

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

FRIDAY, THE 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

WP(C).No. 37771 of 2009 (N)

PETITIONER(S):

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UTHAMAN P.,  
KODIYIL BUNGLAW, NETTAYAM P.O.,  
THIRUVANANTHAPURAM.

BY ADV. SRI.A.RAJASIMHAN.

RESPONDENT(S):

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1. OMBUDSMAN FOR LOCAL SELF GOVERNMENT INSTITUTIONS,  
BARTONHILL, THIRUVANANTHAPURAM,  
REPRESENTED BY ITS SECRETARY.
  2. SECRETARY,  
VATTIYOORKAVU VILLAGE PANCHAYAT, THIRUVANANTHAPURAM.
  3. JAYAKUMAR, \*(6 NADARAJAPILL),  
VADAKKEVILA VEEDU, VAZHOTTUKONAM,  
VATTIYOORKAVU P.O., THIRUVANANTHAPURAM.  
(THE WORD '6 NADARAJAPILL' STRUCK OFF AS PER ORDER DATED  
05.01.2010 IN IA 73/2010)
  4. MADHUKUMAR. A.\*(1 P AMBIKAKUMARI),  
KAVYA, PIDAYANNOOR, NETTAYAM P.O.,  
THIRUVANANTHAPURAM.  
(THE WORD '1P AMBIKAKUMARI' STRUCK OFF AS PER ORDER  
DATED 05.01.2010 IN IA 73/2010).

ADDL. R5 IMPEADED

Addl.5. CORPORATION OF THIRUVANANTHAPURAM,  
REPRESENTED BY ITS SECRETARY, CORPORATION BUILDINGS,  
VIKHAS BHAVAN, THIRUVANANTHAPURAM -695033.

(\*ADDL. R5 IS IMPEADED AS PER ORDER DATED 12.07.2013 IN IA  
9275/2013.)

R2 BY ADV. SRI.PIRAPPANCODE V.S.SUDHIR  
R3,4 BY ADV. SRI.G.SUDHEER  
ADDL.5 BY ADV. SRI.N.NANDAKUMARA MENON (SR.)  
ADDL.5 BY ADV. SRI.P.K.MANOJKUMAR  
BY SENIOR GOVERNMENT PLEADER SRI.SOJAN JAMES.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 22-05-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

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- EXT. P1 : TRUE COPY OF THE TRANSFER DEED DATED 24/10/1997.
- EXT. P2 : TRUE COPY OF THE CONSENT LETTER DATED 11/09/2001.
- EXT. P3 : TRUE COPY OF THE REQUEST DATED 10/01/2003.
- EXT. P4 : TRUE COPY OF THE RECEIPT DATED 23/03/2009.
- EXT. P5 : TRUE COPY OF THE ORDER DATED 06/10/2009.
- EXT. P6 : TRUE COPY OF THE NOTIFICATION DATED 09/12/2009.
- EXT. P7 : TRUE COPY OF THE NOTICE DATED 11/12/2009.
- EXT. P8 : TRUE COPY OF THE REPRESENTATION.

RESPONDENT(S) ' EXHIBITS :

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NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

**ANIL K.NARENDRA, J**

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**W.P.(C)No.37771 Of 2009**  
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**DATED THIS THE 22<sup>nd</sup> DAY OF MAY, 2015**

**JUDGMENT**

The petitioner has filed this writ petition seeking a writ of certiorari to quash Exts.P5 and P7 and for a declaration that Ext.P5 order passed by the Ombudsman for Local Self Government Institutions, the first respondent herein and Ext.P7 notice issued by the Secretary of Vattiyoorkkavu Grama Panchayat, the second respondent herein are illegal and for a further declaration that the first respondent has no jurisdiction to pass Ext.P5 order of eviction.

2. Going by the averments in the writ petition, the shopping complex owned by Vattiyoorkkavu Grama Panchayat was originally allotted to one Gopalakrishnan on the strength of a lease agreement executed between him and the Panchayat. In the year 1990, he got employment in Government service and he handed over possession of the aforesaid shop room to one Devadas. According to the petitioner, the Panchayat has also transferred the lease agreement and licence in the name of the aforesaid Devadas. Later, Devadas got Government employment in the year 1997 and he handed over possession of the aforesaid shop room to the petitioner on

24.10.1997, on the strength of Ext.P1 agreement and Ext.P2 consent letter. According to the petitioner, on 24.10.1997 itself, he had applied for transfer of lease and licence in his name. But the same was not considered by the Panchayat stating untenable reasons. On 10.1.2003 he made Ext.P3 written request before the second respondent for transferring the lease in his favour and also to renew the licence in his name. A perusal of Ext.P4 would show that even on 23.9.2009, the licence fee in respect of the shop room in question was being paid in the name of Sri V.Devadas.

