

(2016) 06 KL CK 0067

In the High Court Of Kerala

Case No : W.P.(C) Nos. 31925 of 2015-M and 15370 of 2016

M.A. Jose

APPELLANT

Vs

Vadavukodu Puthencruz Grama Panchayath

RESPONDENT

Date of Decision : 17-06-2016

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Citation : (2016) 3 ILRKerala 295 : (2016) 4 KerLJ 124 : (2016) 3 KHC 498 : (2016) 3 KLT 32

Hon'ble Judges : Mr. K. Vinod Chandran, J.

Bench : Single Bench

Advocate : Saji Varghese Kakkattumattathil, Advocate, for the Appellant; Sri. Babu Cherukara, Advocate, Senior Government Pleader, Sri. Manoj P. Kunjachan, Sri. Mathews K. Philip, Smt. Minisha K. Das, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Mr. K. Vinod Chandran, J.—The petitioners in the above writ petitions are neighboring property owners, who have rival contentions with respect to the activity carried on in two buildings in Re-survey No.121/22, Block 39 of Puthencruz Village owned by the petitioners in W.P.(C) No.15370 of 2016. The petitioner in W.P.(C) No.31925 of 2015 resides in his property; carries on a provision store in one part of the ground floor and has let out the first floor to State Bank of Travancore. He is aggrieved with the occupation of the nearby premises by the migrant labourers, far in excess of the capacity of the building and the abysmal conditions in which they are housed resulting in contamination of ground water in the locality; especially rendering the well water of the petitioner useless for drinking water purposes and causing untold misery to his family and occupants of his building from the waste and waste water ejected into his building and the constant stench emanating from the neighboring property.

2. The parties are referred to from their status in W.P.(C) No.31925 of 2015. The petitioner had complained before the various authorities, who are impleaded as

the official respondents in the writ petition, against the activities of respondents 5 and 6, which culminated in action being taken by the Panchayat to close down the activities carried on in the objectionable buildings. The said order is challenged by the respondents in the other writ petition, W.P.(C) No.15370 of 2016.

3. Referring to W.P.(C) No.31925 of 2015, it is to be noticed that the petitioner, the neighboring resident, has obtained a report of analysis of his well water sample from the Regional Analytical Lab, Kakkanad, Ernakulam, produced as Exhibit P1. A mere scan of the report indicates many contaminants in excess of the permissible limit. Emphatic notice has to be taken of the presence of Coliform at the rate of 1600mpn/100ml while the permissible limit as per WHO standards {World Health Organisation} is lesser than 2mpn./100ml. Similarly, the standards for drinking water quality, speaks of total absence of E-coli bacteria, while Exhibit P1 report reveals its presence. The report concludes the presence of contaminants beyond the permissible limit and declares the water to be unfit for domestic purposes for reason of the bacteriological quality being unsatisfactory.

4. The petitioner had moved the District Collector by Exhibit P2 and the Grama Panchayat by Exhibit P3. The Health Supervisor of the Panchayat, after inspection, has issued Exhibit P4, by which the 5th respondent, who is the title holder of the property, was directed to stop the operation of the flour mill carried on in the ground floor of the building and also close down the labour camp established in the building. The complaint of the petitioner at Exhibit P2 to the District Collector; evoked a response from the Panchayat, in the form of a report to the District Collector wherein the aforesaid facts were noticed and it was also indicated that a stop memo has been issued. Exhibit P6 is the notice issued to the party respondents under Section 235X of the Kerala Panchayat Raj Act, 1994 [for brevity "Panchayat Raj Act"] and Exhibit P7 is a communication issued by the Secretary to the Sub Inspector of Police, seeking his help in interdicting the party respondents from carrying on any construction; under Section 252 of the Panchayat Raj Act.

