

(1997) 02 KL CK 0018
In the High Court Of Kerala
Case No : O.P. No. 13403 of 1993

K.V. Joseph and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 19-02-1997

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 32

Citation : (1999) ACJ 225 : (1997) 1 CivCC 517

Hon'ble Judges : K.A. Abdul Gafoor, J

Bench : Single Bench

Advocate : M.D. Gangadharan and R. Mayakrishnan, for the Appellant; N. Radhakrishnan, G.P., Siby Mathew, S.P. Aravindakshan Pillai and T.H. Abdul Azeez, for the Respondent

Final Decision : Allowed

Judgement

K.A. Abdul Gafoor, J.—The petitioners allege that respondent No. 8 in his capacity as the Chairman of Road Construction Committee and Member of the Panchayat Local Council approached them demanding free surrender of their properties where boundary wall and three shop rooms, two of them with RCC roof were newly constructed and requiring the petitioners to demolish 75 per cent of their dwelling house including boundary wall and gate for the purpose of road widening. They could not concede to the request because they would be put to heavy loss by reason of that. Exhs. PI, P2 and P3 notices show that there was an attempt to construct a road by utilising the free surrendered land and only four families were against that. Obviously, the four families referred to in Exhs. PI to P3 are of the petitioners. Exhs. PI to P3 are not denied by any of the respondents. It is alleged in the original petition that "on 20.9.1993 at about 5.30 p.m. a mob under the direction of respondent Nos. 8 to 10 trespassed into the properties of the petitioners and demolished their boundary wall and the gates of the petitioners." These people were armed with shovels, pick axes, iron rods, etc. At that time, petitioner No. 4, an old lady, was in the hospital in

connection with Caesarean operation of one among her daughters. The petitioner No. 1 made Exh. P4 complaint to the respondent No. 3, the Superintendent of Police about the incident. It is stated that the respondent No. 3 had assured him that there need not be any apprehension of any further intrusion by the mob and adequate measures would be taken to ensure that there would be no further unlawful intrusion threatening security of life and property by wanton vandalism. A day after the petitioner No. 4 got her daughter discharged from the hospital and returned home with ten days old new born baby, finding that her compound wall had been demolished and dismantled, she also filed a petition before the respondent No. 4, Sub-Inspector of Police as per Exh. P5. The respondent No. 3 was also apprised of the situation by Exh. P6. The petitioner No. 4 had also approached the respondent No. 4 seeking direction for police protection, describing the happening already taken place. It is alleged in para 8 of the original petition that on 23.9.1993 at about 6 a.m. again a frenzied mob under the direction of respondent Nos. 8 to 10 came to the site and started demolishing the entire building belonging to the petitioner No. 4 unmindful of the pathetic entreaties of the inmates who are all women including one among them who had undergone Caesarean operation ten days ago. The mob demolished 80 per cent of the house rendering it unsuitable for the residential purposes. Though information had been given to respondent Nos. 3 and 4 by the petitioner No. 4 as revealed in Exhs. P4, P5 and P6, no steps were taken by the police in spite of the assurance. Had any steps been taken, the demolition of the residential house would not have taken place, the petitioners submit. Subsequent to the incident, F.I.R. had been registered but nothing proceeded beyond that. The petitioners submit that law enforcement machinery had failed to provide protection to the properties and persons of the petitioners. Consequent on the demolition of the buildings the Electricity Board officers disconnected the electrical connection to the shop rooms and the residential buildings. They apprehended that road would be constructed through their properties and over the portion of land where demolished buildings were situated. In the above circumstances, they filed a suit but they did not get any interim injunction. They have approached this Court alleging that their fundamental rights are being violated and seeking direction to respondent Nos. 3 and 4 to provide adequate police protection to the petitioners, persons, liberty and life from respondent Nos. 8 to 10 and also for a direction to respondent Nos. 1 to 10 "to pay adequate damages and compensatory damages, etc. to the petitioners." They also seek for a writ of prohibition restraining respondent Nos. 5 to 7 and the PWD authorities and panchayat authorities from embarking on further construction of the road or bridge through the properties belonging to the petitioners.

