

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 4TH DAY OF FEBRUARY 2015/15TH MAGHA, 1936

WP(C).No. 34486 of 2014 (I)

PETITIONERS:

1. GEETHA K, D/O.KUMBA,
AGED 36 YEARS, KALLEN HOUSE,
2. SADANANDAN M.C.,S/O.KANNAN,
AGED 32 YEARS, MANAKKARAN HOUSE,
3. RADHAMANI E N., D/O.NARAYANAN C.S.,
4. OMANA THRESSYAMMA, D/O.JOSEPH M.,
AGED 45 YEARS,
5. VASUMATHI V., PUTHEN PURAYKKAL,
D/O.VIJAYAN P., AGED 43 YEARS,
6. THAMBAYI MANAKKARATHI, D/O.KANNAN,
AGED 62 YEARS,
7. VINOD A., S/O.NARAYANAN T P.,
AGED 35 YEARS, ARUMADI HOUSE,
8. SREELEKHA C D, D/O.BAHASKARAN,
AGED 28 YEARS, KALAYIL HOUSE,
9. DAMODARAN PODIKKUNDIL, S/O.CHIRAKANDAN,
AGED 40 YEARS,
10. JOSE K A, S/O.ANTONY, AGED 47 YEARS,
KUZHITHULLIYIL HOUSE,
11. NARAYANAN T., THENGINATH,
S/O.AMBU, AGED 43 YEARS,
12. MADHAVI A., D/O.CHIRUKANTAN T P.,
AGED 82 YEARS,
13. PRADEEP KUMAR M P., MARANNADIYAN,
S/O.AMBUKUNHI, AGED 32 YEARS,
14. MANI C G., CHELAKKAVIL,
S/O.GOPALAKRISHNAN, AGED 45 YEARS,
15. BALAKRISHNAN KUNDAYAMKODAN,
S/O.NARAYANAN, AGED 48 YEARS,

16. SURENDRAN K R., KUNNEL HOUSE,
AGED 40 YEARS,
17. DEVI AMMA MANIYAN, D/O.KUNHAMBU,
AGED 77 YEARS,
18. SURARNNINI C., D/O.VISHNU NAMBOODIRI C.,
AGED 66 YEARS,
19. REENA THOTTINAKKARE VEETIL,
D/O.AMBU T., AGED 34 YEARS,
20. SELVARAJ KAMBALIYOOR, S/O.MADATHI,
AGED 50 YEARS,
21. M MUHAMMED, S/O.MOIDENKUTTY,
AGED 45 YEARS,

ALL ARE PERMANENT RESIDENTS OF METRO COLONY,
K P NAGAR, PERINGOME P O, KANNUR DISTRICT.

BY ADV. SRI.MAHESH V RAMAKRISHNAN

RESPONDENTS:

1. THE PERINGOME-VAYAKKARA GRAMA PANCHAYATH,
REP. BY ITS SECRETARY, PERINGOME P O,
KANNUR-670 307.
2. STATE OF KERALA
REP. BY SECRETARY TO GOVERNMENT,
LOCAL SELF GOVERNMENT (RB) DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM-695 001.

R2 BY GOVERNMENT PLEADER SRI.JUSTIN JACOB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
04-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 34486 of 2014 (I)

PETITIONER'S EXHIBITS:

EXT. P1:-TRUE COPY OF THE ORDER NO 30191/R.B2/14/LSGD DATED 23/6/2014 ISSUED BY THE 2ND RESPONDENT

EXT. P2:-TRUE COPY OF THE NOTICE DATED 16/8/2014 ISSUED BY SRI.VINOD KUMAR P, ADVOCATE, PAYYANNUR TO THE IST RESPONDENT

EXT. P3:-TRUE COPY OF THE REPLY DATED 1/9/2014 ISSUED BY THE IST RESPONDENT TO THE PETITIONER'S ADVOCATE

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.34486 of 2014 I

Dated this the 4th day of February, 2015

JUDGMENT

Heard the learned counsel for the petitioner and the learned Government Pleader for the second respondent as well as the learned Standing Counsel for the first respondent, apart from perusing the record. Since the issue lies in a narrow compass, this Court proposes to dispose of the writ petition at the admission stage itself.

2. Briefly stated, the petitioners, who came into possession of small plots of land, each about five to ten cents, in Block No.40, R.S.No.203/2 of Peringome Village, Kannur District, within the territorial limits of the first respondent Grama Panchayat, in course of time constructed residential houses, ostensibly being landless and poor. When their efforts to have temporary residential certificates

to their residential houses became unfruitful, they approached the second respondent Government, which in turn issued Exhibit P1 proceedings. A perusal of the said proceedings reveals that Government issued necessary direction to the Secretary of the first respondent Grama Panchayat to initiate appropriate steps to grant temporary residential certificates to the residents of Metro Colony, K.P.Nagar, Peringome Village, who include the petitioners as well.

