

(2015) 07 KL CK 0185

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 12349 of 2013 (P) and 12418 of 2013

K.V. Ayisha and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 27-07-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 14
Kerala Panchayat Raj Act, 1994 — Section 191, 249

Citation : (2015) 4 KHC 296

Hon'ble Judges : Dama Seshadri Naidu, J

Bench : Single Bench

Advocate : Sumathy Dandapani, Senior Advocate and Praveen K. Joy, for the Appellant; G. Gopakumar, Government Pleader, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Dama Seshadri Naidu, J.

Facts:

1. Since, the petitioners in both the writ petitions are similarly placed, having a common grievance against the same respondent, the Grama Panchayat, this Court has proposed to dispose of both the writ petitions through a common judgment. However, the facts in W.P.(C) No. 12349/2013 are taken up for narrative purpose and also ease of reference.

2. The petitioners, sixteen in number, in both the writ petitions are the tenants of the fifth respondent Grama Panchayat, running their businesses for decades in the shops taken on lease. In course of time, the fifth respondent issued notices, one of them being Exhibit P8, to all the tenants of 31 tenements, including the petitioners, asking them to vacate the shop rooms, since the Grama Panchayat has already decided to demolish the existing shopping complex, so that it could build a new one under a central scheme called "Pura Rural Hub" in collaboration

with INKEL.

3. Having submitted their Exhibit P9 reply notice, the petitioners filed W.P.(C) No. 9199/2012, which this Court disposed of directing the petitioners to file an appeal before the statutory Tribunal. Apart from submitting Exhibit P12 petition under Section 191 of the Kerala Panchayat Raj Act, the petitioners also filed Exhibit P15 appeal before the second respondent, the District Collector.

4. It seems that the petitioners have also filed Appeal No. 402/2012 before the Tribunal for Local Self Government Institutions, which dismissed the appeal, despite its finding that the quit notice issued by the fifth respondent is not in strict compliance with Sections 4 and 5 of the Kerala Public Building (Eviction of Unauthorised Occupation) Act, 1968 ("the Act" for brevity). Aggrieved, the petitioners filed W.P. (C) No. 23948/2012, pending which the fifth respondent passed Exhibit P18 order. The petitioners, in turn, filed appeals before the District Collector, one of them being Exhibit P19. Eventually, this Court disposed of W.P. (C) No. 23948/2012 through Exhibit P20 judgment directing the second respondent to dispose of the statutory appeals. Through Exhibit P21, the second respondent dismissed all the statutory appeals.

5. Ventilating their grievance that the fifth respondent has selectively decided to evict the petitioners, while letting some other tenants to continue, the petitioners have filed the present writ petition, inter alia, laying challenge against Exhibit P21 judgment of the second respondent.

Submissions:

Petitioners":

6. In the above factual backdrop, Smt. P. Sumathi Dandapani, the learned Senior Counsel for the petitioners, has submitted that the petitioners had initially invested huge amounts and sustained losses in the business; only recently, when they started making profits, the respondent Grama Panchayat issued eviction notices without any basis. According to her, the petitioners have already paid the annual rent for the year 2012-13. She has also submitted that the petitioners have been subjected to eviction with a mala fide intention, since some of the employees and Board members of the Grama Panchayat have had personal rivalries with the petitioners.

7. The learned Senior Counsel has further submitted that the present building need not be dismantled, as it is not suitable for "Pura" project. According to her, the very scheme has lapsed and no funds have been made available by the Government. It is the specific contention of the learned Senior Counsel that there have been many procedural violations in the process adopted by the respondent Grama Panchayat for evicting the petitioners. The learned Senior Counsel has also ventilated the grievance of the petitioners that their Exhibit P9 notice under Section 249 of the Act has not been responded to by the officials.

8. The learned Senior Counsel has submitted that when the petitioners and

others filed fifteen appeals, Exhibit P19 being one of them, before the second respondent, the said appellate authority dismissed all the appeals through Exhibit P21. According to her, the said order of dismissal is a non-speaking one. When the petitioners, pursuant to the order of the second respondent, were subjected to be evicted after service of Exhibit P22 notice, the Grama Panchayat has still acted selectively by exempting the Kerala State Electricity Board from eviction.

9. Drawing the Court's attention to the sequence of events, the learned Senior Counsel would contend that the second respondent, while rendering Exhibit P21 order, took into account appeals filed earlier on 21.11.2012, rather than those filed on 31.01.2013. In sum and substance, it is the contention of the learned Senior Counsel that, since a wrong appeal was taken into account, Exhibit P21 cannot be treated as a valid order of dismissal.