2. Respondent No. 1, the State of Kerala, No. 2, the District Collector, No. 3, the Superintendent of Police and No. 4, the Sub-Inspector of Police have not filed any counter affidavit. When the first incident took place on 20.9.93, the petitioner No. 1 made Exh. P4 complaint on 21.9.1993 before the respondent No. 3, the Superintendent of Police. It is alleged that he had assured the petitioner

No. 1 that there need not be any apprehension of further intrusion by the mob and that adequate measures would be taken. When the petitioner No. 4 returned from the hospital on 21.9.1993, she noticed the damages to her properties and she filed on the next day, i.e., 22.9.1993 a petition, Exh. P5, before the respondent No. 4. It is also stated by her that she had filed Exh. P6 on 22.9.1993 itself before the respondent No. 3, Superintendent of Police. It is also averred in the original petition that she had narrated the happenings that took place in the petition and that he passed an order directing the Sub-Inspector of Police, Kodungallur, the respondent No. 4 that all necessary steps should be taken to protect the interests of the petitioners. But, the incident which took place on the next day, i.e., on 23.9.1993 shows that no action had been taken. As there is no counter affidavit to controvert these allegations by the respondent Nos. 3 and 4, it has to be taken that Exhs. P4 to P6 had been submitted to them and they had been apprised of the situation and that they had assured the petitioners that no vandalism would be committed in their properties again. A commission was issued from this Court. The Commissioner has filed a report. No body has raised any objection to the commission report. It is reported by the Commissioner that there was demolition of the shop rooms, the residential building of the petitioners and also that no other buildings than that belonging to the petitioners had been demolished. It is further reported that demolition of the house of the petitioner No. 4 could have been avoided even if construction of the road was necessary. It is also reported that no habitation is possible unless the house itself was reconstructed and that no reconstruction of the house was possible unless the remaining portion of the house also was demolished.

3. A counter affidavit has been filed by respondent Nos. 8 to 10. The respondent No. 8 is the member of the local panchayat. The respondent No. 9 is a Government servant employed in Telephone Exchange and the respondent No. 10 was a businessman who is no more at present and he had been deleted from the party array. In their affidavit, existence of Exhs. P1 to P3 are admitted stating that these were heart-felt appeals of the people to surrender land. They submit that they had not directed the mob to demolish the buildings and that they "are not responsible for any of the acts done by the mob". The reaction of the mob and the reason behind the same was highlighted in the news item appeared in Exhs. P9 and P10. The respondent Nos. 8, 9 and 10 are totally innocent of the incidents that took place on 20.9.1993 and 23.9.1993. They say that "we did not participate in the sramadan conducted on the aforesaid dates." These averments show that certain incidents had taken place on 20.9.1993 and 23.9.1993, the dates mentioned in the original petition when the compound wall and shop rooms of the petitioner Nos. 1 to 3 and the residential building of the petitioner No. 4 were demolished. The respondent Nos. 8 and 9 and the respondent No. 10 at that time being persons interested in the locality, should be aware of the incidents that took place on the said two days even though they might not have persuaded the mob to do so. Thus, by reason of the affidavit of respondent Nos. 8 to 10, it is proved that a large mob had on the said two dates

demolished the buildings and compound walls belonging to the petitioners, trespassing into their properties and the incident also took place on 23.9.1993 after Exhs. P4 to P6 had been filed before the police authorities. It is thus proved that the incident on 23.9.1993, i.e., demolition of the residential building of petitioner No. 4, took place as the police did not act in terms of Exhs. P4, P5 and P6 and as they did not render adequate police protection to the petitioners in spite of the vandalism that was done on 20.9.1993 being pointed out. Thus, the police failed to render adequate protection to the petitioners' life and properties against the crime committed by the mob towards them.

