

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

WEDNESDAY, THE 18TH DAY OF NOVEMBER 2015/27TH KARTHIKA, 1937

WP(C).No. 37574 of 2009 (S)

PETITIONER(S):

**THE PUBLIC LIBRARY PROTECTION COUNCIL,
REPRESENTED BY ITS GENERAL SECRETARY,
ATTUKAL SURENDRN, TC 20/1291, (U) MANGADU LANE,
M.A.KADAR ROAD, KARAMANA P.O., TRIVANDRUM-695 002.**

**BY ADVS.SRI.VELLAYANI SUNDARARAJU
SRI.R.O.MUHAMED SHEMEEM**

RESPONDENT(S):

- 1. STATE OF KERALA, REPRESENTED BY CHIEF
SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. THE STATE CENTRAL LIBRARY,
REPRESENTED BY STATE LIBRARIAN, PALAYAM,
THIRUVANANTHAPURAM.**
- 3. SECRETARY, DEPARTMENT OF HIGHER
EDUCATION, SECRETARIAT, THIRUVANANTHAPURAM.**
- 4. THE STATE LIBRARY COUNCIL,
REPRESENTED BY ITS SECRETARY, THIRUVANANTHAPURAM.**

**R1-R3 BY SENIOR GOVERNMENT PLEADER SRI.C.S.MANILAL
R4 BY ADVA. SRI.T.KRISHNAN UNNI (SR.)
SRI.P.V.SURENDRANATH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
23-9-2015, ALONG WITH WA. 288/2013 THE COURT ON 18-11-2015,
DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: TRUE COPY OF RELEVANT PAGES OF THE BOOK CAPTIONED LIFE HISTORY OF P.N.PANICKER WITH ENGLISH TRANSLATION.

EXT.P2: TRUE COPY OF G.O.NO.250/2000/REVENUE DTD.8.8.2000 WITH ENGLISH TRANSLATION.

EXT.P3: TRUE COPY OF NOTICE DTD.6.11.2000 ISSUED IN CONNECTION WITH THE GOLDEN JUBILEE CELEBRATION OF 4TH RESPONDENT ON 15.11.2000 WITH ENGLISH TRANSLATION.

EXT.P4: TRUE COPY OF G.O.NO.40/2002/REVENUE DTD.14.2.2002 WITH ENGLISH TRANSLATION.

EXT.P5: TRUE COPY OF MASS MEMORANDUM

EXT.P6: TRUE COPY OF G.O.(RT) NO.783/2009/HED DTD.8.6.2009 WITH ENGLISH TRANSLATION.

EXT.P7: TRUE COPY OF NEWS ITEM PUBLISHED BY THE MANGALAM MALAYALAM DAILY ON 31ST OCTOBER 2009 WITH ENGLISH TRANSLATION.

RESPONDENT(S)' EXHIBITS:

EXT.R4(a): A TRUE COPY OF THE JUDGMENT DTD.28.5.2009 IN OP.NO.8787/2002.

EXT.R4(b): A TRUE COPY OF THE REQUEST DTD.11.8.2000 MADE BY THE 4TH RESPONDENT.

EXT.R4(c): A TRUE COPY OF THE SKETCH PREPARED BY THE TAHSILDAR, THIRUVANANTHAPURAM AND SERVED ON THE 4TH RESPONDENT HANDING OVER THE LAND FOR CONSTRUCTION OF THE OFFICE COMPLEX.

EXT.R4(d): A TRUE COPY OF THE GOVERNMENT ORDER G.O.(OP) NO.164/2001 HIGHER EDUCATION DEPARTMENT THIRUVANANTHAPURAM DTD.24.1.2001.

EXT.R4(e): A TRUE COPY OF THE RELEVANT PORTIONS OF THE SKETCH & PLAN PREPARED BY THE VASTHU VIDHYA GURUKULAM ARANMULA.

EXT.R4(f): A TRUE COPY OF THE RECEIPT ISSUED BY THE VASTHUVIDHYA GURUKULAM FOR THE RECEIPT OF RS.2,00,000/- DTD.14.12.2000.

