

(2021) 06 KL CK 0384
In the High Court Of Kerala
Case No : Writ Appeal No.787 Of 2021

Aranmula Grama Panchayath Represented By Its Secretary, APPELLANT
Aranmula P.O, Pathanamthitta

Vs

NSS Karayogam No.234 Edasserymala, Aranmula, RESPONDENT
Pathanamthitta District

Date of Decision : 24-06-2021

Acts Referred:

Kerala Panchayat Raj Act 1994, 1994 — Section 191
Kerala High Court Act 1958 — Section 5

Citation : (2021) 06 KL CK 0384

Hon'ble Judges : S. Manikumar, Cj;Shaji P. Chaly, J

Bench : Division Bench

Advocate : T.R.Harikumar, Arjun Raghavan, V.M.Krishnakumar, Tek Chand,
B.Pradeep

Final Decision : Dismissed

Judgement

Shaji P. Chaly,J.

1. This appeal is preferred by the third respondent in W.P.(C) No. 18456 of 2018 challenging the judgment of the learned single Judge dated

04.12.2020 in the aforesaid writ petition.

2. The subject issue relates to the building taken on rent by the appellant Panchayat from a voluntary organisation namely NSS Karayogam in order to

conduct a Co-operative Training College. The learned single Judge has taken note of the fact that Ext. P1 resolution was passed by the Panchayat

resolving to take on rent the building bearing No. AP-I/28 owned by the NSS Karayogam, Edasserymala within the limits of the appellantâ?"Aranmula

Grama Panchayat, Pathanamthitta District. Resolution No.V(II) passed in the meeting held on 04.08.2006 reads thus:

Resolution No.V (II) in the meeting held on 04.08.2006

It is learned that junior diploma course is starting in the co-operative sector in the State. It is resolved that since it is agreed that the building bearing No. AP-I/28

owned by NSS Karayogam, Edasserymala in Aranmula Grama Panchayat, Pathanamthitta District, is agreed to rent out the building on the basis of the rent fixed at

PWD (building) rate, the Grama Panchayat is allowed to pay the rent.

sd/- President.

Â

3. Therefore, it is unequivocally clear from the resolution that it was the Panchayat which has decided to take the building of the NSS Karayogam on

rent for running the college on the basis of the rent fixed at PWD (building) rate, and the Grama Panchayat was allowed to pay rent to the building

owner. Needless to say, it is undisputed that the building was occupied by the Panchayat on the terms agreed upon by the Panchayat and the building

owner.

4. The contention advanced by the appellant is that even though the Grama Panchayat has taken such a decision, the same was interfered with by the

State Government under Section 191 of the Kerala Panchayat Raj Act and declined permission to pay rent by the Panchayat. Even though a review

was filed to review the said decision of the Government, that was dismissed by the State Government. Taking note of the pros and cons of the matter,

the learned single Judge has found that even though there is no contract/agreement entered into by and between the Panchayat and the NSS

Karayogam, since the Panchayat has passed a resolution to take the building on lease from the said organisation and to pay rent, the landlord is entitled

to receive rent from the Panchayat and held as follows:

Â 10. The learned counsel for the Panchayat, then submitted that there was no formal rent agreement executed between the petitioner and the Panchayat. It is true

that there was no formal agreement, but the Panchayat cannot ignore the decision taken by them. The conduct of the Panchayat approaching the Government itself

would clearly show that the Panchayat wants to honour the commitment made as

per the decision. The resolution and the subsequent decision of the Government, all

clearly would establish that the Panchayat wants to have the legal clothing to protect their action of obtaining the building from the petitioner. They failed in their

attempt. Therefore, it is clearly shows that there was a contract between the petitioner and the Panchayat.

It is submitted now at the Bar, the Co-operative Training College is now shifted to a building owned by the Panchayat from 4.05.2018 onwards. In such circumstances,

I am of the view that the writ petition has to be allowed and I do so. The Panchayat is directed to pay the rent as fixed by PWD, within a period of four months to the

petitioner. It is open for the Government to initiate action against the persons who were responsible to obtain the building from the petitioner for housing a Co-operative Training College, in accordance with the Local Fund Audit Act and Rules, after effecting such payment.â??