10. That the respondent Grama Panchayat has failed to strictly comply with Sections 4 and 5, as well as Section 8, of the Act is also one of the principal contentions of the learned Senior Counsel. Referring to Exhibit P9, the learned Senior Counsel would contend that the inaction on the part of the authorities in responding to the said notice is violative of Article 14 of the Constitution of India. It is also her contention that acting on Exhibit P9 notice issued by the petitioners, the Government ought to have acted under Section 191 of the Kerala Panchayat Raj Act. Summing up her submissions, the learned Senior Counsel has submitted that the entire project, which is aimed at evicting the petitioners, is illegal and ultra vires and is liable to be declared invalid.

Respondents":

11. Per contra, the learned counsel for the respondent Grama Panchayat, strenuously opposing the claims and contentions of the petitioners, has submitted that the petitioners, like all other tenants, had their lease deeds renewed annually. Drawing my attention to Exhibits R5(a) to R5(f), the lease deeds entered into on 01.04.2011 with a validity up to 31.02.2012, the learned counsel for the Grama Panchayat has submitted that there is a clear undertaking by the petitioners to vacate the demised tenements within thirty days from the date of notice to quit. According to him, this clause was inserted, with lessees' consent, only with a view to ensuring that there would not be any obstruction to have the developmental scheme implemented with the help of Asian Development Bank. At any rate, even the renewed lease, contended the learned counsel in the alternative, came to an end by 31.03.2012.

12. The learned counsel for the respondent Grama Panchayat has also contended that this is the third round of litigation, and that the petitioners' earlier efforts twice before this Court have ended in failure. It is further contended that the second respondent rendered Exhibit P21 order after considering only the appeals filed by the petitioners on 31.01.2013.

13. In elaboration of his submissions, the learned counsel for the respondent Grama Panchayat would further contend that, though there was an inadvertent

reference by the appellate authority in Exhibit P21 order to Exhibit P15 appeal, the said authority has actually considered the impugned Exhibit P18 order passed by the Estate Officer. According to him, Exhibit P15, which was an appeal against the notice dated 06.03.2012, issued by the Secretary of the Grama Panchayat, has nothing to do with the subsequent issue covered by Exhibit P18 order of the Estate Officer. The learned counsel has submitted that, pursuant to Exhibit P21 order, though the respondent Grama Panchayat, invoking Section 5 of the Act, evicted the petitioners, later it reinstated them in the light of the interim direction given by this Court.

14. Heard the learned counsel for the petitioners and the learned counsel for the respondent Grama Panchayat, apart from perusing the record.

Issues:

"1. Whether Exhibit P21 order suffers from any incurable legal infirmities warranting its judicial review by this Court?

2. Whether the petitioners are liable to be evicted?

3. Does the Panchayat Raj Act compel the Government to act under Section 191, in response to notice issued by the petitioners under Section 249 of the said Act?

4. Whether Exhibit P18 order is issued by the fourth respondent or the fifth respondent-whether by the Estate Officer or the Secretary of the Grama Panchayat?"

Discussion:

In re, Issue Nos. 1 and 2:

15. As is borne out by the record, the respondent Grama Panchayath (not made a party, though; for adjudicatory purpose referred to as the respondent, since the fifth respondent Secretary represents it) has a Shopping Complex in an extent of 28.5 cents in Tirurangadi Village; the shopping complex comprises two buildings, one two-storied, and the other, three-storied. The former one has or had 12 tenants and the latter, 19 tenants, both having been built in or around 1970 and 1987 respectively. Of all the tenants, one tenant alone pays more than 60 per cent of the rent, while the other 30 tenants contribute about 40 per cent. That tenant who paid the bulk of rent has already handed over vacant possession to the Grama Panchayat on its directive, so that it could proceed with its new construction.

16. As regards the proposed new construction in the place of the existing one, the Ministry of Rural Development, Government of India, has launched a Scheme called "Provision of Urban Amenities in Rural Areas", ("PURA" for brevity) as a Central Sector Scheme during the 11th Plan period, with the aid and support of the Department of Economic Affairs and the Asian Development Bank. It is a scheme being implemented under the Public-Private Partnership (PPP) between the Grama Panchayat and Private Sector Participants. On a comprehensive study

of feasibility, the respondent Grama Panchayath has been selected for the implementation of the project, as one of the only two Panchayats in the State of Kerala, the other being Thalikkulam Gram Pranchayath in Thirssur District. As is evident from Exhibit R5(h), a sum of Rs. 23.69 crores has already been received by the Project Director of the Poverty Alleviation Unit under the District Panchayat, Mallapuram for the implementation of the project in the respondent Grama Panchayat.