EXT.R4(g): A TRUE COPY OF THE RECEIPT ISSUED BY THE VASTHUVIDHYA GURUKULAM FOR RECEIPT OF RS.2,50,000/- ON 22.5.2001.

msv/

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**EXT.R4(h): A TRUE COPY OF THE CONTRACT AGREEMENT BETWEEN THE
4TH RESPONDENT AND THE KERALA STATE CONSTRUCTION
CORPORATION DTD.16.2.2001.**

**EXT.R4(i): A TRUE COPY OF THE BUILDING PERMIT NO.E10.B4-W/343/09
DTD.18.11.2010 ISSUED BY THE THIRUVANANTHAPURAM CORPORATION.**

**EXT.R4(j): TRUE COPY OF THE RULES OF THE THIRUVANANTHAPURAM PUBLIC
LIBRARY.**

**EXT.R4(k): A TRUE COPY OF THE CERTIFICATE ISSUED BY THE VILLAGE OFFICER,
VANJIYOOR DTD.20.8.2010.**

RESPONDENT(S)' ANNEXURES:

ANNEXURE 1: A TRUE COPY OF THE SKETCH

//TRUE COPY//

P.S.TO JUDGE

Msv/

ASHOK BHUSHAN, CJ

&

A.M.SHAFFIQUE, J.

W.P.C.No.37574 of 2009

&

W.A.No.288 of 2013

Dated this the 18th day of November 2015

J U D G M E N T

Shaffique, J

The writ appeal is filed by a third party after seeking leave of this Court. They challenged judgment dated 28/05/2009 in O.P.No.8787/2002, by which an original petition filed by the Kerala State Library Council was allowed by the learned Single Judge quashing Ext.P3 and permitting the petitioner to proceed with the project and complete the construction in terms with Ext.P1.

2. The short facts involved in the original petition would disclose that as per Government Order G.O.No.250/2000/Revenue dated 08/08/2000, the Government granted permission to the petitioner to construct an office complex under the name E.M.S Memorial Library and Information Technology Institute in an extent of 20 cents of Government land situated in Sy.No.3038 of Vanchiyoor village. However, by Ext.P3 dated 14/03/2002, the

said permission had been cancelled. Petitioner contends that it is a Council constituted in terms of Section 3 of the Kerala Public Libraries (Kerala Granthasala Sanghom) Act XV of 1989 (hereinafter referred to as the 'Public Libraries Act'). It is controlling the above 5000 libraries all over the State of Kerala and as part of Golden Jubilee Celebration of Grandhasala Movement, request was made to the Government to allot 20 cents of land near the present office of the State Library Council and the Thiruvananthapuram Public Library, for construction of an office complex, auditorium, conference chamber, library and Information Technology Institute. It is, based on such application, that Ext.P1 Government Order had been issued. It is contended that the foundation stone for the complex was also laid on 15/11/2000. Contention urged by the petitioner is that Ext.P3 order, by which the permission has been cancelled, is mala fide, arbitrary, unfair and unreasonable.

3. Counter affidavit has been filed on behalf of the 2nd respondent, inter alia stating that though Ext.P1 order had been issued, the land was not handed over to the petitioner. On verification it was understood that the permissive sanction

granted was wrong and by virtue of Ext.P3 order, Government was only correcting a mistake. It was contended that in so far as the Government is the owner of the land, Government is justified in cancelling the permission granted as per Ext.P1 order.

4. The learned Single Judge, after taking into consideration the relevant facts, allowed the writ petition against which this appeal has been filed.

5. W.P.C.No.37574/2009 has been filed by the appellant in W.A.No.288/2013 as a public interest litigation. In the above public interest litigation, the petitioner ventilates its grievance of assigning land in favour of the State Library Council. It is inter alia contended that the State Central Library which is generally known as Public library was established in 1829 by the erstwhile Maharaja of Travancore. During the silver jubilee celebrations of Queen Victoria in 1902, the Library was shifted and housed at the present building. The Maharani of Travancore, Sethu Parvathi Bhai had given 3.5 acres of land for the Library and the said property was duly preserved and protected by constructing compound walls on four sides. It is one of the premier libraries in the State of Kerala and have a collection of about 3,50,000 books

and membership of 85,000. It is stated that during the year 1950, the 4th respondent, the State Library Council, which is a sister concern of the 2nd respondent, which did not have an office of its own, requested for allotment of 10 cents of property in the premises of the 2nd respondent library. It was allotted in their favour and their office was functioning at the north eastern side of the public library compound, until 2002. It is stated that the office building was hence demolished completely by the 4th respondent. In the public interest litigation, petitioner mainly challenges the action of the Government in giving permission to the 4th respondent to assign 20 cents of land.

6. It is apparent from the aforesaid pleadings that the issue involved in the appeal as well as in the writ petition is with regard to the permission granted by the Government to assign 20 cents of land in favour of State Library Council.

