

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 17TH DAY OF APRIL 2015/27TH CHAITHRA, 1937

WP(C).No. 35461 of 2014 (G)

PETITIONERS:

1. SAKKEER, S/O. HAMSA, KALLANAPARAMBIL,
VAIRAMKODE P.O., THIRUNAVAYA,
MALAPPURAM DISTRICT.
2. THAJUDEEN, S/O. MUHAMMED,
PARIYADATH HOUSE, SOUTH PALLAR,
VAIRAMKODE P.O., MALAPPURAM DISTRICT.

BY ADVS.SRI.K.MOHANAKANNAN
SMT.A.R.PRAVITHA
SMT.D.S.THUSHARA

RESPONDENTS:

1. THE DIRECTOR OF PANCHAYATH,
TRIVANDRUM - 695 001.
2. THE DEPUTY DIRECTOR OF PANCHAYATH,
MALAPPURAM - 673 001.
3. THIRUNAVAYA GRAMA PANCHAYATH
REPRESENTED BY ITS SECRETARY,
P.O.THIRUNAVAYA - 676 301.
4. THE PRESIDENT, THIRUNAVAYA GRAMA
PANCHAYATH, THIRUNAVAYA,
MALAPPURAM DISTRICT - 676 301.

ADDL. RSPONDENTS 5 TO 12 IMPLEADED

5. HAMZA, AGED 47, S/O KUNHEENKUTTY HAJI,
PILATHETHU HOUSE, ANTHAVOOR P.O.,
THIRUNAVAYA, MALAPPURAM DIST - 676 301.
6. HYDROSE.T., AGED 61, S/O MOIDEEN,
POTTACHOLA HOUSE, ANTHAVOOR P.O.,
THIRUNAVAYA, MALAPPURAM DIST - 676 301.
7. ABDUL RASHEED P.C., AGED 36, S/OMOHAMMED
KUTTY, POTTACHOLA HOUSE, VAIRANCODE P.O.,
THIRUNAVAYA, MALAPPURAM DIST - 676 301.

8. MOHAMMED KUTTY, AGED 45, S/O KAMMAD KUTTY,
THIRUVAKALATHIL HOUSE, ANANTHAVOOR P.O.,
THIRUNAVAYA, MALAPPURAM DIST - 676 301.
9. ALAVI KUTTY, AGED 56, S/O KUNAHAMMED,
KEELEPPATTIL HOUSE, ANANTHAVOOR P.O.,
THIRUNAVAYA, MALAPPURAM DIST - 676 301.
10. C.K.MOIDEENKUTTY, AGED 48, S/O KUNHU MOIDEEN,
CHANGALAKKATTIL HOUSE, ANANTHAVOOR P.O.,
THIRUNAVAYA, MALAPPURAM DIST - 676 301.
11. C.K.IBRAHIM, AGED 43, S/O KUNHU MOIDEEN,
CHANGALAKKATTIL HOUSE, ANANTHAVOOR P.O.,
THIRUNAVAYA, MALAPPURAM DIST - 676 301.
12. ABDUL RAZAK C.P., AGED 42, S/O MOHAMMED KUTTY,
CHANKKALIPARAMBIL HOUSE, ANANTHAVOOR P.O.,
THIRUNAVAYA, MALAPPURAM DIST - 676 301.

Impleaded as per order dated 19.2.15 in IA 2059/15.

R1 & R2 BY GOVT. PLEADER SRI.JUSTIN JACOB
R3 & R4 BY ADV. SRI.C.E.UNNIKRISHNAN
ADDL.R5 -R12 BY ADVS. SRI.K.K.MOHAMED RAVUF
SRI.M.S.NARAYANAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
17-04-2015 ALONG WITH WPC 2570/2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 35461 of 2014 (G)

PETITIONER'S EXHIBITS:

EXT. P1 - TRUE COPY OF THE PROCEEDINGS DATED 01.10.14 OF THE 3RD RESPONDENT.

EXT. P2- TRUE COPY OF THE AUDIT REPORT OF THE LOCAL FUND AUDIT DEPARTMENT DATED 23.7.14.

EXT. P3 - TRUE COPY OF THE REPRESENTATION DATED 17.6.14 SUBMITTED BY THE MUSLIM YOUTH LEAGUE OF THE AREA BEFORE THE PANCHAYATH.

