
(2021) 11 KL CK 0088
In the High Court Of Kerala
Case No : Writ Pettiton (C) No. 20706 Of 2021

Bar Association

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 16-11-2021

Acts Referred:

Constitution of India, 1950 — Article 166(3)

Kerala Panchayat Raj (acquisition and disposal of property) Rules, 2005 — Rule 6

Citation : (2021) 11 KL CK 0088

Hon'ble Judges : P.V.Kunhikrishnan, J

Bench : Single Bench

Advocate : George Mathew, M.D.Sasikumaran, Mathew K.T., Sunil Kumar A.G, George K.V., Praveen S., Dipu James Stephy K Regi

Final Decision : Disposed Of

Judgement

P.V.Kunhikrishnan, J

1. The Hon'ble Chief Justice of India in a recent speech observed like this :

"Good Judicial infrastructure for courts in India has always been an afterthought. It is because of this mindset that courts in India still operate from dilapidated structures, making it difficult to effectively perform their function. Judicial infrastructure is important for improving access to justice and to meet the growing demands of the public that is more aware of its rights and is developing economically, socially and culturally. It is baffling to note that the improvement and maintenance of judicial infrastructure are still being carried out in an ad-hoc and unplanned manner."

2. The issue involved in this case is the construction of a court complex for functioning the trial courts in the Idukki District. The trial courts are the backbone of the Indian Judiciary. They are the decision makers in a lis. The appellate courts are only judging their decisions. If there is no proper infrastructure and proper atmosphere for the decision makers in the trial courts,

that will be a threat to the justice delivery system itself. The present case is one such case, which will show the sorry state of affairs as far as the infrastructure of a court and the attempt to solve the issue is sabotaged because of red tape rules.

3. It is informed that 3 designated courts are functioning in District Headquarters at Idukki, namely, The Special Court under the POCSO Act, Idukki, Judicial First Class Magistrate Court, Idukki, and the Munsiff Court, Idukki. It is also informed that the Judicial First Class Magistrate Court, Idukki, and the Munsiff Court, Idukki were amalgamated and is functioning as Munsiff Magistrate Court. Attached to these courts, there are offices of Prosecutors and Government Pleaders. The courts and the attached offices are functioning now under the limited facility provided in the civil station at Kuyilimala in Idukki. It is the long standing dream of the lawyers, advocate clerks, and other litigant public to get a court complex for functioning the courts and its offices. This issue was mooted about 2 and a half decades back. On 15.1.1997, President, Bar Association, Idukki submitted a request in this regard to the Idukki Development Authority (for short 'IDA').

4. Idukki Development Authority was constituted on 21.10.1976. The Request of the Idukki bar association was entertained by IDA and the General Council meeting of the Idukki Development Authority vide resolution No.4 dated 22.2.1997 decided to earmark two acres of land for a judicial complex. Ext.P1 is the letter issued by the Secretary, IDA to the President, Bar Association on 18.3.1997. Subsequently, as per order dated 09.03.1998, the Secretary, IDA issued an order by which IDA was pleased to accord advance possession of two acres of land to the Registrar, High Court of Kerala for the construction of judicial complex with certain conditions. Ext.P2 is the order and in Ext.P2, it is also stated that the Registrar, High Court of Kerala may enter upon the said land, in the said location and start construction work. The Tahsildar, Thodupuzha handed over 322.974 hectares of Puramboke land to Idukki Development Authority on 16.9.1998 for implementing the Idukki Township Area Development Scheme sanctioned by the Government. As per Ext.P3 proceedings, IDA passed a detailed order in which it is stated that the land allotted for the judicial complex is 2 acres of land at Kuyilimala adjacent to the land allotted to Model Polytechnic on the northern side of Idukki-Thodupuzha road. In Ext.P3, it is specifically stated that the final allotment/handing over of the land will be subject to the approval of the Government. Thereafter, the Registrar (Subordinate Judiciary) addressed a letter to the Addl. Chief Secretary to Government, Home Department as evident by Ext.P4. In Ext.P4, the Registrar (Subordinate Judiciary) of High Court of Kerala requested the Addl. Chief Secretary to Government, Home Department to take steps to transfer possession of two acres of land in Survey No. 161/1 at Kuyilimala of Idukki Village to the Judicial Department or for permissive sanction to utilize the said land for the construction of court complex at Idukki, at the earliest. In the meanwhile, the IDA was abolished on 30.3.2007. In such circumstances, Ext.P5 was sent by the Registrar (Subordinate Judiciary) to the Addl. Chief Secretary, Home Department, Thiruvananthapuram.

