

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 5TH DAY OF JANUARY 2015/15TH POUSHA, 1936

WP(C) .No. 29948 of 2014 (P)

PETITIONER(S) :

P.E NIZAR AGED 46 YEARS
S/O. P.M.IBRAHIM, PURAKKALOTH HOUSE, KAKKANAD
ATHANI, KOCHI-682 030.

BY ADV. SRI.T.M.ABDUL LATHEEF

RESPONDENTS:

1. THE COCHIN PORT TRUST
REPRESENTED BY CHAIRMAN, WILLINGDON ISLAND
KOCHI-682 009.

2. THE CHAIRMAN
COCHIN PORT TRUST, WILLINGDON ISLAND, KOCHI-682 009.

3. THE ESTATE MANAGER
COCHIN PORT TRUST, WILLINGDON ISLAND, KOCHI-682 009.

4. SEBASTIAN
BOOK STALL (MICHAL), NEAR HARBOUR POLICE STATION
WILLINGDON ISLAND, KOCHI-682 009.

BY ADV. SRI.V.ABRAHAM MARKOS
BY ADV. SRI.BINU MATHEW
BY ADV. SRI.TOM THOMAS (KAKKUZHIYIL)
BY ADV. SRI.ISAAC THOMAS
BY ADV. SRI.NOBY THOMAS CYRIAC
R4BY ADV. SRI.S.SACHITHANANDA PAI
R4 BY ADV. KUM.P.M.VIDYA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
05-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS:

- EXT P1 : COPY OF THE NOTICE NO.EM9/LICENCE FEE/DUEDS/2012 DTD.16.1.2012
ISSUED BY THE 3RD RESPONDENT.
- EXT P2 : COPY OF THE LETTER NO.D2/WATER SUPPLY 2012-C DTD.17.1.2012.
- EXT P3 : COPY OF THE RECEIPT NO.13077 DTD.25.1.2012.
- EXT P4 : COPY OF THE RECEIPT NO.13076 DTD.25.1.2012.
- EXT P5 : COPY OF THE RECEIPT DTD.13.6.2014.
- EXT P6 : COPY OF THE RECEIPT DTD.17.6.2014.
- EXT P7 : COPY OF THE WATER BILL DTD.18.6.2014.
- EXT P8 : COPY OF THE LETTER DTD.19.6.2014 SUBMITTED BY THE PETITIONER
BEFORE THE 2ND RESPONDENT.
- EXT P9 : COPY OF THE LETTER NO.EM9/PEN/2014 DTD.9.7.2014 OF THE 3RD
RESPONDENT.
- EXT P10: COPY OF THE FORM OF APPLICATION FOR ALLOTMENT OF BUNKS ALONG
WITH LIST OF BUNKS.
- EXT P11: COPY OF THE PETITION DTD.14.8.2014 SUBMITTED BY THE PETITIONER
BEFORE THE 2ND RESPONDENT.
- EXT P12: COPY OF THE PETITION DTD.8.11.2014 SUBMITTED BY THE PETITIONER
BEFORE THE 2ND RESPONDENT.
- EXT P13: COPY OF THE LETTER NO.EM9/281/PEN/2009 DTD.4.11.2014 OF THE
3RD RESPONDENT.
- EXT P14: TRUE COPY OF the PHOTOGRAPH
- EXT P15: TRUE COPY OF THE NOTICE DTD NIL ISSUED BY SYNDICATE BANK TO
the PETITIONER
- EXT P16: TRUE COPY OF THE NOTICE DTD NIL ISSUED BY STATE BANK OF INDIA
TO THE PETITIONER

RESPONDENT(S) ' EXHIBITS:

- EXT R1(a): TRUE COPY OF THE LICENSE TERMS AND CONDITIONS FOR THE LEASE
OF PORTS BUILDINGS/BUNKS/OPEN SPACE ON WILLINGDON ISLAND
- EXT R1(b): TRUE COPY OF NOTICE DTD 15.01.2014 ISSUED BY THE SENIOR
ASSISTANT ESTATE MANAGER OF THIS RESPONDENTS TO THE PETITIONER
- EXT R1(c): TRUE COPY OF THE NOTICE, ALONG WITH TENDER FORM, SPECIAL
CONDITIONS, TENDER PROGRAM AND LIST OF PLOTS/SHOPS BEING TENDERED
ISSUED BY this RESPONDENT
- EXT R1(d): TRUE COPY OF APPLICATION FORM DTD 12.08.2014 OF THE
PETITIONER
- EXT R1(e): TRUE COPY OF RELEVANT PAGES OF THE AUCTION REGISTER WITH
RESPECT TO PLOT BRR S/04