17. Indeed, the petitioners, along with others, have been the tenants under the fifth respondent for many years, with the renewal of lease annually. On it getting selected to be one of the two Panchayats for project implementation, the Grama Panchayat in its latest lease deeds-Exhibits R5(a) to R5(f) being a few of them-executed on 01.04.2011, included clause No. 4(4), as per which the lessees, including the petitioners, agreed to surrender vacant possession of the leased property within thirty days from the date of demand by the Grama Panchayat. To have the project of constructing a new shopping complex executed, firstly the Grama Panchayat is required to have the existing structures demolished, which is possible only after having the tenants vacated.

18. Not disputed is the fact that the respondent Grama Panchayat has not renewed the lease after 31.3.2012. The rental arrangement between the fifth respondent and the petitioners were not renewed in view of the proposal for surrender of the shopping complex to the implementing agency. In furtherance of the project execution, on receipt of intimation from the INKEL Limited, the other participant in the project, the respondent Grama Panchayat having passed a resolution on 05.03.2012, issued Exhibit R5(j) notice to the petitioners on 06.03.2012 calling upon them to surrender the shop rooms within thirty days. They were also called upon to receive back the deposit made towards license fees for the year 2012-13.

19. Assailing Exhibit R5(j) notice, the petitioners on 06.10.2012 filed Exhibit P15 appeal before the second respondent. After filing Exhibit P15 appeal, petitioner also filed W.P.(C) No. 9199/2012 challenging the eviction proceedings initiated by the fifth respondent. The petitioners, however, ultimately withdrew the writ petition, ostensibly in view of the pendency of the appeal before the Tribunal for Local Self Government Institutions ("the Tribunal" for brevity), where the petitioners initially obtained a stay against the eviction proceedings. When W.P. (C) No. 9199/2012 was pending before this Court, the fifth respondent, nevertheless, issued Exhibit R5(k) notice under Section 4 of Act 25 of 1968 directing the petitioners to show cause why an order of eviction shall not be passed against the petitioners invoking the powers under Section 5 of the Act. Having not been satisfied with the reply issued by the petitioners, the Secretary of the respondent Grama Panchayat, acting as the Estate Officer, passed Exhibit P18 final order of eviction on 04.01.2013, invoking the powers under Section 5(1) of the Act. Exhibit P18 order of eviction has been served on the petitioners on 05.01.2013, as is evident from Exhibits R5(1) to R5(q); the date of serving of

Exhibit P18 has, however, been disputed by the petitioners, who contend that it was received by them on 19.01.2013.

20. It is not in controversy that the petitioners filed statutory appeals against Exhibit P18 order before the second respondent on 03.01.2013. Since the statutory appeal, as per Section 10 of the Act, is required to be filed within fifteen days, the fifth respondent contends that Exhibit P19 appeals have been barred by limitation.

21. It is the further contention of the respondent Grama Panchayat that the second respondent does not have the power to condone the delay. Pending Exhibit P19 appeal, this Court disposed of W.P.(C) No. 23948/2012 through Exhibit P20 judgment directing the second respondent to dispose of the statutory appeals, filed as Exhibits P39 to P43 therein, within a period of thirty days. Accordingly, the second respondent did dispose of the appeals through Exhibit P21 order, by dismissing all the appeals. Based on the reference by the second respondent to Exhibit P15 appeal filed on 06.10.2012, the petitioners contend that Exhibit P21 order is not in consideration of Exhibit P18 appeal, but in consideration of Exhibit P15 appeal, which has already lost its relevance.

22. The record does reveal that Exhibit P15 appeal was filed against Exhibit P8 notice dated 06.03.2012 issued by the Secretary of the fifth respondent Grama Panchayat.

23. While passing Exhibit P21 order, the second respondent has considered the question whether the final order passed on 04.01.2013, evidenced by Exhibit P18, is issued by the Estate Officer after following the procedure and after affording sufficient opportunity to the petitioners. Having been satisfied that Exhibit P18 order issued by the Estate Officer is after following the procedure formalities, the second respondent found that there is no scope for interference with the order. Accordingly, Exhibit P21 order was passed.

24. Though, on receipt of Exhibit P21 order, the fifth respondent had taken possession of the respective shop rooms from the petitioners by resorting to the provisions under Section 5(2) of the Act, later, based on the interim direction given by this Court on 14.05.2013, it put the petitioners back in possession.