5. Based on Ext.P5 request of the High Court of Kerala, the Government after getting a report from other authorities issued Ext.P6 Government Order on 24.8.2019. Ext.P6 is an order passed by the Secretary, Local Self Government Department. In Ext.P6 it is clearly stated that the ownership of the land will be retained with the District Panchayat and permission was granted for using the land for the purpose of constructing a judicial complex. Ext.P7 is a proceeding of the District Panchayat. In Ext.P7 it is stated that in the light of Ext.P6 Government Order, two acres of land is given for the construction of judicial complex retaining the ownership with the District Panchayat. Based on Exts.P6 and P7, further steps were taken to construct the judicial complex. Thereafter, Ext.P8 order was passed by the Secretary, Local Self Government Institutions on 30.06.2021, in which it is stated that Ext.P6 order is cancelled. It is also stated that to hand over the necessary land for constructing the judicial complex, a fresh proposal is to be submitted by the Panchayat Director to the Government. It seems that Ext.P8 was modified as per GO(K) No.150/2021 LSGD dated 24.07.2021, in which it is only stated that the fresh proposal is to be submitted by the Secretary, District Panchayat instead of Panchayat Director. Aggrieved by these, this writ petition is filed.

6. Heard the learned counsel for the petitioner and the learned Government Pleader. I also heard the learned counsel appearing for the 5th respondent and the learned Standing Counsel for respondents 8 and 9.

7. The learned counsel for the petitioner reiterated his contentions in the writ petition and submitted that Ext.P8 and the modified order of Ext.P8 are unsustainable and it will only further delay the construction of the judicial complex, which is the longstanding demand of the bar association of Idukki. The counsel submitted that there is no justification for passing an order like Ext.P8 by the Government even without hearing the petitioner or the 5th respondent- High Court. Ext.P8 is not a speaking order and the reason why Ext.P6 was cancelled is also not clear from Ext.P8. The learned counsel submitted that Ext.P8 may be quashed and there may be a direction to the authority concerned to initiate appropriate steps to construct a judicial complex at Idukki, forthwith.

8. On the other hand, the learned Government Pleader submitted that Ext.P8 order is perfectly correct. The Government Pleader takes me through an order passed by the Government on 02.04.2019, in which it is stated that the revenue is entrusted with the power to transact Government land. As per the Rules of Business, if any department had taken over any land and the same is not necessary for that department, it is to be returned to the revenue department and the revenue department is the authority to allot the same to any other departments. The sum and substance of the arguments of the learned Government Pleader is that as per the Government Order dated 02.04.2019, the revenue department is the ultimate authority to assign or allocate a government land to any other department, and the Secretary, Local Self Government Institutions has no such authority and that is why Ext.P6 order was set aside.

The Government Pleader also argued that, after the constitution of IDA, 322.974 hectors of purambokku land was handed over to IDA only on 10.09.1998. Even before that day, IDA issued Exts.P1 and P2 which, according to the Government Pleader, is unsustainable because as on that date, IDA was not in possession of the land mentioned in those orders. The Government Pleader submitted that the Government has no objection in allocating land for the construction of a judicial complex at Idukki. But it can be done only in accordance to law and after following the procedural formalities. That is the reason behind Ext.P8 order is the submission. The Government Pleader also submitted that the Government will do the needful to see that the properties are handed over for the construction of the judicial complex after following the procedures.