4. The respondent No. 6 in the original petition has filed a counter affidavit on 16.12.1994. That counter affidavit is filed in C.M.P. No. 29445 of 1994 where he is the respondent No. 2. The respondent No. 6 in the original petition is the Assistant Executive Engineer. It is stated that "no damage will be done to the petitioners as the road will be improved only on the portion surrendered freely for 8 metres width and in other portions, i.e., adjoining the property of the petitioners the improvements will be done only in the old road or at available width without touching the property of the petitioners. So, no road will be constructed through the property of the petitioners." It is also averred in para 5 of the counter affidavit that the formation of the road had not yet been started. Thus, the road could have been constructed without affecting the petitioners' properties. It is in spite of that the mob had intruded into the petitioners' properties and demolished their buildings, though police had been informed in advance as revealed by Exhs. P4 to P6. The incident on 23.9.1993 took place only because of the inaction on the part of the police.

5. Thus, the petitioners have sustained heavy loss because of the incident on 23.9.1993 and because of the inaction on the part of the police to provide adequate protection to the petitioners in the light of the incident that took place on 20.9.1993 and as the police failed to take into account the complaint made in Exhs. P4 to P6. It was on 23.9.1993 that the residential building of the petitioner No. 4 was totally damaged. The Commissioner has reported that no reconstruction was possible unless the entire building was demolished. The Commissioner has also estimated the cost as Rs. 4,65,000 for reconstruction as in 1993. Certainly by this time there will be escalation.

6. As it is thus proved that there was trespass by a mob into the petitioners' properties, the petitioners are entitled to a direction to provide adequate police protection for their properties, liberty and life. The respondent Nos. 3 and 4 shall examine the situation and render adequate police protection to the petitioners if there is tense situation and if there is any chance for trespass into the petitioners' properties.

7. As the petitioners have not surrendered their land and there is no acquisition of their properties and as it is stated in the counter affidavit of the respondent No. 6 that no road had been formed, the petitioners are also entitled for a direction restraining the respondent Nos. 5 to 7, the PWD authorities and the

panchayat authorities from embarking on further construction of the road or bridge through the properties belonging to the petitioners. If anybody violates this direction, the police shall render necessary protection to avert such violation also.

8. The petitioners have also prayed for adequate damages and compensatory damages. In effect they seek compensation for the loss and injury done to them. The demolition took place on 20.9.1993 and 23.9.1993.

9. The petitioners have the right to protection of life as guaranteed under Article 21 of the Constitution of India. That includes a right to decently live in a residential house, without intervention from others. The expression "life or personal liberty" has been held to include the right to live with dignity. In the case of the petitioner No. 4, that right has been violated on 23.9.1993 when her residential building had been demolished by a mob. That would not have taken place if the police had acted taking into account the incident that happened on 20.9.93 and also the complaints made in Exhs. P4 to P6. Thus, the police and the State machinery failed to protect the rights to live peacefully and with dignity available to the petitioner No. 4. Thus, her right guaranteed under the Constitution had been totally violated because of the inaction on the part of the police machinery under the State. When the fundamental right guaranteed under the Constitution is so nakedly violated because of the inaction on the part of the police and of the State machinery, necessarily such a citizen is entitled for compensation from the State. In the case reported in Lucknow Development Authority v. M.K. Gupta 1993 CCJ 1100 (SC) the Supreme Court observed as follows:

The administrative law of accountability of the public authorities for their arbitrary and even ultra vires action has taken many strides. It is now accepted both by this Court and English courts that the State is liable to compensate for loss or injury suffered by a citizen due to arbitrary action of its employees.

The properties of petitioner Nos. 1 to 3 were demolished on 20.9.1993. At that time, the police could not have prevented it. The petitioners have no case that they had approached the police on any day earlier than 21.9.1993. Therefore, the petitioner Nos. 1 to 3 cannot claim compensation in respect of the injury that had taken place because of the demolition on 20.9.93. They can approach the appropriate authority seeking damages against the persons who caused such damages.