EXT. P4 - TRUE COPY OF THE MINUTES DECISION DATED 14.8.14 TAKEN BY THE PANCHAYAT.

EXT. P5 - TRUE COPY OF THE COMPLAINT BY THE 3RD RESPONDENT TO THE SUB INSPECTOR, KALPAKAMCHERRY ON 04.12.14.

EXT. P6 - TRUE COPY OF THE COMMUNICATION SENT BY THE PUBLIC INFORMATION OFFICER TO THE 1ST PETITIONER DATED 04.9.14.

RESPONDENT'S EXHIBITS:

EXT. R5(A) TRUE COPY OF THE LEASE AGREEMENT DATED 28.4.2014 ENTERED INTO BETWEEN THE ADDITIONAL 12TH RESPONDENT AND 3RD RESPONDENT

EXT. R5(B) TRUE COPY OF THE NOTICE DATED 26.12.2014 ISSUED BY THE SECRETARY OF THE THIRD RESPONDENT

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)Nos.35461 of 2014 G
& 2570 of 2015 U

Dated this the 17th day of April, 2015

JUDGMENT

This writ petition W.P.(C)No.2570/2015, though filed later, requires primary adjudication since the petitioners therein have the grievance that they have been evicted with police force, without recourse to due process of law. On the other hand, W.P.(C)No.35461/2014, filed earlier, ventilates the grievance of the petitioners therein, who are said to be the residents of the Grama Panchayat, that the Grama Panchayat has been frittering away its property without observing any statutory safeguards. Since the issues are inter-connected, this Court disposes of both writ petitions through a common judgment.

2. Before advertng to the facts of the matter, some of which are hardly disputed, this Court is constrained to

observe that this is a classic case of official apathy, regrettably, leading to loss of faith in the Local Self Government; and also gross abuse of position vis-a-vis the public property. The saying goes: If it is the property of many, it is not the concern of any.

3. Briefly stated, the petitioners, eight in number, are said to be the tenants of the respondent Grama Panchayat. The first petitioner, apart from representing himself, also represents his brother, who is also an alleged tenant of the respondent Grama Panchayat; similar is the case with the second petitioner, who is said to represent his son, another tenant. The justification supplied by the first and second petitioners to represent others, related though, without any valid agency is that the other two tenants were not readily available to sign the authorisation, vakalatnama.

4. The petitioners, having produced Exhibits P1 to P24 documents to hammer home their claim that they have been the tenants, have a singular grievance that on 26.12.2014

all of them were evicted summarily without any notice, not to speak of observance of any principles of natural justice. Aggrieved thereby, the petitioners have filed the present writ petition seeking a declaration that they are the tenants and that possession of the respective shop rooms be restored to them.

5. After taking me through Exhibits P1 to P24 to establish that the petitioners were not trespassers but tenants duly inducted by the respondent Grama Panchayat in to their respective shop rooms, the learned counsel for the petitioners has strenuously contended that on 26.12.2014, with the help of the police, the respondent Grama Panchayat threw the petitioners out on to the streets without due process. According to the learned counsel, after effecting the eviction, the respondent Grama Panchayat, post-haste, issued Exhibit P25 notice calling for objections concerning eviction, provided the objector could establish that he had been a tenant earlier. The learned

counsel has also drawn my attention to Exhibit P26, objection filed by one of the petitioners in response to Exhibit P25. He has submitted that all the other petitioners have also submitted similar objections, but to no avail.

6. The learned counsel has submitted that, initially having suspected certain foul play on the part of the respondent Grama Panchayat to evict the petitioners without due process, the petitioners invoked the jurisdiction of Civil Court by filing O.S.No.445/2014 on 04.12.2014. In expatiation of his submissions, the learned counsel would contend that since Section 249 of the Panchayat Raj Act has a statutory embargo against filing suits without prior notice, the petitioners, despite their filing the suit well in advance, could not get any interim protection. According to him, taking advantage of the said situation, the respondent Grama Panchayat forcefully evicted the petitioners on 26.12.2014.

7. The learned counsel has also strenuously contended that no provision of the Kerala Panchayat Raj Act (for brevity 'the Act') provides for summary and forceful eviction without recourse to due process of law. The learned counsel has eventually contended that, notwithstanding the pendency of the civil suit, in view of gross illegality perpetuated by the respondent Grama Panchayat, the petitioners are always at liberty to take recourse to public law remedy under Article 226 of the Constitution of India by filing a writ petition, which they did. Eventually, the learned counsel has urged this Court to allow the writ petition declaring the petitioners to be the tenants with a consequential direction to the Grama Panchayat to restore petitioners' possession.