25. In this context, we may examine the statutory scheme and the juridical status of the petitioners to hold on to the property. The Kerala Public Buildings (Eviction of Unauthorised Occupants) Act, 1968, as amended by Act 16 of 2000, is an act for the eviction of unauthorised occupants in public buildings and the matters connected therewith. As per the lexical clause of the Act, the fifth respondent is a local authority, the demised building is a public building, and the Secretary of the fifth respondent is an Estate Officer. Section 2(f) of the Act defines "unauthorised occupation" in relation to any public building as the occupation by any person of the building without authority for such occupation and includes the continuance in occupation by any person of the public building after the lease under which he was allowed to occupy the building has expired or

has been determined for any reason whatsoever. As the eviction is supposed to be initiated by issuing a notice under Section 4 of the Act, it is material to examine the said provision, which reads as follows:

"4. Issue of notice to show cause against order of eviction:--(1) If the estate Officer is of opinion that any persons are in unauthorised occupation of any public building and that they should be evicted the estate officer shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made.

(2) The notice shall-

(a) specify the grounds on which the order of eviction is proposed to be made; and

(b) require all persons concerned, that is to say, all persons who are or may be, in occupation of, or claim interests in, the public building, to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than ten days from the date of issue thereof.

(3) The estate officer shall cause the notice to be served by having it affixed on the outer door or some other conspicuous part of the public building, and in such other manner as may be prescribed, whereupon the notice shall be deemed to have been duly given to all persons concerned.

(4) Where the estate officer knows or has reason to believe that any persons are in occupation of the public building, then, without prejudice to the provisions of Sub-section (3), he shall cause a copy of the notice to be served on every such person by post or by delivering or tendering it to that person or in such other manner as may be prescribed."

26. It is incontrovertible that the Secretary of the fifth respondent Grama Panchayt, acting as the Estate Officer, issued Exhibit R5(k) show-cause notice under Section 4 of the Act, and later, having not been satisfied with the reply issued by the petitioners, he passed Exhibit P18 final order of eviction on 04.01.2013, invoking the powers under Section 5(1) of the Act. It is, thus, essential to examine Section 5 of the Act, which reads as follows:

"5. Eviction of unauthorised occupants.- (1) If, after considering the cause, if any, shown by any person in pursuance of a notice under section 4 and any evidence produced by such person in support of the same and after giving him a reasonable opportunity of being heard, the estate officer is satisfied that the building is in unauthorised occupation, the estate officer may, on a date to be fixed for the purpose, make an order of eviction, for reasons to be recorded therein, directing that the public building shall be vacated by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be published by affixing it on the outer door or some other conspicuous part of the public building.

(2) If any person refuses or fails to comply with the order of eviction within thirty days of the date of its publication under Sub-section (1), the estate officer or any other officer duly authorised by him in this behalf may evict that person from, and take possession of, the public building and may, for that purpose, use such force as may be necessary."

(emphasis added)

27. If we examine Exhibit P18 order passed by the Estate Officer, I do not find any substantive objection emanating from the petitioners that there have been any procedural irregularities in the Estate Officer's passing the said order, though there is an objection after a fashion. All the objections, substantially, concern themselves with the wisdom of policy adopted by the fifth respondent Grama Panchayat in demolishing an existing building and going for a new structure, much to the prejudice of the tenants, especially the petitioners.

28. Focussing on the remedial measures for adjudicatory redressal in the Act, we can examine Section 10 of the Act.

"10. Appeal.- (1) An appeal shall lie from any order of the estate officer made in respect of any public building under section 5 or section 8 to the Collector of the District in which the public building is situate.

(2) An appeal under sub-section (1) shall be preferred,-- (a) in the case of an appeal from an order under section 5, within fifteen days from the date of publication of the order under sub-section (1) of that section; and (b) in the case of an appeal from any order under section 8, within fifteen days from the date on which the order is communicated to the appellant;

(3) Where an appeal is preferred from an order of the estate officer, the District collector may stay the enforcement of that order for such period and on such conditions as he deems fit.

(4) Every appeal under this section shall be disposed of by the District Collector as expeditiously as possible.

(5) The costs of any appeal under this section shall be in the discretion of the District Collector.

(6) The appellate authority shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908(5 of 1908) when trying a suit, in respect of the following matters, namely:---

(a) summoning and enforcing the attendance of any person and examining him on oath; (b) requiring the discovery and production of document; (c) any other matter which may be prescribed."