7. From what is stated above, it is clear that the Government themselves have cancelled the permission granted in terms of Ext.P1 in O.P.No.8787/2002. However, in view of the judgment of the learned Single Judge in O.P.No.8787/2002, the said permission has now been revived.

8. Hence, what is required to be considered in these cases is with reference to the legality or otherwise of the judgment of the learned Single Judge which would decide the rival contentions made by the parties.

9. Heard Sri.Vellayani Sundara Raju appearing on behalf of the appellant and the petitioner in W.P.C.No.37579/2005, Sri.Krishananunni, learned senior counsel appearing on behalf of State Library Council, which is hereinafter referred to as the Library Council.

10. The learned Single Judge, while allowing the writ petition, observed that after issuing Ext.P1, the foundation stone was laid on 15/01/2000 and the impugned order Ext.P3 was passed after two years and especially when the project has already been proceeded to a certain extent. It is further observed that no reasons have been stated for cancelling Ext.P1 order and no notice has been given to the Library Council before cancelling the order. Therefore Ext.P3 is in total violation of the principles of natural justice. It is also held that in addition to having violated the principles of natural justice, Ext.P3 is tainted with arbitrariness and therefore it requires to be set aside.

11. Learned counsel appearing for the appellant submits that the entire land in possession of the Public Library should not be utilised for any other purpose other than the purpose of a library. The very grant to the library was given for the said purpose of setting up a public library and by permitting to construct other buildings in the said premises and that too unrelated to the public library, it would affect the interest of the public at large. That apart, the intention was to construct an office complex in the name of a political leader and Information Technology Centre which have nothing to do with the Public Library. Though it is mentioned that their intention is also to set up a library, it is only a camouflage to utilise the complex for political gains. It is also argued that the Public Library is a heritage building and any other building coming in the locality should not affect the grandeur of the said building.

12. On the other hand, it was argued on behalf of the learned counsel for the Library Council that the learned Single Judge was justified in quashing Ext.P3 as there was no justification on the part of the Government to do so, without hearing the Library Council. That apart, there is no valid reason to issue a

cancellation order. It is nothing but politically motivated and cannot stand to reason.

13. It is not in dispute that no notice has been issued to the Library Council before setting aside Ext.P1. But, it is relevant to note that Ext.P1 was only an order permitting allotment of 20 cents of land to the Library Council. District Collector was directed to take further steps in the matter. It is apparent that no further steps were taken in the matter by the District Collector and no materials are produced to indicate that there is an assignment in accordance with law. By Ext.P3, the Government Order dated 08/08/2007 is cancelled. The question is whether any notice is required for cancelling Ext.P1 and whether any explanation is required from the part of the Government. It is not in dispute that the land belongs to the Government and as long as it is not assigned in favour of any person, question of cancellation does not arise.

14. It is stated that though steps were taken for measurement of the property in metes and bounds, the property has not been assigned in favour of the Library Council. Therefore, no specific right could have been claimed by the Library Council

as far as the right to property is concerned. It might be true that they have proceeded with certain expenditure for preparation of plan and to proceed with the project. But the fact remains that no construction has been made in the property other than laying the foundation stone.

15. In the counter affidavit, it has been stated that Ext.P1 was issued by way of a mistake. Though it is not pointed out, under what circumstances the mistake has occurred, still, by considering the fact that no right had accrued to the Library Council, they cannot claim any legal right to remain in possession of the property nor can they seek enforcement of Ext.P1. Hence they do not have any legal right to direct the Government to grant them right over the property.

16. But before cancelling Ext.P1, as rightly observed by the learned single Judge, the Library Council ought to have been heard. Hence P3 is therefore clearly in violation of the principles of natural justice. But having said so, the learned Single Judge ought to have directed the matter to be decided afresh after notice to the Library Council. As already stated, no assignment has been made pursuant to Ext.P1 order. Hence the direction of

the learned Single Judge permitting the petitioner to proceed with the construction was unwarranted and unjustified. To that extent, we are interfering with the judgment of the learned Single Judge.

Under such circumstances, the writ appeal is partly allowed as follows:

- (i) Quashing of Ext.P3 is confirmed.
- (ii) The direction of the learned Single Judge permitting the petitioner to proceed with the project and complete the construction in terms with Ext.P1 is set aside.
- (iii) Government's right to proceed further after notice to the Library Council is reserved.
- (iv) No directions are required in W.P.C.No.37574 of 2009, but they should also be heard before any decision is taken by the Government in the matter.

(ASHOK BHUSHAN, CHIEF JUSTICE)

(A.M.SHAFFIQUE, JUDGE)

jsr