8. The learned counsel for the respondent Grama Panchayat, per contra, has strenuously opposed the claims and contentions of the petitioners. He has contended that as could be seen from Exhibit P2 (in W.P.(C)No. 35461/2014),

the statutory audit under Section 215 of the Act has found gross irregularities in allotting the shop rooms and also the failure of the Grama Panchayat in collecting the rental dues.

9. The learned counsel for the respondent Grama Panchayat has, in my view candidly, submitted that for many years the petitioners have been successfully squatting on public property, illegally though, essentially owing to the venal ways of certain officials of the Grama Panchayat. He has further submitted that the Grama Panchayat is determined to enquire into the issue and punish the guilty for the loss the respondent Grama Panchayat was made to suffer on account of what is said to be illegal occupation of its property by certain encroachers—the petitioners.

10. The learned counsel has eventually contended that since the petitioners have already approached the Civil Court, they cannot take recourse to parallel proceedings by filing the writ petition, which according to him is clearly impermissible, more particularly in the face of the fact that

they have already been evicted.

11. The learned counsel for the third and fourth respondents, who are the petitioners in W.P.(C)No. 35461/2014, has submitted that the said respondents being the residents of the Grama Panchayat have got a vital interest in the affairs of the respondent Grama Panchayat. He has submitted that the Panchayat has constructed the building in question, using funds from Kerala Urban and Rural Financing Corporation. All these years, the Grama Panchayat, contends the learned counsel, has never bothered to ensure proportionate returns from the property by letting out the shop rooms therein through public auction. In this regard, the learned counsel has drawn my attention to Rule 7 of the Kerala Panchayat Raj (Acquisition and Disposal of Property) Rules, 2005 ('the Rules' for brevity).

12. The learned counsel has further drawn my attention to Exhibit R3(a), which is an interim order dated

08.01.2015 passed in W.P.(C)No.35461/2014, the other writ petition. According to the learned counsel, this Court, having taken note of the totality of circumstances, has directed the respondent Grama Panchayat to ensure any future letting out of the property only through public auction.

13. The learned counsel for the third and fourth respondents has submitted that there are 35 shop rooms in all and, as could be seen from Exhibit P2 audit report (in W.P.(C)No.35461/2014), ₹ 13,50,000/- is the arrears of rent due from defaulting tenants. According to him, so far the respondent Grama Panchayat has not taken any steps to recover the amounts from the defaulters. He has also contended that respondents three and four have submitted representations to various authorities, including the Director of Panchayat (first respondent in W.P.(C)No. 35461/2014), to conduct an enquiry and take appropriate action concerning the irregularities said to have taken place

in the respondent Grama Panchayat. Eventually, the learned counsel has submitted that it is not in dispute that the Panchayat Committee decided to evict all the unlawful occupants of the shopping complex as per the decisions, dated 10.07.2014, 14.08.2014 and 06.11.2014 and it thus evicted all of them. According to him, the evicted persons again trespassed upon the property by breaking open the locks using force, and attempted even to manhandle the Panchayat officials, by fabricating certain documents. Therefore, the unauthorized occupants who committed acts of trespass were evicted with the help of police on 05.12.2014 and 06.12.2014, once again.

14. Summing up his submissions, the learned counsel for the petitioners has strenuously contended that the petitioners are rank trespassers and that they have been evicted only in accordance with law.

15. In reply, the learned counsel for the petitioner has submitted that though Exhibit P1 lease deed was

antedated, it is a usual practice in the Grama Panchayats that even after commencement of the lease, lease deeds could be executed subsequently covering the period that has already lapsed. Concerning the lease deeds with regard to other petitioners, especially in the face of contention raised by the learned counsel for the Grama Panchayat that there are no lease deeds, the learned counsel has submitted that all the lease deeds are with the respondent Grama Panchayat and it is for the officials to produce them before the Court.

16. The learned counsel has also submitted that in terms of Rule 7(4) of the Rules, even when there is any iota of doubt on the part of the respondent Grama Panchayat that the property has been sub-let by the petitioners or that there is any violation of the terms of the lease, there is an elaborate procedure prescribed, which it ought to have taken recourse to. Accordingly, the learned counsel would contend that the action of the respondent Grama Panchayat

in evicting the petitioners is grossly illegal and indefensible.