5. The respondents 5 and 6 filed a counter affidavit, contending that they had filed an appeal from Exhibit P7 notice before the Panchayat Committee under Section 276(1) of the Panchayat Raj Act. Admittedly no appeal has been filed from Exhibit P6 and, as rightly submitted by the learned Counsel for the petitioner, an appeal from an order passed under Section 235X would be maintainable only before the Tribunal constituted for Local Self Government Institutions. The further contention of respondents 5 and 6 is that the 5th respondent has leased out the premises to two individuals, a Company and a firm, the agreements of which are produced at Exhibits R5(c), R5(d), R5 (e) and R5(f). It is also contended that one of the said lessees has approached the Munsiff's Court and obtained an order at Exhibit R5(h); from forceful eviction. The respondents also have a case that the migrant labourers housed in their premises are labourers; employed by their lessees, in contract works of a public

sector company. The respondents 5 and 6 have the very same contentions in the writ petition filed by them [W.P.(C) No.15370 of 2016], which challenge Exhibit P6 notice produced therein, issued by the Panchayat bearing No.A3/6184/16 dated 18.04.2016.

6. A detailed counter affidavit has been filed by the petitioner in W.P.(C) No.31925 of 2015; in which also the documents produced herein have been produced. The respondents 5 & 6 have a case that the petitioner has not impleaded their lessees, who are responsible for the objectionable contamination and pollution and hence the writ petition has to be rejected for non-impleadment of essential parties. The said contention is only to be noticed to be rejected. The neighboring property owner would not be aware of the fact that the migrant labourers are housed; in pursuance of a lease agreement. The owner of the property who has leased out the premises has the primary responsibility to avoid contamination and pollution in the neighboring areas and he cannot be absolved from such responsibility merely for the reason that it is the lessees who are creating such problems. Further the writ petition of the respondents; while raising allegations against the lessees do not make them parties, which speaks for itself. It is also pertinent that the notice issued by the Panchayat to close down the labour camp, which is the root cause of the objections raised by the petitioner; has been challenged by the owner of the property, the respondents 5 and 6 while alleging that the activity is carried on by their lessees

7. The respondents 5 and 6 also obtained an order of stay against Exhibit P6 in W.P.(C) No.15370 of 2016. Even prior to that, the petitioner in W.P.(C) No.31925 of 2015 was granted an interim order directing Exhibit P7 letter of the Panchayat to be implemented. Contempt Case (Civil) No.532 of 2016 filed by the petitioner in W.P.(C) No.31925 of 2015 resulted in a Commission being appointed, whose report is produced by the petitioner in the counter affidavit in W.P.(C) No.15370 of 2016; marked as Exhibit R3(f).

8. A reading of the Commission Report reveals the dismal conditions under which the migrant labourers are housed in the buildings owned by respondents 5 and 6, which causes untold misery to the neighboring residents, especially the petitioner. The Commissioner has reported that the building, consisting of three floors, has about 30 rooms and 2 rooms with shutters in the ground floor of the building, which was closed. Obviously this is the flour mill which is admittedly closed down by respondents 5 and 6 on the proceedings initiated by the Panchayat. When the Commissioner inspected the premises, not all the rooms were open. It was also informed by the Panchayat Secretary that only five rooms in the building were numbered. The total area of the buildings is reported to be around 1039.5 square meters and the Commissioner herself saw about 50 workers occupying various rooms. On a local enquiry, the Commissioner was also informed that there were about 200 workers residing in the building.

9. The Commissioner's report indicates that the distance between the petitioner's building and the building of the 5th respondent is less than 2 feet.

The 2 common toilets of the building of the 5th respondent is situated very near to the petitioner's building; one in the ground floor and the other in the first floor. The toilets of the building owned by the 5th respondent are facing the kitchen and bed room of the petitioner's house. Due to proximity of the two buildings, it is reported that the water and other waste from the toilet fall inside the kitchen and bed room of the petitioner. The dismal condition in which the respondents' building is maintained with the walls splattered with spit and chewing pan is specifically noticed by the Commissioner. It is also reported that there were construction activities going on in the said premises.

10. An inspection of the buildings revealed them to be kept in unclean circumstances, the details of which are herein above noticed. The migrant workers are said to be using water from a bore-well, situated about 3.8 feet from the pits collecting faecal waste. The Commissioner has also reported that there are no septic tanks provided for disposal of faecal waste and the same is collected from the toilets in five open pits in the property. The well of the petitioner is said to be very near to the building and the ground floor common toilet; the water of which, even on a mere look is said to be dirty and polluted; being dark in colour with foul stench emanating therefrom. The toilet pipes are connected to the open pits in the building and it is also stated that a pipe laid from the property to the public drainage is closed, on the interference caused by the Panchayat authorities; which, the nearby residents complained, is often opened by respondents 5 and 6 to discharge the waste into the public drainage system.

