

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 23RD DAY OF JUNE 2015/2ND ASHADHA, 1937

WP(C).No. 28558 of 2014 (T)

PETITIONER :

**BAIJU JOHN,
S/O.LATE BABY JOHN, KOCHIN FOOD MALL, SHOP NO. F-8,
REVENUE TOWER, KOCHI, RESIDING AT NEST,
CHIRKKAKOM VARAPPUZHA P.O., KOCHI.**

BY ADV. SRI.B.MOHANLAL

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
HOUSING DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM,
PIN - 695 001.**
- 2. THE KERALA STATE HOUSING BOARD,
REPRESENTED BY ITS SECRETARY, SHANTHI NAGAR,
THIRUVANANTHAPURAM, PIN - 695 001.**
- 3. THE EXECUTIVE ENGINEER,
PROJECT AND CONSULTANCY DIVISION,
KERALA STATE HOUSING BOARD, REVENUE TOWER,
ERNAKULAM, PIN - 682 035.**
- 4. THE EXECUTIVE ENGINEER,
KERALA STATE HOUSING BOARD, ERNAKULAM DIVISION,
PANAMPALLY NAGAR, KOCHI - 682 036.**
- 5. THE MANAGING COMMITTEE FOR AMENITIES,
REPRESENTED BY ITS PRESIDENT SRI.VICTOR P.THOMAS,
REVENUE TOWER BUILDING, ERNAKULAM, PIN - 682 035.**
- 6. THE AGRI TOURISM CO-OPERATIVE SOCIETY LIMITED,
ERRA-6, NANATT, ELAVUNKAL ROAD,
PIPE LINE, PALARIVATTOM, KOCHI - 682 025,
REPRESENTED BY ITS SECRETARY.**

**R1 BY GOVERNMENT PLEADER SRI.S.JAMAL
R2 TO R4 BY ADV. SRI.GEORGE BOBAN, SC, K.S.H.B.
R5 BY ADV. SRI.D.KISHORE
R6 BY ADV. SRI.PRAKASH P.GEORGE**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 23-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: THE TRUE COPY OF THE JUDGMENT DATED 14/08/2013 IN W.P(C) NO. 11604/2013 OF THIS HON'BLE COURT.
- EXHIBIT P2: THE TRUE COPY OF THE STAY ORDER NO. 2694/B2/2013/HSG. DATED 27/08/2013 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER GRANTING STAY.
- EXHIBIT P3: THE TRUE COPY OF THE ORDER NO. 2694/B2/2013/HSG. DATED 23/12/2013 OF THE 1ST RESPONDENT.
- EXHIBIT P4: THE TRUE COPY OF THE JUDGMENT DATED 15/01/2014 IN W.P(C) NO. 622/2014 OF THIS HON'BLE COURT.
- EXHIBIT P5: THE TRUE COPY OF THE COMMUNICATION NO. 955/B2/2014/HSG DATED 21/07/2014 AND THE COMMISSION REPORT.
- EXHIBIT P6: THE TRUE COPY OF ORDER NO. G.O (RT) NO. 74/2014/HSG DATED 01/07/2014 OF THE 1ST RESPONDENT DISMISSING THE APPEAL.
- EXHIBIT P7: THE TRUE COPY OF THE APPLICATION DATED 11/06/2014 SUBMITTED BY THE 6TH RESPONDENT TO THE HON'BLE MINISTER FOR HOUSING.
- EXHIBIT P8: THE TRUE COPY OF THE APPLICATION DATED 12/08/2014 SUBMITTED BY THE PETITIONER BEFORE THE HON'BLE MINISTER FOR HOUSING.
- EXHIBIT P9: THE TRUE COPY OF THE ORDER NO. 4680/B2/2014/HSG. DATED 14/08/2014 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.
- EXHIBIT P10: THE TRUE COPY OF THE APPLICATION DATED 21/10/2014 SUBMITTED BY THE PETITIONER BEFORE THE HON'BLE MINISTER FOR HOUSING WITH THE RECOMMENDATIONS OF THE CHIEF WHIP.
- EXHIBIT P11: THE TRUE COPY OF THE COMMUNICATION NO. 7833/2014/M/FLHSG. DATED 08/10/2014 ISSUED FROM THE OFFICE OF MINISTER FOR HOUSING.
- EXHIBIT P12: THE TRUE COPY OF THE ORDER NO. E2/RT(E)/FOOD COURT - 3RD FLOOR DATED 27/10/2014 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER.
- EXHIBIT P13: TRUE COPY OF THE COMMUNICATION NO.E2/RT(E)/FOOD COURT DATED 26/04/2013 ISSUED BY THE BOARD TO THE PETITIONER.
- EXHIBIT P14: TRUE COPY OF THE APPLICATION SUBMITTED BY THE EXECUTIVE ENGINEER AND AMOUNT PAID BY THE BOARD
- EXHIBIT P15: TRUE COPY OF THE NOTICE NO.B1/P&C/BUILDING TAX/2013 DATED 11/03/2013 ISSUED BY THE BOARD TO THE PETITIONER.