17. Heard the learned counsel for the petitioners, the learned counsel for the respondent Grama Panchayat and the learned counsel for the additional respondents 3 and 4, apart from perusing the record.

18. The issues to be decided are as follows: (1) Whether the petitioners are entitled to maintain the writ petition in the face of Civil suit filed by them at an earlier point of time; (2) Whether the petitioners were evicted without following due process of law, despite the fact that in terms of Rules 2005 they were only licensees, but not tenants; (3) Whether the petitioners fabricated Exhibit P1 lease deed subsequent to 01.04.2014 and produced it before the Court, thereby committing a crime; and (4) Whether the petitioners 1 and 2 are empowered to espouse the cause of other tenants without any proper authority or agency?

In re, Issue No.I:

19. The gravamen of the dispute is that the petitioners, though continued to be duly inducted tenants in peaceful possession of the tenements, had been forcefully evicted by the Grama Panchayat without following the due process of law. In other words, though the petitioners' possession always remained legal, they were treated as trespassers and were subjected to summary eviction, which is impermissible in law.

20. It is not in dispute that the petitioners earlier approached the civil court and filed O.S.No.445/2014 on 04.12.2014. The petitioners were, however, said to have been dispossessed on 26.12.2014, i.e., twenty two days subsequent to filing of the suit. The justification supplied by the petitioners for taking recourse to Article 226 of Constitution, despite the filing of the suit, is that Section 249 of the Act has disabled them from having an efficacious and timely alternative remedy.

21. Indeed, Section 249 of the Act does put an absolute embargo on filing of a suit or other civil proceedings against a Panchayat, etc., until the expiration of one month after the affected person's issuing a statutory notice. Though section 249 of the Act is analogous to sub-section (1) of Section 80 of the Code of Civil Procedure, it, nevertheless, conspicuously lacks the provision for exemption akin to sub-section (2) of Section 80 of CPC. Having conceded to the said extent, I must hasten to observe that the alleged forceful eviction of the petitioners on 26.12.2014 is a lis pendence development. In this regard, we may examine Section 6 of the Specific Relief Act, which provides that if any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any other person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit. At any rate, no suit under this section shall be brought after the expiry

of six months from the date of dispossession, or against the Government. There is no cavil that the respondent Grama Panchayat is not 'Government'. Leaving that aside, if we examine the very section 249 of the Act, clause (b) thereof enables the dispossessed person to file a suit for the recovery of immovable property within six months next after the accrual of the alleged cause of action.

22. The Hon'ble Supreme Court in **Ritesh Tewari v. State of U.P.**¹, has held thus:

“26. The power under Article 226 of the Constitution is discretionary and supervisory in nature. It is not issued merely because it is lawful to do so. The extraordinary power in the writ jurisdiction does not exist to set right mere errors of law which do not occasion any substantial injustice. A writ can be issued only in case of a grave miscarriage of justice or where there has been a flagrant violation of law. The writ court has not only to protect a person from being subjected to a violation of law but also to advance justice and not to thwart it. The Constitution does not place any fetter on the power of the extraordinary jurisdiction but leaves it to the discretion of the court. However, being that the power is discretionary, the court has to balance competing interests, keeping in mind

¹ (2010) 10 SCC 677

that the interests of justice and public interest coalesce generally. A court of equity, when exercising its equitable jurisdiction must act so as to prevent perpetration of a legal fraud and promote good faith and equity. An order in equity is one which is equitable to all the parties concerned. The petition can be entertained only after being fully satisfied about the factual statements and not in a casual and cavalier manner.”

(emphasis added)

23. This Court in **K.G.Soudamini v. The District Collector** (W.P.(C)No.4136/2015), has observed that a cause may have many shades, one giving the colour of public law controversy, another that of pure personal dispute, and still another, of a mixed lattice. We cannot rush to a civil court complaining of one hue, and to the writ court complaining of another. A cause is, more often than not, is heterogeneous, thereby calling for compendious and comprehensive judicial treatment. Every cause, in some measure, is bound to have an element of public law character. Ipso facto, it does not give licence to the suitor to split the cause and seek parallel remedies, leading to

decisional chaos and conflict. In a writ petition what is to be complained of is the infringement of an established right by the state, an instrumentality of state, or any of its officials. In other words, it is to protect an established right, but not to establish a right.