EXT R1(f): TRUE COPY OF LETTER DTD 10.10.2014 ISSUED BY THIS RESPONDENT TO SRI P C SEBASTIAN

EXT R1(G): TRUE COPY OF CHALLAN OF THE PAYMENT ONE ONETIME NON-REFUNDABLE PREMIUM ALONG WITH SECURITY DEPOSIT WITH RESPECT TO THE PLOT ON 18.10.2014

EXT R4(a): COPY OF the ALLOTMENT LETTER DTD 10.10.2014 OF THE 2nd RESPONDENT

EXT R4(b): COPY OF THE CHALLAN DTD 18.10.2014 OF DEPOSIT OF RS.220000/-

EXT R4(c): COPY OF the CHALLAN DTD 18.10.2014 FOR DEPOSIT OF RS.9573/-

EXT R4(d): COPY OF THE CHALLAN DTD 18.10.2014 FOR DEPOSIT OF RS.27192/-

True Copy/

P A to Judge

A.MUHAMMED MUSTAQUE, J.
=====

W.P(C).No.29948 of 2014 P
=====

Dated this the 05th day of January, 2015

JUDGMENT

Petitioner was operating a bunk near Harbour Police Station. The licence was issued, according to the petitioner, to install a bunk in the vacant land. Petitioner submits that this was originally given to petitioner's father and thereafter he was carrying the business in the bunk. Petitioner approached this Court commanding respondents to re-allot the space in which the bunk was erected subject to payment of normal rent applicable to other allottees and also to cancel the allotment in favour of the 4th respondent. Petitioner has a case that he has never vacated the bunk premises. Petitioner also has a case that he has effected construction of permanent nature and he has protection under Sec.60 of the Indian Easement Act. Petitioner also challenges auction proceedings in respect of the bunk without evicting him and award of the bunk in favour of the 4th respondent. The bunk in question is situated in land belonging to the Cochin Port trust.

2. Cochin Port Trust filed a statement. It is submitted that the petitioner was a licensee. It is further submitted that licence period was for eleven months. Ext.R1(a) is the licence agreement.

It is further submitted that petitioner is a chronic defaulter of payment of rent. Accordingly, petitioner was served with Ext.R1(b) notice dated 15.01.2014 to pay the arrears before 31.01.2014. It is pointed out in the notice itself that licence will be cancelled and area will be repossessed if petitioner fails to pay the rent arrears. It is further submitted that since petitioner did not pay the licence fee, authorities took possession of the bunk on the expiry of the licence. It is pointed out that the petitioner's bunk shop was not functioning and consequently it was locked. It is also stated that on 28.07.2014 a notice was issued inviting tender for allotment of bunks/shops at various locations. Petitioner thereafter submitted a tender in respect of the plot where he was operating the bunk. The petitioner did not take part in the auction. To evidence this, Ext.R1(e) is produced. However it is admitted that petitioner paid the entire arrears during June 2014. It is stated that petitioner's representation produced as Ext.P8 was not considered for the reason that the bunk had already been repossessed by the authorities. The respondent also relies on Ext.P9 and states that the petitioner was intimated as per Ext.P9 as well that the bunk was repossessed on

violation of the licence conditions. Therefore it is contended that petitioner cannot challenge allotment made in respect of the 4th respondent based on public tender.

3. Petitioner has no challenge against repossession. Ext.P9 notice is dated 09.07.2014. Petitioner has taken part in the re-tender process. This is also affirmed by petitioner's application for re-allotment of the space where the bunk is erected. Thus, petitioner is estopped from challenging re-possession. Question whether petitioner has effected work of permanent nature to disable authorities from revoking licence does not arise in this case as the petitioner had already accepted repossession of the space where the bunk is erected by the authorities. Petitioner's case is that he could not take part in the auction for the reason that all the bunk holders were given their bunk at the rate quoted by them. The petitioner submits that he is prepared to pay necessary non refundable premium quoted by the 4th respondent. It has to be noted that allotment was made in favour of the 4th respondent on 10.10.2014. The 4th respondent remitted one time non refundable premium on 18.10.2014. Petitioner submitted his application for re-tender on 12.08.2014. No doubt, petitioner

deserves certain sympathy in the matter as he has availed loan from the bank to run the bunk. However his own latches in taking appropriate timely action, disentitle him from any reconsideration of the matter especially when third party rights are also intervened.

4. In view of the facts and circumstances stated above, I do not find any merit in the writ petition. However, the improvements, structure etc. made by the petitioner in the bunk shall be valued by the Estate Manager. Estate Manager shall also attempt to pay the value of the improvements and structure made by the petitioner through the 4th respondent. However if 4th respondent is not amenable for taking the same structure with the improvements, petitioner shall be given liberty to remove the structure. To work out this, status quo shall be continued for a period of two weeks.

With the above direction, writ petition is dismissed.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE.

Sbna/