9. On the other hand, the learned Standing counsel who appeared for the 5th respondent submitted that the Rules of Business of Government of Kerala was framed by the Governor under Article 166(3) of the Constitution of India and the 5th respondent acted only in accordance to the same. The counsel submitted that as per the Rules of Business of the Government of Kerala, the business of the Government is to be transacted by the Department specified in the 1st schedule. The counsel takes me through Chapter XV which deals with Home Department. Clause (C) of Chapter XV deals with the administration of justice. Sub-clause (1) of Clause (C) says that the Home Department is in charge of all matters relating to the administration of justice - civil and criminal constitution and organisation of courts (except High Court) offices, and servants of the High Court. The counsel also submitted that the property where the proposed construction is situated belongs to the District Panchayat. The counsel also submitted that, as per Rule 6 of the Kerala Panchayat Raj(acquisition and disposal of property) Rules, 2005, the prior permission of the Government is required only when there is a transfer of its property by the Panchayat through a sale. According to the counsel, in the instant case, the title is retained by the Panchayat and hence no sanction from the Government is necessary. Moreover, the counsel submitted that the 5th respondent already addressed the Home department as evident by Exts.P4 and P5. According to the counsel, the further delay on technical ground may be ruled out by this Court and there may be a direction to the Government to expedite the proceedings for starting the construction of court complex immediately because the grievance raised by the petitioner is genuine.

10. I considered the contentions raised by the counsel for the petitioner and the respondents. As I observed earlier, the proposal to construct a court complex at Idukki was initiated in 1997. Now we are in 2021. Almost 24 years over. The Government may be right in saying that the orders so far passed are not in accordance to law or not as per the Government orders in vogue. But, whatever that may be, it is the duty of the government to rectify the illegalities or any procedure irregularities committed by the departments of the Government itself. Moreover, this court can't endorse the stand of the government to cancel Exhibit P6 order dated 28.08.2019 on 30.06.2021 as per Exhibit P8 even without hearing

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11. In the above Government order, what is stated is that the Revenue Department is the authority to allocate land and if any land is given to a particular department and the land is not needed to that department, the same is to be returned to the Revenue Department and the Revenue department has to decide to whom this land is to be allocated. After hearing the Government Pleader in detail, I understood that the Government has no objection in allotting the same land which is already handed over as per Ext.P6 order for the construction of court complex. If that is the case, the 1st respondent can look into this matter and can supervise the entire formalities to be followed between the departments. The Standing counsel for the 5th respondent submitted that the 5th respondent can only approach the Home department and the proposal is already pending before the Home department as evident from Exhibit P4 and P5. The Government Pleader submitted that the Revenue department has to allocate the land. If that is the case, the 1st respondent can issue the necessary direction to the Revenue department to do the needful to see that the land referred in Ext.P6 itself is allotted for the construction of the court complex at Idukki within a time frame. Therefore, according to me, necessary orders allotting the land for the construction of Idukki court complex can be issued by the Government in accordance to law and there can be a time limit also for doing the same. Once the land is allotted, the competent authority among the respondents will do the needful to see that the construction of court complex is completed immediately. Idukki is one of the important district in our State. The counsel for the petitioners and the Standing counsel for the 5th respondent narrated the sorry state of affairs now faced by the lawyers, judicial officers, advocate clerks, and litigants because of the lack of infrastructure in the present building where the courts are functioning. As I observed earlier, without proper judicial infrastructure and a proper atmosphere to administer justice, the judiciary can not function. I am sure that the Government will cooperate with the 5th respondent and will see that the dream of the Idukki people to get a new court complex is fulfilled soon. In the light of the fact that Ext.P6 is already canceled as per Ext.P8, I think there can be a direction to the competent authority among the 1st respondent to pass consequential order immediately within a time limit to allocate the same land referred in Ext.P6 for the court complex construction.

Therefore, this writ petition is disposed of in the following manner:

(i) The Chief Secretary to the State of Kerala will do the needful, after coordinating all the departments including Revenue, Home and local self government institutions, to see that order in accordance to law is passed allocating the same land referred in Ext.P6 for the construction of court complex at Idukki within six weeks from the date of receipt of a copy of this judgment.

(ii) Once the land is allotted, the competent authority among the respondents will take immediate necessary steps to see that the dream of the litigant public including the lawyers, advocate clerks etc are fulfilled and a new court complex is constructed at least within one year from the date on which the land is allotted. All the authorities among the respondents will take earnest efforts to move all files quickly to start the construction work immediately and to fulfill the aim to complete the construction itself within the period mentioned above.