10. But, the case of the petitioner No. 4 is not like that. Her residential building was demolished on 23.9.1993, after the police had been apprised of the situation prevailing there, in Exhs. P4 to P6. It is stated that the police including the respondent No. 3 had assured necessary protection and that there would be no further vandalism. But, nothing was done by the police. Police officers, the respondent Nos. 3 and 4, have not denied receipt of Exhs. P4 to P6 or the averments of the petitioners that they had been assured protection and that no

vandalism would recur. Therefore, it is conclusive that the incident that took place on 23.9.1993, demolition of the building of the petitioner No. 4, was solely because of the inaction on the part of the police. This violated the fundamental right guaranteed to the petitioner No. 4 under Article 21 of the Constitution of India and the "administrative law of accountability" of respondent Nos. 1 to 4, as held by the Supreme Court in *Lucknow Development Authority v. M.K. Gupta* 1993 CCJ 1100 (SC) shall extend to compensate the petitioner No. 4. This court exercising its power under Article 226 of the Constitution can definitely grant compensation in terms of the remedy available under public law based on strict liability for contravention of the fundamental rights. This court had considered similar issue in the decision reported in *P. Gangadharan Pillai v. State of Kerala* 1995 (2) KLJ 201. This court held as follows:

It has been well settled that this Court can pass an order in exercise of the jurisdiction under Article 226 of the Constitution for payment of money if such an order is in the nature of compensation consequential upon the deprivation of fundamental right. The award of compensation in proceeding under Article 32 by the Supreme Court or under Article 226 by the High Court is a remedy available under public law based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort. [Vide *Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others*, . In the above mentioned decision, reference has been made to all the earlier decisions of the Supreme Court and it was held that in the State's liability for contravention of fundamental rights, the doctrine of sovereign immunity has no application in the constitutional scheme and is no defence to the constitutional remedy under Articles 32 and 226 of the Constitution which enables award of compensation for the contravention of the fundamental rights when the only practicable mode of enforcement of fundamental rights can be the award of compensation.

11. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen under public law jurisdiction is in addition to the traditional remedies. The claim for compensation is based on the principle of strict liability to which the defence of sovereign immunity is not available. It is now well settled that monetary compensation is the appropriate and indeed a remedy for redressal of the established infringement of fundamental right to life of a citizen by the public servant. The State is vicariously liable for their acts. To award compensation is the only suitable remedy to redress the grievances of such victims.

12. Where a man has been wronged and endangered, he must have a remedy. A mere declaration of invalidity of an action does not by itself provide any meaningful remedy to a person whose fundamental right to life has been infringed. In a very recent decision in *D.K. Basu Vs. State of West Bengal*, the Supreme Court held:

The claim in public law for compensation for unconstitutional deprivation of

fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article is an exercise of the courts under the public law justification for penalising the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.

13. Following the dicta laid down in the above case the petitioner No. 4 is necessarily entitled to compensation. The quantum of compensation will depend upon the particular facts of each case and no straight-jacket formula can be evolved. In the assessment of compensation the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor.

14. The Commissioner has ascertained the cost for construction of the building of the petitioner No. 4 as Rs. 4,65,000. No objection is filed to that report. The report was submitted in December 1993. Some escalation in the construction cost might have taken place by this time. The petitioner No. 4 can necessarily make use of some of the articles from the demolished structure to reconstruct the building. Therefore, the escalation will not adversely affect her. So, the compensation as assessed by the Commissioner can be accepted. Accordingly, I direct the respondent Nos. 1 to 4 to pay Rs. 4,65,000 to the petitioner No. 4, as assessed in the commission report which is not objected to by any of them as compensation, to enable her to reconstruct the building.

O.P. is allowed. In the circumstances there will be no order as to costs.