24. In the present instance, the petitioners first filed a suit for injunction, but in pendency they were allegedly dispossessed. As has already been discussed, the petitioners had remedial ways of having their grievance redressed before the Civil Court; nevertheless, they did not choose to. Be that it may, this Court does not desire to non-suit them on the ground of alternative -- efficacious or otherwise -- remedy; hence, the issues are to be determined on merits, as well. The need to answer the first issue has thus been obviated.

In re, Issue No.2:

25. To answer this issue, we may have to first determine the nature of the petitioners' right: Are they

lessees or licencees? The supplementary issue to be addressed is whether the due process clause applies in both the instances—lease and licence—with the same vigour.

26. Statutorily speaking, Section 105 of the Transfer of Property Act defines “lease” of immovable property as a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money. On the other hand, Section 52 of the Easement Act, 1882 defines “Licence” as a grant from one person to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property.

27. Now under the extant Panchayat Raj Act the Grama Panchayat can only create a licence in favour of a person, who desires to have its property put to use. In

exercise of the powers conferred by Section 178 of the Act, read with clause (xxxvii) of sub-section (2) of Section 254 thereof, the Government of Kerala framed the Rules. Rule 7, which is pivotal for our purpose reads thus:

7. Grant of Panchayat's own property for rent or lease on licence.— (1) A Panchayat may construct buildings for the purpose of trade or otherwise and can give the same to the public who require them on rent or lease on license in accordance with provisions of the Act and the rules made thereunder and the bye-laws that may be made by the Panchayat for this purpose and may also levy fees that may be decided by the Panchayat for its enjoyment and possession.

(2) Every licence under sub-rule (1) shall contain the conditions for the enjoyment and possession of that building or room or space, in it and rate of fees and time of payment, and the above said conditions and stipulations shall be written in the form of an agreement in stamped paper of appropriate value and shall also be in accordances with Form III appended to these rules.

(3) No building or room or space given on rent under sub-rule (1), shall be sub-letted to another or change its nature of use by the licensee.

(4) If at any time the Secretary feels that any building or room given on rent to any person under sub-rule (1), has been sub-letted to

another person, he shall cancel the licence issued to such person immediately by an order and direct the person or persons enjoying and possessing that building or room or space, as the case may be, to vacate within the time mentioned in the order. Provided that the Secretary shall before issuing an order cancelling the licence and also before evicting the user or the possessor, give notice asking him to show cause the reason if any, for not issuing such order within a reasonable time, to be specified in the notice.

(5) If the order under sub-rule (4) is not complied within the time specified therein, the Secretary shall evict such person or persons from the building, room or space with or without the assistance of police and the building, room or space, as the case may be, shall be closed. Thereafter all the properties found in that premises become the property of the Panchayat and shall be disposed of and the income therefrom shall be credited in the Panchayat fund.

(6) Every person having been granted a licence as per sub-rule (1) shall remit without demand the licence fee and other charges at the rate specified in the agreement within the time mentioned therein.

(7) If any licensee defaults the remittance of licence fee beyond the period for which the amount deposited in accordance with the provisions of the licence, the Secretary shall, by notice in writing, demand the defaulter to remit the amount due along with interest or fine provided for in the agreement, within 7

days from the issuance of such notice and in the case of default, he shall make to close the premises temporarily at once and evict the possessor or possessors from there with or without the assistance of the police.

Xxxxxxxx

(emphasis added)

28. It seems that the Rules had originally been framed in the vernacular and later translated it into English. The above extract does not seem to bear verbatim rendition of the Rule into English, for expressions like lease, licence, rent, etc., have been used rather indiscriminately, though they have distinct semantic and legal significance, not to mention the solecisms such as 'sub-letted'. At any rate, it is unmistakable, that the property of the Grama Panchayat can be given under a licence. Once the licence is determined, the mode of eviction has been prescribed in clear and categorical terms.

29. It needs no reiteration that 'due process' is a facet of fairness, for justice is fairness in action. Nevertheless, fairness, as an essential concomitant of the

principles of natural justice, is neither nebulous nor boundless: It runs its writ where statute is silent. It is axiomatic that any common law principle of whatever vintage has to give way to the statutory stipulations. If we examine the provisions of the Easements Act, Section 63 there of speaks of the licensee's rights on revocation; it is profitable to extract the same, which reads thus:

“63. Licensee’s rights on revocation.—

Where a licence is revoked, the licensee is entitled to a reasonable time to leave the property affected thereby and to remove any goods which he has been allowed to place on such property.”

