayath is justified in evicting the petitioner on the ground that the petitioner has persistently committed default in paying the rent.

16. In addressing the first issue, I may have to observe that the learned counsel repeatedly asserted that the petitioner was subjected to eviction only as a measure of retaliation against his complaining to the first respondent regarding the misdemeanors on the part of the

officials of the Grama Panchayath. This contention, nevertheless, holds no water on a closer scrutiny of the facts. It is not in dispute that when the rent was enhanced initially through Ext.P1 and subsequently through Ext.P2, the petitioner did not choose to pay the rent. Assuming that there was any element of ambiguity owing to the fact that the respondent Grama Panchayath issued two proceedings in quick succession enhancing rent adopting different methods, the petitioner, to establish his bona fides, could have remitted the rent at least based on the lesser of the two enhancements. Even when the respondent Grama Panchayath had initiated the eviction proceedings, the petitioner remained quiet, apart from submitting complaints ritualistically.

17. By no stretch of imagination can it be said that there is any element of arbitrariness, much less discrimination, in the approach of the respondent Grama Panchayath in enhancing its rent either through Ext.P1 or through Ext.P2. The rents, in fact, stood enhanced uniformly without being person specific. Thus, on that count, I find it difficult to sustain the contention of the petitioner that there is any element of discrimination of whatever nature.

18. Given the fact that the petitioner had been a lessee for 20 years, the Grama Panchayath tellingly demonstrated that the petitioner obtained the D & O licence, the pre-requisite for carrying on business, only for two years. It is an inescapable conclusion that the shop could have been kept idle during the rest of the years. On the contrary, if any business had been carried on, it ought to have been carried without any licence. Indeed, the petitioner in his reply affidavit would contend that, of late he has been carrying on business in Consultancy, which does not require any licence at all. If that were so, it would not still explain what sort of business the petitioner had been carrying on all these years.

19. I am conscious that the learned counsel for the petitioner has strenuously contended that the alleged eviction has not taken place on the ground of either misuse or disuse of the shop room. According to him, the singular ground that weighed with the Grama Panchayath is non-remittance of rent or otherwise the default in payment of the rent. If one were to assume that the petitioner had been carrying on consultancy business either recently or even from some time in the past, Rule 7 of the Rules mandates that, at any point

of time, if there is any change of user, the tenant is bound to inform the Grama Panchayath to the said effect. Evidently, at one point of time, the petitioner took licence for carrying on the business of toy shop and later for the purpose of having an export and import business. Even on that count, it could be seen that there is infraction of Rule 7.

20. In the light of discussion held above, I am of the considered opinion that the petitioner did commit default in the payment of rent and there was no discrimination shown by the respondent Grama Panchayath against the petitioner, its tenant.

21. Addressing the second issue, whether the respondent Grama Panchayath has followed the due process in evicting the petitioner, it is profitable to refer to Rule 7 of the Rules to the extent relevant.

“7. Grant Panchayat's own property for rent or lease on licence. --(1) A Panchayat may construct buildings for the purpose of trade or otherwise and can give the same to the public who require them on rent or lease on licence in accordance with provisions of the Act and the rules made thereunder and the bye-laws that may be made by the Panchayat for this purpose and may also levy fees that may be decided by the Panchayat for its enjoyment and possession.

(2) Every licence under sub-rule (1) shall contain the conditions for the enjoyment and possession of that building or room or space in it and rate of fees and time of payment, and the

above said conditions and stipulations shall be written in the form of an agreement in stamped paper of appropriate value and shall also be in accordance with Form III appended to these rules.

(3) No building or room or space given on rent under sub-rule (1), shall be subletted to another or change its nature of use by the licensee.

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(6) Every person having been granted a licence as per sub-rule (1) shall remit without demand the licence fee and other charges at the rate specified in the agreement within the time mentioned therein.

(7) If any licensee defaults the remittance of licence fee beyond the period for which the amount deposited in accordance with the provisions of the licence, the Secretary shall, by notice in writing, demand the defaulter to remit the amount due along with interest or fine provided for in the agreement, within 7 days from the issuance of such notice and in the case of default, he shall make to close the premises temporarily at once and evict the possessor or possessors from there with or without the assistance of the police.

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(9) When a premises is caused to be closed by the Secretary under sub-rule (7), he shall direct the licensee to remit the amount due within the period that may be specified in the notice.

(10) If the licensee remits the amount demanded under sub-rule (9), the Secretary shall handover possession of the premises to him immediately and if he defaults the payment of that amount, the Secretary shall cancel the licence at once and the order of cancellation of the licence shall be communicated to him and where it is not possible to communicate to him personally that order, it shall be published in the premises closed under sub-rule 7 and it shall be deemed to be sufficient notice.

(11) Where a licence has been cancelled by the Secretary under sub-rule (10) he shall after giving advance notice to the

licensee and public notice dispose of the properties found in the premises by auction or otherwise on the date notified and the income received from it shall be set off towards the amount due from the licensee and other expenses and charges connected with the sale and the balance, if any, shall be returned to the licensee. If the income received from such sale is not sufficient to set off completely the amount to be realised from the licensee and other charges and expenses connected with the sale; the balance amount shall be realised from the licensee as arrear of tax due to the Panchayath.”

22. As could be seen, Rule 7 provides an elaborate mechanism and also the grounds under which eviction can take place. On appreciation of the totality of the circumstances, I have no hesitation to conclude that the petitioner has been guilty of violation of more than one sub-Rule of Rule 7. Under these circumstances, the respondent Grama Panchayath, after providing an ample opportunity to the petitioner, especially by putting him on notice, has initiated further steps which culminated in his eventual eviction. Under these circumstances, I do not see any ground to interfere with the decision taken by the Grama Panchayath through the proceedings which have been assailed in the present writ petition.

23. Indeed, the learned counsel for the petitioner has made a specific plea before Court that the petitioner's request to continue as a

tenant after the remittance of the entire arrears could be considered especially because the petitioner has been tenant for the past 20 years without committing any default till recently. I am afraid, the position has become irreversible presently. In elaboration, it can be stated that the learned Sub Judge of Chavakkad has already made a request through Ext.R2(b), which is said to have been accepted by the respondent Grama Panchayath.

24. At this juncture, it is, however, relevant to refer to the contention of the learned counsel for the petitioner that there are many other shops available and if at all the court has approached the Grama Panchayath, it could have allotted any of the vacant shop rooms to accommodate the Legal Services Authority, instead of subjecting the petitioner to eviction. I am afraid, it is for the owner of the property, in the present instance the Grama Panchayath, to determine which part of the premises is suitable for which purpose. This Court can hardly exercise its power of judicial review concerning the matters which lie within the realm of the subjective satisfaction of the land owner, be it the Grama Panchayath. Under these irrefragable circumstances, I do not find any merit in the contentions of the petitioner and accordingly

dismiss the writ petition. No order as to costs.

Before parting, I observe that there appears to be Ext.P9 representation pending before the first respondent touching upon the administration of the Grama Panchayath. It is made clear that the first respondent may take steps to consider the said application expeditiously.

sd/- DAMA SESHADRI NAIDU, JUDGE.