3. As could be seen from the record, in furtherance of Exhibit P1 directive, though the first respondent Grama Panchayat seems to have initiated steps, when the petitioners wanted to have the process expedited, the first respondent Grama Panchayat issued Exhibit P3 communication dated 01.09.2014 in response to Exhibit P2 legal notice caused by the petitioners. In Exhibit P3, the first respondent Grama Panchayat has observed that a list

of the persons in occupation will be given to the Village Officers of the neighbouring Villages for finding out the real landless persons, and that appropriate final decision will be taken regarding the applications for allotment of temporary numbers on receipt of the report.

4. Complaining of inordinate delay in implementing Exhibit P1 by the first respondent Grama Panchayat, the petitioners have approached this Court.

5. The learned counsel for the petitioners has fairly submitted that the petitioners, under the cover of getting temporary residential certificates, would not be staking any claim of ownership over the property. He has further submitted that eventually either the Government or the first respondent Grama Panchayat may decide in that regard. He has also submitted that in the absence of temporary residential certificates, the petitioners have been put to difficulties in getting civic amenities, including ration card,

electricity connection, etc. Accordingly, he urged this Court to give a suitable direction to the first respondent Grama Panchayat to expedite the process and implement Exhibit P1 by issuing temporary residential certificates.

6. Though notice has been served, none appears for the first respondent Grama Panchayat. The learned Government Pleader, however, submits that in the face of Exhibit P1 proceedings issued by the second respondent Government, it is for the first respondent Grama Panchayat to implement the same.

7. There is not much dispute concerning the title of the land, inasmuch as the petitioners have admitted that, being landless poor persons, they occupied small portions of land and constructed residential houses thereon. At any rate, if either the Government or the first respondent Grama Panchayat feels that it amounts to any trespass or illegal occupation of its property, they are at liberty to initiate

appropriate proceedings by following due process. Once it is admitted that petitioners have been peacefully living in their houses notwithstanding the title dispute, if any, it is imperative that they be allowed to have the minimum civic amenities inasmuch as right to decent living is a facet of Article 21 of the Constitution of India.

8. As it could be seen from the record, in furtherance of Exhibit P1 directive, the first respondent Grama Panchayat seems to have initiated certain steps. When the petitioners caused Exhibit P2 legal notice seeking expedition of the issue, the Grama Panchayat, however, has issued Exhibit P3 communication dated 01.09.2014. It pays to extract the Grama Panchayat's response in Exhibit P3, which is as follows:

“As decided in the said meeting, the officers of the Village Panchayat and the Village Office have jointly conducted verification for finding out the persons who are actually residing at the place and

in such verification it was found that only 20 applicants are residing at the place. The governing body of the Panchayat has further observed that when there are schemes for assigning four cents in colonies by the Grama Panchayat and by the Government for landless persons, the construction of the houses in the land in question in an organised manner is to be enquired. The governing body of the Panchayat has further observed that assignment of numbers to such houses may pave way for further trespasses. In such circumstances it is decided to hand over the list of the said twenty persons to the Village Officers of the neighbouring Villages for finding out the real landless persons. Appropriate final decision will be taken in the applications for allotment of temporary numbers on receipt of the report. You are also informed that the said Smt.T.K.Saraswathi Amma has filed a case as O.S.216/2014 before the Munsiff Court, Payyannur claiming ownership over the property."

9. In fact, in **Chameli Singh v. State of U.P.** ((1996)

2 SCC 549), the Hon'ble Supreme Court has held thus:

"8. In any organised society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which

inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights. Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being. Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting. In a democratic society as a member of the organised civic community one should have permanent shelter so as to physically,

mentally and intellectually equip oneself to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be a useful citizen and equal participant in democracy. The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultured being. Want of decent residence, therefore, frustrates the very object of the constitutional animation of right to equality, economic justice, fundamental right to residence, dignity of person and right to live itself..."

10. There is, nevertheless, no gainsaying the fact that there is any amount of difference between landless poor persons who have been in permissive, at least in passive terms, possession of certain property and those who squat on it in statutory violation, say a tenant in government quarters continuing as a tenant at sufferance. In the absence of any statutory provision, depriving a resident of basic amenities for minimal existence on the ground of his not having title to the property, on which the residence has been built upon and from which eviction is yet to take place

by due process may not gel well with the constitutional ethos.

In the facts and circumstances, this Court disposes of the writ petition with a direction to the first respondent Grama Panchayat to expedite the process of issuing temporary residential certificates to the petitioners in terms of Exhibit P1 proceedings issued by the second respondent Government. It is further made clear that granting of such certificates would not amount to any recognition of title on the part of the petitioner, as has been rightly submitted by the learned counsel for the petitioners himself. It is also made clear that the first respondent Grama Panchayat may complete the entire process within one month from the date of receipt of a copy of this judgment.

Dama Seshadri Naidu, Judge

tkv