11. Suffice it to notice that the report of the Commissioner is quite in consonance with the notice issued by the Panchayat at Exhibit P6; challenged in W.P.(C) No.15370 of 2016. Exhibit P6 reveals that the buildings lack good sanitation facilities, as also the absence of proper arrangements for disposal of solid and liquid waste. The building construction is said to be against the building rules of the Panchayat. The toilet and the bathrooms were found to be leaking with waste water dribbling down the walls and found to be stagnated in the premises. Exhibit P6 found that the migrant workers were housed in the building, without proper facilities and that the labour camp was carried on in a manner injurious to public health; with the building and its immediate premises stagnated with foul and filthy solid and liquid waste which could even result in outbreak of contagious and infectious diseases. The existence of open pits for defecation and absence of septic tanks were also noticed. It is also seen that there was no sanction or permission from the authorities to carry on such activity of housing of migrant labourers. This Court cannot but say that the mere narration of the details; as seen from the Commissioners report and Ext.P6 notice of closure, was so repulsive; let alone think of living in and adjacent to; such dismal conditions.

12. Respondents 5 and 6, as was noticed, have a contention that they have leased out the premises to others and they do not have any responsibility in the activities being carried on by the lessees. Respondents 5 and 6 being owners of

the property, have the primary responsibility to see that any activity carried on within the premises is not harmful or dangerous to the public in general and the residents of the locality in particular. It is also pertinent that despite such lease having been asserted by producing the documents, the respondents 5 and 6 have not thought it fit to implead any of the said persons in the writ petition filed challenging Exhibit P6 order. If the contention of respondents 5 and 6 is that they had no responsibility in the activities carried on in their property, then definitely they do not have any locus to challenge the order, which is impugned by them in W.P.(C) No.15370 of 2016. If it is otherwise and the respondents 5 and 6 were also aggrieved with the activities carried on in their property, there is no reason why the respondents 5 and 6 challenge Exhibit P6 order. In that view of the matter, Exhibit R5(h) order, produced in W.P.(C) No.31925 of 2015, obtained from the Munsiff's Court could only be deemed to be an order obtained in a collusive suit. In any event, that would not interdict the Panchayat from taking appropriate proceedings against the respondents or against the objectionable activities carried on in the buildings. The Panchayat has a public duty coupled with the power, to avert the apprehended injury to the residents of the locality, as also prevent the spread of an epidemic; which eventually could be the drastic and disastrous consequence.

13. On the compelling facts as referred herein above, this Court does not find any reason to interfere with Exhibit P6 notice in W.P.(C) No.15370 of 2016. The writ petition is found to be devoid of merit and the same is dismissed, with exemplary cost of Rs. 50,000/- [Rupees fifty thousand only] which shall be paid to the petitioner in W.P.(C) No.31925 of 2015 within three weeks from today, failing which he would be entitled to take proceedings for recovery under The Kerala Revenue Recovery Act, 1968.

14. With respect to W.P.(C) No.31925 of 2015, the issue projected is not one of statutory compliance alone; but involves basic human rights and violation of the fundamental rights guaranteed under the Constitution. In such circumstances, this Court would invoke its extraordinary jurisdiction under Article 226 of the Constitution to direct the District Collector to depute an Officer, sufficiently senior in the hierarchy; to immediately conduct an inspection of the premises, which is the subject matter of the above writ petitions, and close down the labour camp by providing alternate facilities for accommodating the migrant labourers. The Panchayat shall also be participated in the exercise, since the closure is effected on account of the notice issued by its Secretary. The Secretary of the Panchayat shall seal the buildings and the District Administration along with the Local Self Government Institution shall take immediate steps to avert the nuisance caused by the property and efface it of the contaminants and restore it to ensure the safe habitation of the near by residents. The expenditure incurred by the State and the Panchayat for closing down of the labour camp carried on in the premises and for rehabilitating the migrant labourers shall be determined, by the District Collector; with notice to respondents 5 and 6, who shall be liable for the same. The amount so determined shall be a charge on the subject property or