3. Now the petitioner is aggrieved by Ext.P5 order passed by the first respondent, based on a complaint filed by respondents 3 and 4, alleging that, the petitioner is an unauthorised occupant in the shop room in question and therefore the Panchayat should take necessary steps to evict him from the aforesaid shop room. On the basis of the aforesaid complaint, the first respondent issued Ext.P5 order by which the Panchayat has been directed to take immediate steps to evict the unauthorised occupant from the shop room. It is pursuant to

Ext.P5 order, the second respondent has issued Ext.P7 notice by which the petitioner was directed to give vacant possession of the shop room in question within seven days from the date of receipt of notice. On receipt of Ext.P7, the petitioner has submitted Ext.P8 objection before the Panchayat. Thereafter the petitioner has approached this Court in this writ petition seeking various reliefs.

4. By order dated 5.1.2010, this Court stayed the operation of Ext.P7 for a period of two months. But in the meantime the respondent-Panchayat had locked the shop room. In such circumstances, the petitioner filed I.A.No.481 of 2010 seeking an order directing the respondent-Panchayat to hand over the key of the shop room till the disposal of the writ petition. By order dated 14.1.2010, this Court directed the second respondent to hand over key of the shop room to the petitioner and thereafter the interim order was extended until further orders by order dated 4.3.2010.

5. Later, the additional fifth respondent, Secretary of Thiruvananthapuram Corporation filed I.A.No.3799 of 2014 to

vacate the interim order of stay on the ground that the shopping complex originally owned by the second respondent-Panchayat is vested with the fifth respondent-Corporation under the provisions of the Kerala Municipality Act, 1994 and that the petitioner is in occupation of the shop room even without executing any agreement either with the fifth respondent-Corporation or with the Panchayat. By order dated 28.5.2014 this Court vacated the interim order of stay.

6. It is not in dispute that the shop room in question originally owned by Vattiyoorkkavu Grama Panchayat is vested with the Corporation based on Ext.P6 notification dated 9.12.2009 issued by the Government under Sections 4(1) and (2) of the Municipality Act, 1994. Section 215 of the Act empowers the Municipality to acquire and dispose of property. Going by Sub-section (1) of Section 215, Municipality may in the manner prescribed acquire any property such as land or building within or outside its Municipal area or dispose of any of its properties with prior approval of the Government for providing any arrangement or facility for a public purpose. Going by Clause (a) of Sub-

section (2), a Municipality may construct commercial or other building and let them out to the public who need them on licence and may charge such fees as it may fix for the use and occupation of the same in the manner prescribed. Sub-section (4) of Section 215 categorically provides that no building or room or space let out under Sub-section (2) shall be sub-let by the licensee to any person, nor the nature of use changed without the prior approval of the Municipality. Going by the proviso to Sub-section (4) of Section 215, the Municipality may at the instance of a licensee transfer the licence to any other person subject to such terms and conditions as it may deem fit to impose and upon such transfer, it shall be deemed to be a fresh licence for all purposes.

7. In exercise of the power under Sections 215 and 365 of the Act read with clause (b) of sub-section (2) of Section 565, the Government has issued the Kerala Municipality (Acquisition and Disposal of Property) Rules, 2000. Going by Rule 7, which deals with grant of Municipality's own property on lease, the Municipality may subject to the conditions mentioned under

Section 215 of the Act, on licence basis for periods as fixed by the Council, give on rent or lease its own buildings. Going by sub-rule (2) to Rule 7, the transfer referred under sub-rule (1) shall be in accordance with Form No.III in Schedule III in the Rules.

8. The pleadings and materials on record make it abundantly clear that the petitioner is not a licensee or lessee either under the second respondent-Panchayat or the fifth respondent-Corporation. He has also not executed any deed in respect of the shop room in question in terms of Rule 7 of the Rules. Neither the second respondent-Panchayat, nor the fifth respondent-Corporation has granted any approval for transferring the possession or occupation of the shop room in favour of the petitioner. In such circumstances, the petitioner has absolutely no legal right to occupy the shop room in question. Therefore, the proceedings initiated against the petitioner for evicting him from the shop room in question cannot be termed either arbitrary or illegal, warranting an interference of this Court.

9. The petitioner would contend that Ext.P5 order passed

by the first respondent is without notice to him and therefore the same is in violation of the principles of natural justice. I am unable to accept the said contention. As seen from the records, based on Ext.P5 order, the Panchayat has issued Ext.P7 notice by which the petitioner was asked to vacate the shop in question within a period of 7 days. To Ext.P7 notice, the petitioner has submitted Ext.P8 reply, a reading of which would show that the petitioner has absolutely no legal right to continue in occupation of the shop room in question. Further, if Ext.P5 order is interfered with on technicalities, this Court will be perpetuating an illegality by permitting the petitioner, who has absolutely no legal right to occupy the shop in question, to continue in occupation. In such circumstances, I find absolutely no grounds to interfere with Ext.P5 order passed by the first respondent and Ext.P7 notice issued by the second respondent.

In the result, the writ petition fails and the same is dismissed. No order as to costs.

Sd/-

**ANIL K.NARENDRA, JUDGE**

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