5. We have heard the learned counsel for the appellant Sri. Arjun Raghavan, learned counsel appearing for the State Co-operative Union

Keralaâ??respondent No. 4, Sri. K. B. Pradeep and Sri. V.M. Krishnakumar appeared for the NSS Karayogam No.234, respondent No.1, and

perused the pleadings and materials on record.

6. The specific contention advanced by the learned counsel for the appellant is that, the college run by the 4th respondent i.e., the State Co-operative

Union Kerala, the Panchayat is not a beneficiary of the proceeds received by the 4th respondent. Therefore, the 4th respondent is the Organisation

liable to pay the arrears of rent to the NSS Karayogam. It was also pointed out that the direction in the writ petition as sought for by the NSS

Karayogam was to direct the Aranmula Grama Panchayat as well as the State Co-operative Union to pay arrears of rent and therefore, the liability

ought to have been shouldered on the 4th respondent.

7. On the other hand, learned counsel appearing for the NSS Karayogam and the State Co-operative Union have submitted that the building was taken

on rent by the NSS Karayogam on the basis of the resolution passed by the Panchayat. It was also pointed out that in fact the Panchayat has

persuaded the 4th respondent to conduct the college within the Panchayat area

on the specific understanding that the Panchayat would pay the rent and therefore, the Panchayat is not at liberty to turn around and slip away from its resolution.

8. We have evaluated the rival submissions made across the Bar. It is an admitted fact that it was on the basis of Ext. P1 resolution that the building was taken on rent by the Panchayat from the NSS Karayogam. It is also an admitted fact that the rent was not paid by the Panchayat to the NSS

Karayogam. Merely because the resolution of the Panchayat was interfered with by the State Government and the review was also dismissed, that

will not grant liberty to the Panchayat from not paying rent to the building owner, especially for the fact that the privity by and between the Panchayat

and the writ petitioner was constituted as per the resolution passed by the Panchayat. It is also clear from the pleadings put forth by the parties that

the college was being functioned in the premises of the NSS Karayogam till a building was constructed by the Panchayat during the year 2018.

Therefore, we have no hesitation to hold that the learned single Judge was right in arriving at the conclusion that there was an agreement by and

between the Panchayat and NSS Karayogam. This we say because, the Panchayat through its proceedings admit the material aspects discussed

above, which will in turn disables the Panchayat from resiling from all those aspects.

9. Taking into account the facts and figures, we have no hesitation to hold that the learned single Judge has correctly and rightly appreciated the

contentions put forth by the rival parties and arrived at the final conclusions. Even though it was contended that the subject issue is a civil dispute and

therefore, a writ petition is not maintainable, we are of the considered opinion that since there is no dispute with respect to the material, factual and

legal aspects involved in the case, and the amount that is payable towards NSS Karayogam, nothing stands in the way of the writ court considering the

undisputed matters, as is well settled under law.

10. Above all, the Panchayat is a statutory body created and functioning under the provisions of the Kerala Panchayat Raj Act, 1994 and also

discharging its duties in accordance with the rights, duties, and powers conferred and obligated on it under the Constitution of India and

consequently, the Panchayat cannot contend that the issue involved is not a

dispute coming under the public law remedy. In our view, when there is no dispute as to the correctness of the resolution deliberated above, and the amounts due, the Panchayat cannot make a countervailing statement and refrain from its liabilities for the payment of the rent amount due to the building owner. Cogitating, we do not think that the appellant has made out a case of jurisdictional error or other legal infirmities for interference in an intra court appeal filed under section 5 of the Kerala High Court Act 1958. Resultantly, writ appeal fails and accordingly it is dismissed, however without causing prejudice to make any claims against the 4th respondent in accordance with law, as is sought for by the appellant.