(emphasis added)

29. The scheme of the statute for eviction is that pursuant to the notice issued under Section 4 of the Act, if any evidence is produced by a tenant-more

accurately the ex-tenant, who can at best be called a tenant at sufferance after notice under Section 4 of the Act-in support of his or her continued occupation of the building, the Estate Officer, after giving the said person a reasonable opportunity of being heard, may make an order of eviction, for the reasons to be recorded therein.

30. As we have been discussing the juridical significance of the relationship between the lessor and lessee after the expiration or termination, as the case may be, of the lease, it is instructive to quote the disposition of the Hon"ble Supreme Court in this regard. In R.V. Bhupal Prasad Vs. State of Andhra Pradesh and others, AIR 1996 SC 140 : AIR 1995 SC 140 : (1995) 2 CTC 342 : (1995) 6 JT 258 : (1995) 5 SCALE 41 : (1995) 5 SCC 698 : (1995) 2 SCR 658 Supp , the Apex Court has held thus:

"8. Tenant at sufferance is one who comes into possession of land by lawful title, but who holds it by wrong after the termination of the term or expiry of the lease by efflux of time. The tenant at sufferance is, therefore, one who wrongfully continues in possession after the extinction of a lawful title. There is little difference between him and a trespasser."

31. Having observed that a tenancy at sufferance does not create the relationship of landlord and tenant, the Supreme Court, referring to the celebrated commentary of Mulla on "The Transfer of Property Act", has further observed that the possession of a tenant who has ceased to be a tenant is protected by law. Although he may not have a right to continue in possession after the termination of the tenancy, his possession is juridical.

32. It is further profitable to appreciate the dictum in R.V. Bhupal Prasad (supra) concerning the continuation of the tenant at sufferance in possession of the demised property. It is held by the Apex Court thus:

"13. In view of the settled position of law, the possession of the appellant is as tenant at sufferance and is liable to ejectment in due course of law. But his possession is not legal nor lawful. In other words, his possession of the theatre is unlawful or litigious possession. The appellant may remain in possession until he is ejected in due course in execution of the decree in the suit filed by the respondent. His possession cannot be considered to be settled possession. He is akin to a trespasser, though initially he had lawful entry."

33. All that the lessor required to do vis-?-vis a tenant at sufferance is that the said person should be evicted through due process of law. The intention of the lessor to evict the erstwhile tenant or the justification for eviction is hardly a matter to be adjudicated upon in that context. So long as the lessor does not take law into his own hands, and as long as he adheres to the due process of law.

34. In the light of the above authoritative declaration of law, our concern is to see whether the fifth respondent has been guilty of any procedural violations.

35. The requirement under Section 5(1) of the Act is that the order of eviction

shall be published by affixing it on the outer door or some other conspicuous part of the public building. The significance of the mode of serving the copy of the order is too significant to be lost sight of. It is, more often than not, the basic requirement of law that a judicial order, to be effective, is required to be served on the person affected, rather than on the subject property. Thus, it could have been, under normal circumstances, justified to hold that there ought to be a service of notice on the person. For the reasons not far to seek, the Legislature has, however, mandated the publication of the order of eviction by way of affixture to or on the property.

36. Firstly, the erstwhile lessee has got his status derogated to that of a trespasser, tenuously holding on to the property under a common law devise of fairness of procedure, though fairness need not be a necessary attribute of common law, for it properly belongs to the realm of equity. Secondly, when the property squatted on is a public building, the procedural rigmarole stands, justifiably, diluted. The upshot of the above discussion is that the petitioners cannot insist that they have not been served in person or that the personal service is delayed.

37. So long as Exhibit P18 order stands "published" in a conspicuous place in relation to the leasehold property, the petitioners cannot insist on personal service. In the present instance, it is abundantly clear from Exhibits R5(1) to R5(q) that Exhibit P18 was served on the petitioners on 05.01.2013, but not on 19.01.2013, as had been contended by the petitioners.

38. If we examine Section 10 of the Act, the appeal provision, an appeal is required to be filed within fifteen days from the date of publication of the order under Sub-section (1) of Section 5 of the Act. Exhibit P19 appeal was admittedly filed on 31st January, 2013; that is, beyond fifteen days from the date of publication of Exhibit P18 order of eviction.

39. As can be seen, in Exhibit P19 appeal, there is no ground touching on the delayed service of Exhibit P18 order or notice on the petitioners, even if we still concede that there were such a legal requirement as to have a personal service of notice on the petitioners. Nor are there any grounds either justifying or explaining the delay in filing the statutory appeal beyond fifteen days" time.

