
(2023) 12 KL CK 0185

In the High Court Of Kerala

Case No : Writ Petition (C)Nos.26469 Of 2020 and 24857 Of 2022

Gopinathan Pillai

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 19-12-2023

Acts Referred:

Kerala Land Conservancy Act, 1957 — Section 12

Citation : (2023) 12 KL CK 0185

Hon'ble Judges : T.R. Ravi, J

Bench : Single Bench

Advocate : P.R.Venkatesh, G.Keerthivas, Jaffer Khan

Final Decision : Disposed Of

Judgement

T.R. Ravi, J.

1. The petitioners are the President and Secretary of the Chavara unit of the All Kerala Document Writers and Scribes Association, which is a registered Association having registration No.96/77. Prior to the re-organisation of States, in July, 1955, His Highness Maharaja of Travancore-Cochin granted 2.22 Ares of land in Re.Sy.No.247/1 of Chavara Village near the Sub Registrar's Office, Chavara, for the purpose of construction of a building for housing the Document Writers and Scribes. Under the aegis of late Kumbalathu Sanku Pillai, a veteran socio political leader, a building was constructed and it is being occupied by the members of the Association and also utilised by people who are visiting the Document Writers and Scribes for the purpose of registration of documents.

2. During 2005, on directions issued by the Government, steps were initiated to recover a huge amount as arrears of rent for the land. The petitioners approached this Court by filing W.P(C).No.19537/2005. A counter affidavit was filed (Ext.P2) in the said writ petition by the respondents, wherein it is stated that 2.22 Ares of land was leased out to the petitioners on 08.10.2002 by proceedings No.L6-18747/02 of the District Collector, Kollam, fixing a lease rent

of Rs.20,328/- per annum for a period of three years from 2001-02. It is stated that the petitioners did not turn up to remit the lease rent even after the receipt of the notice. The counter affidavit refers to a request from the Association to reduce the lease rent. It is also stated that the Government had on 16.03.2004 stayed the enhancement of the rate of lease rent in the case of the petitioners till the issue of rationalisation of lease rent is decided or two months, whichever is earlier. Thereafter, the Government on 27.12.2004, informed the petitioners that G.O.(P). No.126/2004 is applicable only to land leased in Municipal and Corporation areas and is not applicable to cases of lease in Panchayat areas. The writ petition was dismissed by judgment (Ext.P1) dated 18.01.2012 with an observation that it is for the petitioner to agitate before the Government for appropriate reliefs regarding the issuance of a Government Order for governing lease of land in Panchayat areas, like the one issued for areas coming under Corporation and Municipalities. After Ext.P1 judgment, the petitioners received a notice dated 28.11.2015 from the Tahsildar, Karunagappally, which has been produced as Ext.P3. Ext.P3 directs the petitioner to remit the arrears of rent of Rs.50,984/- after deducting the 25% which has been remitted. Ext.P3 also states that extension of the lease can be considered only after the payment of arrears of lease rent. The petitioners preferred Ext.P4 reply to Ext.P3 wherein it is contended that the Government is bound to refix rents which are payable in Panchayat areas based on the judgment Ext.P1. There is also a request for the assignment of land to the petitioners' association in view of their continuous possession for more than 65 years.

3. While so, the land was proposed to be acquired for the widening of NH 47. The petitioners submitted Ext.P5 representation before the Special Deputy Collector (LA), Kollam, claiming that they are in occupation of the land and the building situated therein and that O.S.No.302/2016 is pending before the Munsiff Court, Karunagapally, against the steps initiated under the Revenue Recovery Act, for recovery of arrears of rent. It is also stated in Ext.P5 that a sum of at least Rs.1,00,00,000/- would be required for the rehabilitation of the members of the petitioners' association if the building is acquired. The Special Tahsildar (LA), vide proceedings dated 12.07.2018, stated that compensation will be paid for the acquisition of the building and the land and the improvements and that the question relating to rehabilitation has to be decided by the Government. Ext.P9 produced along with the writ petition is the certificate issued by the Chavara Grama Panchayat stating that the petitioners are the owners of the building bearing No.2 in Ward No.3 as per the Assessment Register maintained by the Chavara Grama Panchayat. The petitioners were issued with another notice on 07.08.2020 stating that they can avail of the benefit of the scheme for One Time Settlement of the rent arrears, which has been announced by the Hon'ble Minister of Finance for the year 2019-2020. It is stated that a sum of Rs.4,54,817/- is due from the petitioners as per the scheme. On receipt of the notice, the petitioners submitted a representation on 09.10.2020 before the District Collector, which has been produced as Ext.P13. The petitioners are

