

(2012) 10 KL CK 0112
In the High Court Of Kerala
Case No : WP (C) . No. 21444 of 2012 (E)

A.N. Vijayan

APPELLANT

Vs

State of Kerala and Asst. Executive Engineer

RESPONDENT

Date of Decision : 18-10-2012

Acts Referred:

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 5

Citation : (2012) 10 KL CK 0112

Hon'ble Judges : T.R. Ramachandran Nair, J

Bench : Single Bench

Advocate : Jacob Sebastian, for the Appellant; K.C. Vincent, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

T.R. Ramachandran Nair, J.—This Writ Petition is filed by the petitioner challenging the proceedings culminating in Exhibit P5 whereby the

petitioner has been ordered to be vacated from the premises of the Malampuzha Garden. The transaction initially was one wherein he was allowed

to put up a vegetarian canteen in the year 1994. The lease deed was for five years from 19.10.1994 to 18.10.1999. Exhibit P1 is the copy of the

same. It appears that additional constructions were made, according to the petitioner, with permission of the Department as per Exhibit P2. The

petitioner also points out that certain arrears of rent have been paid even for the current year and Exhibit P3 series are the receipts evidencing the

same. The present proceedings started when the petitioner was served with a notice in January, 2011 by the 4th respondent asking him to vacate

the premises for the reconstruction of stalls as part of the renovation of Malampuzha Garden and surroundings. This was challenged before this

Court in W.P.(C) No. 1601/2011 and this Court disposed of the same making it clear that the petitioner can be evicted only adhering to the

provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Thereafter notice was issued on 4.7.2011 under the said Act

which was challenged before this Court in W.P. (C) No. 19281/2011, wherein the notice was quashed reserving liberty to initiate fresh action. The

3rd notice is dated 16.11.2011, which was received by him on 23.11.2011. According to him, without considering his objections, an order was

passed on 23.6.2012 directing him to vacate the building which was under challenge before this court in W.P.(C) No. 12835/12. The order was

set aside by this Court directing to pass fresh order in terms of the Statute and the petitioner was directed to appear before the 4th respondent at

11 a.m. on 22.6.2012.

2. Thereafter an order has been passed as per Exhibit P4 which was challenged in appeal and as per Exhibit P5, the appeal also stands dismissed.

According to the petitioner, there is no requirement of the space for the purpose of the Garden and the action now taken is clearly illegal, which is

only a ruse to evict him. It is also stated by the Learned Counsel for the petitioner that the petitioner is depending upon the present business for his livelihood.

3. Mainly it is pointed out by the Learned Counsel for the petitioner that the petitioner was not allowed an effective opportunity to adduce evidence

and the order Exhibit P4 is passed in violation of the provisions of Section 5 of the Act. Of course the petitioner also points out that the dispute

raised also have not been properly considered by the original authority. Exhibit P5 is the detailed order passed by the appellate authority.

It is further submitted that the plea raised by the respondents that the space is required for utilisation as parking area is also not correct.

4. The learned Government Pleader submitted that the establishment of the petitioner is situated at the entrance and the said area is required to be

utilised as parking space. In the statement filed on behalf of the 4th respondent it is pointed out that the entire buildings inside the car parking area,

except the vegetarian canteen building occupied by the petitioner is vacated by the stall/hotel owners either by surrender or by process of law. In

paragraph No. 4 it is stated that at present there is no vacant shops available in

the Malampuzha Garden. The stall/hotel owners who vacated their stalls and hotels other than the petitioner are also awaiting for new places for running business and is under consideration by the Department. In paragraph 5 it is stated that the Department is ready to consider the petitioner's case also to provide places/stalls along with other vacated stall/hotel owners on priority basis, on vacation of the existing shops or new places near garden, subject to the availability and approval of the Government. Therefore the emphasis made by the respondents is that the petitioner will have to urgently vacate the premises, for developing the area as part of the parking area.

5. In fact the petitioner was asked to appear on 22.6.2012 for a hearing as per the judgment of this Court in W.P. (C) No. 12835/12. This is a case wherein the petitioner was continuing from 1994 on the basis of an agreement. The initial period was for by five years. The contention is that the petitioner is a tenant holding over. In fact a reading of the judgment in W.P. (C) No. 12835/12 will show that contention therein was that the order impugned therein was passed without hearing him. The contention of the Learned Counsel for the petitioner was that a personal hearing ought to have been granted to the petitioner by the Estate Officer. In para. 9 this court has issued the following directions.

The 2nd respondent will personally hear the petitioner on 22.6.2012 at 11 a.m. and thereafter appropriate decision will be taken in the matter, expeditiously. For enabling the 2nd respondent to take appropriate decision in the matter, Exhibit P7 will stand quashed.

6. In the light of the above, I cannot accept the contention of the petitioner that the proceedings should have been adjourned again as the petitioner only wanted a personal hearing alone. The same alone was permitted by this Court. No further opportunity to adduce evidence was sought for.

Now the argument developed is that he should have been granted an opportunity to adduce evidence also. The entire matter was heard in the light of the directions issued by this court in the above judgment. Therefore I do not find any infirmity in the proceedings issued as per Exhibits P4 and

5. All the points have been considered by the original authority as well as the appellate authority. This is a case where the initial arrangement was over within a period of five years and the petitioner has been continuing,

thereafter.

7. One of the issues pointed out by the Learned Counsel for the petitioner is that the arrears of rent claimed by the respondents is not correct. In

the order arrears to the tune of Rs. 4,23,014/- have been ordered to be paid by him. It is stated that on 23.8.2012, the petitioner has remitted Rs.

1 Lakh. If the petitioner is able to prove that some more payments have been made by him and the total amount of Rs. 4,23,014 does not actually

represent the arrears, he will be free to file a statement showing the amounts already paid and with respect to the dates of payment. It is clear from

the pleadings of the respondents that the space is required for parking area and all other tenants/occupants similarly placed have vacated.

Respondents are willing to consider the case of the petitioner for an alternate space also. Therefore, it cannot be said that the orders passed are

arbitrary and are issued only to evict the petitioner. I do not find any reason to interfere with the same. The Writ Petition fails and the same is

dismissed.

The Learned Counsel for the petitioner sought for some time to vacate the premises, namely three months, which is opposed by the learned

Government Pleader, stating that already the petitioner has obtained one month after the order is passed. Having regard to the various aspects, the

petitioner is granted two months from today to vacate the premises and he will pay another amount of Rs. 1 Lakh towards arrears which will be

subject to the recalculation of the arrears, if sought for by the petitioner.