WP(C).NO.28558/2014

EXHIBIT P16: TRUE COPY OF THE NOC VIDE NO.DB/120/RTE/FOOD COURT/2011
DATED 17/02/2012 ISSUED BY THE BOARD TO THE PETITIONER.

EXHIBIT P17: TRUE COPY OF THE ORDER NO.RENT/8372/2012/RT/ERNAKULAM
DATED 27/09/2014 ISSUED BY THE RESPONDENTS

RESPONDENT(S)' EXHIBITS

EXHIBIT R2(A) COPY OF THE REGISTERED NOTICE DATED 3/2/2012

EXHIBIT R2(B) COPY OF THE LETTER DATED 19/1/2012 ISSUED THE CORPORATION
OF KOCHI REFUSING THE PERMISSION FOR DOING CONSTRUCTION
IN THE OPEN AREA

EXHIBIT R2(C) COPY OF THE LETTER NO.8372/2012/RT, EKM DATED 27/09/2014

EXHIBIT R2(D) COPY OF THE MATTER WAS ALREADY REPORTED TO THE 1ST
RESPONDENT VIDE LETTER NO.RENT 8372/2012/RT, EKM DATED
27/09/2014

EXHIBIT R2(E) COPY OF THE LEASE DEED DATED 10/6/2011 EXECUTED IN BETWEEN
THE PETITIONER AND KERALA STATE HOUSING BOARD

EXHIBIT R2(F) COPY OF THE LETTER DATED 16/3/2015 ISSUED BY THE KERALA
STATE HOUSING BOARD INCORPORATING THE DECISION WITH
RESPECT TO THE GRANTING OF LEASE TO THE 6TH RESPONDENT

/TRUE COPY/

P.A.TO JUDGE

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K. VINOD CHANDRAN, J.

W.P.(C) No. 28558 of 2014 (T)

Dated this the 23rd day of June, 2015

J U D G M E N T

The petitioner is aggrieved with Exts.P6, P12 and P17 orders. The petitioner admittedly was inducted into the Revenue Tower, Ernakulam, to carry on Food Mall as a lessee in the year 2011, as per a lease deed produced at Ext.R2(e). The tenanted premises had an extent of 6830 sq. feet with open terrace in the third floor. The petitioner is said to have enclosed the open terrace, for which the Corporation has assessed the Housing Board to tax. The petitioner admittedly committed default in payment of rent and the admitted arrears are around more than one crore as of today. The petitioner was aggrieved with the order passed by the Housing Board and as per the judgment in Ext.P4, an appeal was considered by the Government as is indicated in Ext.P6.

2. The petitioner had unsuccessfully raised various contentions regarding the denial of facilities as promised, which were negated after issuance of a Commission and on looking at the Commissioner's report. In any event it is admitted that the petitioner had been carrying on its activities in the premises and the petitioner had committed huge default in arrears of rent. The appellate authority having considered the matter, rejected the appeal of the petitioner by Ext.P6, pursuant to which the petitioner was asked to vacate the premises by the Housing Board by Ext.P12 order. The petitioner neither deposited the amounts demanded nor vacated the premises.

3. The petitioner was before this Court challenging the said orders and obtained a stay of eviction. In the writ petition itself the petitioner had impleaded the additional 6th respondent who, according to the petitioner, was ready to take over the liabilities of the petitioner and was also willing to continue in the premises on the same terms as were

available to the petitioner under Ext.R2(e) lease deed, till the expiry of the term of the lease. A proposal was submitted before the Government and the same was referred to the Board and it was considered and rejected by Ext.P17. The petitioner filed amended writ petition challenging Ext.P17 rejection also.

4. As of now, nothing survives to be considered on Exts.P6 and P12. Ext.P6 is an order rejecting the appeal of the petitioner against the demand made by the Board for rent arrears. The demand having been made in accordance with the terms of the deed produced at Ext.R2(e), no interference can be made to Ext.P6. The non payment of rent arrears stands admitted. The plea regarding denial of facilities stands negated on a consideration of the factual aspects as reported by the Commissioner on site inspection. Ext.P12 is just a consequential order which the Board was entitled to pass, for eviction of the petitioner since the petitioner failed to comply with the demand of payment of

arrears of rent. What survives for consideration is only the proposal of the 6th respondent.

5. The learned counsel for the petitioner would submit that the proposal of the 6th respondent would, in fact, absolve the petitioner from the liability and the Board would also be benefited insofar as receiving the arrears due from the petitioner. The additional 6th respondent also would contend that they are willing to take the premises on the same terms applicable to the petitioner till the petitioner's lease period expires, as also settle the liabilities of the petitioner.