thereafter issued with a notice dated 06.11.2020 under Section 12 of the Kerala Land Conservancy Act VIII of 1958, a copy of which has been produced as Ext.P14. It is stated in Ext.P14 that the poramboke land described in the notice is under the unauthorised occupation of the petitioners, and the petitioners have been directed to show cause why action should not be initiated. The petitioners submitted Ext.P15 reply dated 17.11.2020. Ext.P16 dated 15.11.1971, is the communication received by the petitioners rejecting an earlier request for assignment. The writ petition has been filed contending that no action for recovery of amounts can be initiated against the petitioners unless and until the Government fixes the rent that is payable in Panchayat areas by the issuance of necessary Government Orders. The petitioners seek to quash Exts.P11 and P14 and pray for a direction to the 2nd respondent to consider Ext.P13 representation. The fixation of the enhanced rent was challenged by the petitioners before this Court, and this Court was not inclined to allow the claim put forward by the petitioners. This Court also found that the petitioners had not chosen to challenge the Government Orders dated 04.05.1994 and 19.12.1985, which, according to the respondents, were the basis for the fixation of lease rent. The Court had only observed that it is for the petitioners to pursue the matter regarding the fixation of lease rent in the Panchayat area before the Government. However, the subsequent letters sent by the petitioners are on the premise that this Court had directed the issuance of Government Orders fixing lease rent in Panchayat areas. A reading of the Ext.P1 judgment would show that there has been no such direction issued by this Court. Since the petitioners had already approached this Court with regard to the rent payable and this Court has dismissed the writ petition, the prayers relating to fixation of lease rent cannot be entertained in this writ petition. The petitioners submitted that they had approached the civil court for relief regarding the demands made under the Revenue Recovery Act. That aspect also need not be gone into in this writ petition. The only other prayer is for consideration of Ext.P13 representation by the District Collector. The properties are already identified for acquisition. As such, the only issue is regarding the compensation payable to the petitioners and adjustment, if any, towards the lease rent payable to the Government.

W.P(C).No.24857 of 2022

4. W.P.(C)No.24857 of 2022 has also been filed by the petitioners in W.P. (C). No.26469 of 2020. The prayer in this writ petition is for quashing Exts.P26 and P27 and for a declaration that since the lease over the land subsists, the petitioners and other members are entitled to get compensation for the entire property and the building and structures put up by them and also for rehabilitation in the remaining property by putting up any structure for their own use. There is also a prayer for a direction to the Special Deputy Collector (CALA) to pay compensation in respect of the building to be acquired, which is being occupied by the petitioners. The facts relating to the occupation of the building by the petitioners and the demand for rent have already been set out in detail in the previous paragraphs. Regarding the payment of rent, this Court had stayed

the demand on condition that the petitioners remit a sum of Rs.2,25,000/- within three weeks. The said order was issued on 13.08.2021 in I.A.No.1/21 in W.P. (C).No.26469/2020. The petitioners remitted the amount directed to be paid, and the stay of recovery was extended until further orders. The petitioners produced Ext.P4, whereby the land was granted to the Association in 1955. Ext.P24 would show that the lease was for 12 years. It is also stated that the rent will be charged at the scheduled rates under the Kuthakapattom Rules dated 06.05.1947. The ownership of the land remains with the Government, and the petitioners cannot have any claim of ownership over the land. The lease deed of 1955 shows that the shed to be put upon the land by the lessee will be according to the specification prescribed by the Public Works Department and that the land and shed should not be used for any purpose other than that of the Association. Clause 11 says that if there is a violation of the terms of the lease, the Association cannot claim compensation for the shed or for any improvements made on the land, which shall thereupon become the property of the Government unless the Government directs otherwise. Clause 12 says that if the land is required for Government purposes at any time, it shall be competent to the Government to terminate the lease after giving three months' notice to the lessee and that in case of such termination, the lessee may remove the shed and all its materials from the land within such period as may be prescribed by Government. It is thus clear that the land belongs to the Government, but as far as the improvement is concerned, the lessee has been given the option to remove it if the land is resumed by the Government. It is also stated that the right over the building will be lost if the petitioners violate any of the conditions. Apart from non-payment of lease rent, no other violations of the conditions of the lease are really pointed out. Even though the document says only about the shed being put up, it also says sheds are to be as per the specifications of the Public Works Department.