40. The petitioners in Exhibit P19 appeal have, inter alia, contended that there was no proper notice to them under Section 4 of the Act, and that there ought not to have been any order of eviction passed under Section 5(1) of the Act, once the statutory appeal has been pending before the second respondent against Exhibit R5(k) show-cause notice under Section 4 of the Act.

41. Both the objections could cumulatively be answered thus that this Court through Exhibit P20 judgment has expressly directed the second respondent to decide Exhibit P18 appeal on merits. Further, the petitioners" appeal against Exhibit R5(k), a notice under Section 4 of the Act, has lost its significance in the light of the subsequent developments, especially in the absence of any stay

against the Estate Officer's proceeding further.

42. Indeed, the learned Senior Counsel for the petitioners has descanted on the issue of the justifiability of the project; I am, nevertheless, of the opinion that no discussion is required on the said issue. It is not in dispute that the fifth respondent is the owner of the property; it has desired, in the public interest, to have the property put to better use; to wit, to build a new shopping complex with more amenities under a Centrally sponsored scheme in the manner of a PPP under the aegis of Inter-Ministerial Empowered Committee, Union of India. The fifth respondent has refuted the petitioners' allegation that the scheme has lapsed. He has placed on record sufficient proof to the effect that the project has been very much alive and funds have already been partly released. There is no rebuttal in this regard on the petitioners' part.

43. Further, given the fact that the fifth respondent is the only second Panchayat in the entire State selected under the scheme, and further given the fact that the scheme is, evidently, an outcome of an administrative decision taken by the experts in the field concerning a developmental activity, it requires judicial deference. More particularly, when all other tenants have surrendered the vacant possession to the fifth respondent, acting on its assurance that once the new shopping complex is put in place, their interests would be taken care of, more particularly given the stipulation in the lease deed regarding the surrender of vacant possession, it is unfortunate that the petitioners have reneged on their solemn contractual commitment and squatted on the property for more than three years, holding up the developmental project, without any justification.

44. Even otherwise, it is too well established to cavil about that where challenge is laid to a Government policy, particularly economic policy, Courts do not interfere in such policy matter in their power of judicial review unless the impugned policy is found to be grossly arbitrary or unfair or unreasonable or irrational or violative of constitutional provisions or contrary to statutory provision. (vide Mr. Ehsan Khalid Vs. Union of India (UOI) thr. Secretary and Others, (2013) 10 SCALE 452 : (2013) 122 SCL 100).

A word about W.P.(C) No. 23948/2012:

45. The petitioners filed these writ petitions, aggrieved by the order passed by the Tribunal refusing to interfere with the resolution passed by the Grama Panchayat. Though various pleas have been raised by the petitioners, eventually this Court has taken judicial note of the subsequent developments, including the steps initiated by the Estate Officer. This Court, in fact, has eventually permitted the petitioners to take up all contentions before the second respondent regarding the proposed eviction. As such, the petitioners' efforts to roll back the whole situation cannot be countenanced.

46. Exhibit P21, though a quasi-judicial order, may not have been admirably drafted; it may not have been an epitome of judicial reasoning; nevertheless, it is in order that was passed under Section 5(1) of the Act, the second respondent

having been fully conscious of the subject matter being adjudicated upon by him. A stray reference to some of the proceedings which have long been buried judicially, so to speak, cannot delegate Exhibit P21 from its finding value.

47. In the alternative, even if I were to conclude that Exhibit P21 suffers from any inherent limitations, remand is not the only answer, much less a panacea. Since the entire record is before this Court, it is always advisable, in the interest of justice, to re-examine the matter, if necessary, so that the ends of justice would be met, so long as the order under review does not suffer from any inherent lack of jurisdiction. On that count too, the petitioners, I am afraid, have not established any substantial grounds to interfere with the process of eviction initiated, and the actual eviction undertaken by the respondent Grama Panchayat.

48. Keeping aside all the technicalities, it is of singular importance to examine the lease conditions are incorporated in Exhibits R5 (a) to R5(f) series. Nothing can be more persuasive than extracting the actual covenant in the said deeds, amounting to an undertaking on the part of the tenants to vacate the demised premises on remand. Clause 4 of the lease deed reads as follows:

"As Tirurangadi Grama Panchayat is being selected under PURA scheme of garment of India, Reese every chance that the building including the rules of effort about shall be demolished for constructing a Rural Hub. In that circumstance nothing in the sediment shall prevent the lessor from giving notice to the lessee for vacating the rules within 30 days and the lessee shall be obliged to vacate the rooms within the said period without any claim for compensation."