30. From the above statutory extract, it is clear that a licensee, on revocation of licence, is entitled to a reasonable time to leave the property. It does not contemplate eviction by due process. The reason for this proposition, even de hors the statutory support, is not far to seek: a licence does not create any interest in the property; the seisin remains with the owner. In other words, the licensee only has a right to use the immovable property,

without any actual transfer of the very property. In **Chandu Lal v. MCD**² a Full Bench of the Hon'ble High Court of Delhi has held thus:

“26. [A] bare licensee having no interest in the property cannot maintain an action for its possession. A mere licensee has only a right to use the property. Such a right does not amount to an easement or an Interest in the property but is only a personal privilege to the licensee. After the termination of the license, the licensor is entitled to deal with the property as he likes. This right he gets as an owner in possession of his property. He need not secure a decree of the Court to obtain this right. He is entitled to resist in defense of his property the attempts of a trespasser to come upon his property by exerting the necessary and reasonable force to expel a trespasser. If, however, the licensor uses excessive force, he may make himself liable to be punished under a prosecution, but he will Infringe no right of the licensee, No doubt a person in exclusive possession of the property is prima facie to be considered to be a tenant, nevertheless he would not be held to be so if the circumstances negative any intention to create a tenancy.

27. [T]he petitioners, therefore, in law are not entitled to retain possession against the Corporation, having only the personal privilege to carry on their business which

² AIR 1978 DELHI 174 (FB)

otherwise without the permission granted by the Corporation would be an unlawful act...”

31. Settled as the above proposition of law has been, if we further examine, Section 64 of the Easements Act provides for the consequences that follow forceful eviction. It is profitable to extract the same, which reads thus:

“64. Licensee's rights on eviction.-Where a license has been granted for a consideration, and the licensee, without any fault of his own, is evicted by the grantor before he has fully enjoyed, under the license, the right for which he contracted, he is entitled to recover compensation from the grantor.”

32. It is explicit from Section 64 of the Easements Act that if a licensee has been evicted by the grantor for no fault of his, the remedy of the licensee is not restoration, but only restitution. Thus, the common law cannon of restoration comes to an end in the face of statutory stipulation. In the present instance, however, Section 249 of the Act provides for an efficacious remedy.

33. When all is said and done, the petitioners have essentially sought an equitable relief of having the possession of the licensed premises restored to them—a mandatory injection, though couched in constitutional terms as a mandamus. There can be no exercise of equity power of the court without considering the conduct of the parties, for they go hand in hand. It is instructive to examine the Grama Panchayat's counter affidavit, a part of which reads thus:

“[P]ilatheth Kunjimuhammed, who is said to be the allottee of Room No.1 and who is said to have authorized the first petitioner to conduct the business has not actually given any authorization and the first petitioner has not cared to produce the same. The rent for room No.1 for the period from 01.04.2000 to 31.03.2001 (for 12 months) and 01.11.2001 to 31.03.2013 (11 years and five months) have not been remitted. The second petitioner has not remitted the rent for the period from 01.04.2011 to 31.03.2013 (24 months). The son of the second petitioner has not remitted the rent for the period from 01.04.2000 to 31.03.2014 (14 years 5 months). No authorization in favour of the second respondent by his son has been produced. The third petitioner has not remitted any rent at all but at the same time

demolished the wall of the room. As far as the fourth petitioner is concerned, he managed to get a room allotted to the members of the Scheduled caste while he was a member during 2005-2010 and did not remit the rent except for the period evidenced by Exhibit P19 and as far as the fifth petitioner is concerned he has not paid the rent from 01.04.2000 to 31.07.2014 (14 years and 3 months). The sixth petitioner has not remitted the rent for the period from 01.04.2000 to 31.03.2014 (14 years). The seventh petitioner has not remitted the rent from the period from 01.04.2000 to 31.07.2014 (14 years 4 months) and the DLO licence produced is related to some other room outside the complex. The 8th petitioner has not remitted any amount for the entire period and the amount evidenced by Exhibit P24 is only security deposit. More over fourth and fifth respondents who are not members belong to Scheduled caste community are occupying rooms specifically reserved for SC communities."