5. A counter affidavit has been filed by the 6th respondent. Ext.P4 is the reply to the counter affidavit, and it is contended that the petitioners have violated condition No.1 and constructed a building on the property without obtaining sanction from the Government. However, it is not denied that the building was put up after obtaining the lease in 1955 under the aegis of the late Kumbalathu Shankupillai. There is no case for the Government in the counter affidavit filed in W.P(C).No.19537 of 2005 that the building has been put up in violation of the conditions of the lease. The construction of the building and the occupation by the petitioners for the last more than 65 years is not disputed by the respondents. I am hence of the opinion that there is no violation of condition No.1 on the part of the petitioners, particularly since, for the past 65 years, no steps have been taken for evicting the petitioners on the ground that there is an unauthorised construction. Another contention is that the petitioners are not entitled to demand compensation for the land. The reason stated is that the land belongs to the Government, it is acquired for the Government purpose and there is no violation of the lease agreement. It is contended that if there is any doubt

or dispute regarding the interpretation of any clause in the agreement, the decision of the Government will be final, going by Clause 13 of Ext.P24. It is also stated that the acquisition authority has no objection if the petitioners are removing the building in tune with condition No.12 of Ext.P24. It is further stated that the building has been valued for an amount of Rs.6,28,213/- and that the District Collector on 11.03.2020 directed the Special Tahsildar not to disburse the compensation amount relating to the structure situated in the leased land. Another contention taken is that under the Land Assignment Rules, 1964 when the lease is terminated and the land is resumed, no compensation shall be paid to the lessee for any construction effected in the property.

6. Heard the counsel for the petitioners, the Government Pleader on behalf of the official respondents and the counsel for NHA.

7. The reliefs prayed for in the above writ petitions are inter-related, and hence, the writ petitions are being disposed of by this common judgment. Admittedly, the land belongs to the Government. As such, the petitioners are not entitled to any claim for compensation towards the land as owners. The prayer for assignment of the land also cannot be considered since the lands are being acquired for public purpose, and the direction to assign the properties which have been leased as per Ext.P24 produced in W.P.(C).No.24857/2022 cannot be legally granted. The questions that need to be answered in both these writ petitions are:

(i) Whether the petitioners are liable to pay the lease rent?

(ii) Whether the petitioners are entitled to compensation for the structure and for rehabilitation on the acquisition of the building where the petitioners are carrying out their occupation as Document Writers and Scribes?

8. It is stated that the building has already been valued and the compensation was fixed but not paid. Regarding the payment of rent, the petitioners have already paid one-half of the amount demanded as per orders issued by this Court, and what remains is the balance. The State has no case that the construction was put up by the State. There is also no case that the petitioners are not occupying the building. Going by the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, compensation is payable to occupants also, and there is also a provision for rehabilitation. The amount of compensation is to be fixed by the competent authorities under the Act, and going by the provisions of the Act, the rehabilitation package is also to be decided at the time of acquisition. The Government has admittedly not come up with any package for rehabilitation. Going by the proceedings issued by the Special Tahsildar (LA), rehabilitation is an issue that has to be addressed by the Government. The writ petitions are hence ordered as follows:

(i) The petitioners are not entitled to any compensation for the land over which the building wherein the Document Writers and Scribes are housed is situated.

(ii) It is declared that the petitioners are entitled to compensation for the structures put up by them in the property. The respondents are directed to release the amount of compensation payable to the petitioners after passing an award, and on receipt of the copy of the award, the petitioners may, if aggrieved, take appropriate measures as provided under the Statute for enhanced compensation. The amount of compensation payable to the petitioners shall be paid after deducting the balance amount payable under the revenue recovery notice.

(iii) It is made clear that if O.S.No.302/2016 is decided in favour of the petitioners, the respondents shall be liable to refund the excess amount, if any, collected as rent/arrears of rent.

(iv) Necessary orders shall be issued within two months from the date of receipt of a copy of this judgment.