6. The learned Standing Counsel for the Housing Board, however, seeks to sustain Ext.P17 Order on multifarious reasons. The learned Standing Counsel would point out that there had been an unauthorised construction by the petitioner enclosing the terrace on the third floor, which had been taxed by the Corporation. Though, the petitioner asserts on the basis of Exts.P15 and P16 that the

enclosure of the terrace has been regularised, this Court does not find any warrant for such inference from Exts. P15 and P16.

7. Admittedly, the petitioner had made some unauthorised construction which was assessed to tax by the Corporation, upon which Ext.P15 was issued by the Housing Board directing the petitioner to make good the amounts they had to pay to the Corporation. Ext.P16 is also a No Objection Certificate not relating to the enclosed portion, but, however, for running a small cinema theater in the third floor. In such circumstance, it cannot be said that the enclosure has now been regularized. The Housing Board also submits that the regularisation can be made only with the approval of the Government, especially since the land has been allotted to the Housing Board by the Government for the specific purpose of building a Revenue Tower and after exempting the Housing Board from the provisions of the Building Rules by Ext.R2(b).

8. The question of utilisation of the open space and the regularisation of an enclosed space is left to the discretion of the Board, since the building belongs to them. However, the Board objects to the 6th respondent's proposal on two counts, one that if at all the 6th respondent has to be inducted, he would have to pay an additional amount for the enclosed space since the petitioner as per Ext.R2(e) deed was never given any area above 6830 sq. feet. The petitioner had by himself enclosed the open terrace and appropriated it to himself. Either the enclosure would have to be removed or the 6th respondent required to pay rent for the same, is the contention taken by the Housing Board.

9. However, before going to that, what has to be considered is the purpose for which the 6th respondent intends to use the premises which has been leased out to the petitioner. In Ext.P17 the purposes intended has been indicated in the report of the Executive Engineer as extracted herein below.

- “a) permission to construct a day care home for senior citizens and also a few rooms to run a hotel.
- b) permission to conduct museum to exhibit the spices and agricultural produce
- c) permission to sublease the existing space for ATM Counter, Mobile shop, UAE Exchange and Travel desk.
- d) permission to beautify the premises of the Revenue Tower
- e) permission to do 'Pay and Park' in the premises of Revenue Tower
- d) concession of 12 month's rent and Security deposit.”

10. The submission of the Housing Board is that the said purposes cannot be carried on in the premises of the Revenue Tower and the space which had been leased out to the petitioner was specifically set apart for carrying on food court, food mall and related business, catering essentially to the needs of the persons working in the offices in the Revenue Tower.

11. The 6th respondent also is said to have filed a rejoinder in the above case. No rejoinder is seen from the records. A copy is handed over by the learned counsel appearing for the 6th respondent; paragraph 3 of which is extracted hereunder.

“3. The 6th respondent Society is a registered one under the Multi State Co-operative Societies Act, 2002, for the purpose of promoting agriculture as well as tourism in Indian States. Within the purview of the objectives of society, and as per the norms and rules of the above act government has issued registration to fulfill the objectives of society and within the face of objectives the 6th respondent intends to start a Food Court attached with a Agri-Tourism Consortium Museum start up village to the other co-operative societies especially with the help of tribal co-operative societies to start an organic food and vegetable product mart and motels along with “Senior citizens' Paradise”.

12. The proposal to carry on a motel and a senior citizens' home as also to sub lease the properties is seriously objected to by the Board. It is the Board's premises and it is the discretion of the Board to decide on what activity should be carried on in the said premises. The 6th respondent has absolutely no right to dictate the terms of the lease or demand surrender of property to the 6th respondent, on their terms. The petitioner himself is under orders of eviction and has no right to carry on in the premises. The 6th respondent, a mere nominee of the petitioner, cannot claim any right which is not available to the petitioner.

13. The proposal was, in fact, considered by the Board only since the same was forwarded by the Government and there was a possibility of receiving the amounts due from the petitioner. The Board having found the proposal of the 6th respondent not to be a feasible one, this Court would not interfere with the same. The attempt

of the petitioner is to coerce the Board into inducing the 6th respondent on the lure of the arrears of rent being satisfied. The realisation of the arrears is the look-out of the Board and merely for absolving the petitioner of his liability, the Board cannot be saddled with the 6th respondent who seems to be dictating terms, even before induction is made and with absolutely no rights.

In such circumstance, nothing survives in the writ petition and the writ petition would stand dismissed. The petitioner will vacate the premises within three weeks from today and the Housing Board would be entitled to recover the rent till the date of vacation of the premises, from the petitioner. The parties will suffer their respective costs.

Sd/-
K.VINOD CHANDRAN,
JUDGE