49. Indeed, as can be seen from the above extracted clause of the lease deed, the very lease, in fact, is conditional. Thus, the lease being conditional and contingent, it is only a reasoned one. For all intents and purposes, it is only a license, under which the petitioners had only permissive possession. This Court, in the end analysis, having come to the said conclusion, the whole discussion with regard to the legitimacy of the fifth respondent's in subjecting the petitioners to eviction pales into insignificance.

50. It may be pertinent to observe that the petitioners' defiant continuance in possession, later albeit under a protective judicial order, has only amounted to a premium on dishonesty, for some of the other law-abiding tenants who handed over the position had a rethinking. In fact, those tenants filed W.P.(C) No. 1270/2015 seeking restoration of the position on a par with the petitioners.

In re, Issue No. 3:

51. One of the principal contentions of the petitioners is that the petitioners, having received Exhibit P8 notice to quit, issued Exhibit P9 notice to the Government under Section 249 of the Kerala panchayat Raj Act, and that the Government, in turn, in response to Exhibit P9 notice, ought to have invoked Section 191 of the said Act.

52. Section 249 of the Kerala Panchayat Raj Act is analogous to Section 80 of the

Code of Civil Procedure ("CPC"). The provision mandates that no suit or other civil proceedings against a Panchayat or against the President, the Vice-President or any other member, or employee thereof, etc., for anything done or purporting to be done under this Act in its or his official capacity, be instituted until the expiration of one month after notice in writing. The said notice shall state the cause of action, the name and place of abode of the intending plaintiff and the nature of the relief which he claims. Notwithstanding the provisions of the Limitation Act, 1963, Section 249 also provides a limitation of six months for instituting civil proceedings against the Grama Panchayat in all cases, other than those for the recovery of immovable property or for the declaration of title thereto.

53. The mechanism under Section 249 of the Kerala Panchayat Raj Act, which is, like Section 80 of CPC, mandatory in character, is put in place to give the Grama Panchayat sufficient notice of judicial proceedings intended to be initiated against it by any person. On service of notice, the Panchayat may decide for itself whether the claim of the person is to be met or not. Law, however, does not compel the Panchayat to respond to the said notice; much less accept the demand of the person who has issued the notice under Section 249.

54. It is further pertinent to notice that sub-section (3) of Section 249 specifies the consequences flowing from the notice. If any Panchayat or person to whom notice is given under sub-section (1) tenders to the plaintiff before the proceedings is commenced and if the plaintiff does not in such proceedings require more than the amounts so tendered, he shall not recover any costs incurred by him after such tender, and the plaintiff shall also pay all costs incurred by the Panchayat after such tender.

55. From the above statutory scheme it clearly manifests that, in the first place, the pre-litigation notice under Section 249 is required to be issued to the Grama Panchayat or its officials as have been specified therein. Secondly, they may choose to act on it, so that they could avoid the legal consequences flowing from the judicial proceedings to be initiated by the person, more particularly the costs of the proceedings. The provision by no means compels the Grama Panchayat to act on the demand contained in the notice. A fortiori, it does not mandate that the Grama Panchayat, on its part, postpone any of its actions intended to be taken against the person in question.

56. Section 191 of the Grama panchayat Act, on which much emphasis has been laid by the petitioners, reads as follows:

"191. Power of cancellation and suspension of resolutions etc.-- (1) Government may either suo moto or, on a reference by President, Secretary or a member, or on a petition received from a citizen, cancel or vary a resolution passed or a decision taken by the Panchayat if in their opinion such decision or resolution -

(a) is not legally passed or taken; or

(b) is in excess of the powers conferred by this Act or any other law or its abuse;

or

(c) is likely to endanger human life, health public safety, communal harmony or may lead to riot or quarrel; or

(d) is in violation of the directions or provisions of grant issued by Government in the matter of implementing the plans, schemes or programmes.

(2) Before cancelling or amending a resolution or decision as per sub-section (1), the Government may refer the matter for consideration either of the ombudsman constituted under section 271G or the tribunal constituted under section 271S and the ombudsman or the tribunal, as the case may be; after giving the Panchayat an opportunity of being heard, send a report to the Government with its conclusions and the Government may, on its basis cancel, amend or confirm the resolution or decision.

(3) If another remedy is available to the petitioner through the tribunal under section 276, the Government shall not consider any petition for cancelling or amending any resolution or decision of the Panchayat.