any other owned by the respondents 5 and 6. The respondents 5 and 6 since have a contention that it is their lessees who are carrying on such activity in the premises, they could always take proceedings against such lessees for recovery of the amounts determined by the State and computed by the District Collector. The District Collector shall, within two days from the date of receipt of a certified copy of this judgment, carry out the directions herein. The District Collector shall, through an appropriate officer of the Regional Analytical Lab, Kakkanad, Ernakulam, collect sample of the well water of the petitioner's well and conduct analysis of the same. W.P.(C) No.31925 of 2015 would stand allowed. The right of damages, if any, available to the petitioner would be left open; in addition to the cost imposed in the other case which is only to defray his expenses before this Court.

15. Before leaving with the matter it is to be emphasised that the issue projected definitely visits the petitioner with undue hardship and injury but also brings to the notice of this Court a social malady which is now affecting the State of Kerala. The recent incidents, which this Court would not specifically refer to; for reason of the controversial nature, often brings to public scrutiny the problem of migrant labourers; with emphasis laid on the crimes in which they are involved. Often what comes to the public eye is the crimes in which such migrant labourers are involved. The exodus of such labourers into the State cannot be wished away. While highlighting the criminal acts of such migrant labourers, it is also to be noticed that the persons who bring them into the State treat them dismally and house them in in-human conditions.

16. The migrants, most of whom; living in abject poverty are lured by the prospect of regular employment and bare-living wages, (not capable of being called decent), as compared to what they could earn in their native States. The employers have cheap labour as against what is demanded by the locals who have better awareness by virtue of the higher literacy rate and proliferation of trade union activities. It is in the interest of such contractors/employers that the migrants are kept insulated from the locals and hence the cloistering in dismal conditions. The Constitution and the various labour welfare legislations have adopted the measure of ensuring welfare of the workmen/labourers in the un-organised sector by importing the concept of principal employer and intermediary employer; casting the primary responsibility on the former. Even when works are carried out through contractors or contract employees the principal employer has a duty to ensure the welfare of workmen so employed; despite they being not in their regular rolls and there does not exist a direct employer-employee relationship. There is no dearth of laws but the fault lies in its effective implementation and lack of co-ordination of the various departments. Herein the specific contention taken by the party respondents is that the that the labourers housed in their building are employed; by their lessees, in contract work awarded by a public sector company. Since the contention is not substantiated it is for the District Collector to conduct enquiry through the appropriate department to ensure that no violation of labour legislations have been occasioned.

17. Migrations into other societies have been plaguing the international community itself; where issues of citizenry have often been raised. Here no such issue can be raised for reason of the common nationality. An enlightened society has to take steps to assimilate the migrant population into their adopted community; instilling in them a feeling of oneness which alone could result in working together towards regional aspirations and development; in a Country as varied and vibrant as ours. Isolating some and treating them as second class citizens can only lead to backlash by way of crimes against civil society and result in deleterious consequence of widespread public harm and injury, including spread of epidemics; which latter consequence is highlighted in the present case.

18. The Commission Report filed in the contempt case as produced by the petitioner and the impugned order in the writ petition of W.P.(C) No.15370 of 2016 reveal the pathetic conditions under which the labourers are housed. It cannot also be ignored that no human being in his right senses would be able to live in such dismal, filthy and abhorrent conditions; and hence the resort to intoxicants; which in turn triggers depraved instincts leading to un-imaginable violence and crimes without rhyme or reason. The State and its functionaries have to sit up and take notice. The General Administration, the Police and the Labour Department cannot shut their eyes to the spreading malady increasing in its effect on the civil society of Kerala. Considering the social ramifications arising, on the introspection made by this Court on the specific instance brought before it, by the above case, this Court would direct the Registry to place this judgment before the learned The Acting Chief Justice, so as to decide whether a suo-motu public interest litigation be initiated.

Ordered accordingly.