34. Further, Exhibit P2 (in W.P.(C)No.35461/2014, the statutory audit report running into about forty three pages graphically depicts the gross illegalities committed, inter alia, in the issue of letting out the property of the Panchayat. Indisputably, the petitioners are chronic defaulters; they continued to squat on the property for

many years without any justification—even without paying rent or licence fee.

35. Under these circumstances, I do not hesitate to hold that the petitioners' eviction in terms of Rule 7 of the Rules is legal and unexceptionable.

In re, Issue No.3:

36. The petitioners, though eight in number representing the interests of ten persons, produced only one alleged lease deed. Concerning the rest of the deeds, if any, the learned counsel for the petitioners has contended that they have all been in possession of the respondent Grama Panchayat. Strange indeed. Lease deeds are usually executed at the behest and for the benefit of the lessees, who are supposed to have their custody. Be that as it may, let us examine Exhibit P8 lease deed, which is said to be a contemporaneously executed document. The duration of the lease was from 01.04.2014 to 31.03.2014; however, the non-judicial stamp paper on which the lease was engrossed was

purchased on 28.04.2014. No explanation was to be found in the pleadings regarding the discrepancy, nor was there any convincing answer emanating from the learned counsel for the petitioner, who, in fact, was equally taken aback at the unnoticed discrepancy. Exhibit P8 emphatically declares that 'the agreement of lease entered into on 28.04.2014'. Nevertheless, the learned counsel did make a vain attempt to convince the court that it was the unusual practice to execute documents post-dated after the lease period commenced. It is, for me, an usual practice, if it all a practice, and Exhibit P8 is anachronistic. Under these circumstances, I am constrained to observe that Exhibit P8 is devoid of legal sanctity, much less force, thus calling for stringent penal action.

In re, Issue No.4:

37. The petitioners 1 and 2, apart from representing themselves, are also said to be representing two other tenants, brother and son respectively. Both those persons,

ostensibly tenants in their own right, are not minors, nor are they under any disability. In the absence of any express agency having been created in their favour, the petitioners cannot represent in any judicial proceedings some other person or persons, who do not suffer from any disability, such as minority or lunacy. Thus, the last issue too is to be held against the petitioners.

W.P.(C)No.35461/2014:

38. The petitioners, the residents of the Grama Panchayat, have ventilated their grievance that despite persistent default committed by the respondents 5 to 12, who include the petitioners in W.P.(C)No.2570/2015, the officials of the Grama Panchayat have still not been inclined to go for public auction of the property. According to them, they are still trying to re-allot the shops to those defaulters only. In this regard, they have placed reliance on Exhibit P2 audit report; they are also said to have made representations on that count to the authorities.

39. Summing up the discussion, I observe that the petitioners in W.P.(C)No.2570/2015 have been evicted in accordance with law. Further, the official apathy in frittering away public property is appalling. Exhibit P2, a statutory audit, cries foul. The Director of Panchayat, the first respondent in W.P.(C)No.35461/2014, or any other competent authority in statutory terms, shall cause a comprehensive enquiry into the issues raised by the petitioners in the said writ petition, especially keeping in view Exhibit P2 audit report, and take appropriate action against the erring officials, after affording an opportunity to those persons, in a duly constituted departmental enquiry, if necessary.

40. The Director of Panchayat or any other competent authority, as the case may be, shall also launch criminal prosecution against the petitioners and any officials of the respondent Grama Panchayat in terms of the ratio laid down by a Constituent Bench of the Hon'ble

Supreme Court in **Iqbal Singh Marwah v. Meenakshi Marwah**³ in relation to Exhibit P2 alleged lease deed.

With the above observations, W.P.(C)No.35461/2014 is allowed; W.P.(C)No.2570/2015 is dismissed with costs quantified at ₹ 5,000/- to each of the petitioners to be remitted to the Kerala State Legal Services Authority, Ernakulam. Taking aid of the observations of the Hon'ble Supreme Court in **Ramrameshwari Devi v. Nirmala Devi**⁴, it is made clear that costs are imposed not out of anguish but by following the fundamental principle that wrongdoers should not get benefit out of frivolous litigation.

Dama Seshadri Naidu, Judge

tkv/DMR

³ AIR 2005 SC 2119

⁴ (2011) 8 SCC 249