(4) If Government consider that a resolution or decision of the Panchayat has to be cancelled or amended as per sub-section (1) it may suspend such resolution or decision temporarily and may direct the Panchayat to defer its implementation till the final disposal after the completion of the procedure under sub-section (2)."

(emphasis added)

57. A perusal of the above provision makes it manifestly clear that the Government under the said provision exercise its supervisory power over the Grama Panchayats. The phraseology employed in the provision gives the necessary clues to the scope and ambit of the provision.

58. The Government, apart from acting suo moto or on a reference by the President, the Secretary or a member, can also act on a petition received from a citizen. The Legislature has not employed the expression an aggrieved person, the affected person, or even a member or voter of the Grama Panchayat. It has simply stated "a citizen". Further is the expression "on a reference by the President, the Secretary or a member". If the nature of complaint is adversarial, it makes little sense to expect the President, the Secretary or the Member to be aggrieved; they, in fact, are the persons in charge of the affairs of the Grama Panchayat. The Government is required to act, inter alia, on a reference by those office bearers.

59. Proceeding further, I may observe that the decision of the respondent Grama Panchayat to be examined by the Government may have the potential of endangering human life, health public safety, communal harmony or leading to riot or quarrel. Crucial is clause (d) of sub-section (1) of the Section which says that the decision of the Grama Panchayat may have been in violation of the

directions or provisions of grant issued by Government in the matter of implementing the plans, schemes or programmes.

60. In terms of sub-section (2), before cancelling or amending a resolution or decision as per sub-section (1), the Government may refer the matter for consideration of either the Ombudsman constituted under Section 271G or the Tribunal constituted under section 271S of the Act. On such reference, either of the said adjudicatory authorities can render advice on the issue referred, and eventually the Government may decide to act one way or another. It is further pertinent to observe that, as per sub-section (3) of Section 191, if another remedy is available to "the petitioner" through the Tribunal under Section 276, the Government shall not consider any petition for cancelling or amending any resolution or decision of the Panchayat.

61. A comprehensive reading of Section 191 of the Kerala Panchayat Raj Act leaves me in no doubt that the Government under the said provision exercises its supervisory or corrective powers only in terms of the policy decisions of the Panchayat, but not any individual disputes within the statutory frame work of the Act. Thus, the issue under Section 191 to be interfered with by the Government cannot be adversarial in nature affecting any individual rights of persons, which aspect, to my mind, has been taken care of in sub-section (3) of the said Section.

62. In conclusion, I hold that Section 249 of the Kerala Panchayat Raj Act has nothing to do with Section 191 of the said Act, and that the petitioners' claim that the Government ought to have acted under Section 191, based on their notice under Section 249 cannot be accepted and is accordingly rejected.

In re, Issue No. 4:

63. It is to be borne in mind that, based on the resolution passed by the Grama Panchayat, the fifth respondent issued Exhibit P8/R5(j) notice to the petitioners and others. Later, in course of time, when the judicial proceedings initiated by the petitioners against the said notice had been pending, the fifth respondent acting as the Estate Officer, the fourth respondent, issued Exhibit R5(k) notice under Section 4 of the Act. Having not been satisfied with the reply submitted by the petitioners, the fifth respondent passed Exhibit P18 order under Section 5(1) of the Act.

64. It can be seen that Exhibit P8 notice was issued by the fourth respondent, but Exhibit R5(k) notice was issued by the fifth respondent-though the same person, but acting in different capacities. Indeed, Exhibit P21 order of the second respondent is against Exhibit P18 order of the Estate Officer, the fourth respondent. Further, Exhibit R5(k) notice clearly shows that it was signed by the Estate Officer/Secretary. It is axiomatic to hold, in the alternative, that once an authority has the necessary power, mere mis-description in his title does not derogate the said authority from exercising the powers which he otherwise has. The fact, however, starkly remains that the petitioners have not made the very Grama Panchayat a party to the writ proceedings, though it is very much a

necessary party. Issue No. 2 is thus answered against the petitioners.

65. Having reneged from the binding undertaking, or at least covenant, to vacate in the eventuality of the project fructifying, having spurned the offer of rehabilitation unlike the other tenants who vacated, and having squatted on the property holding to ransom the developmental activities in the Grama Panchayat meant for the public benefit, it is only in the fitness of things to dismiss the writ petition and it is accordingly dismissed with costs quantified at Rs. 25,000/- per petitioner, to be payable to the Kerala State Legal Services Authority.