

(2026) 03 KL CK 0731

In the High Court Of Kerala

Case No : Writ Petition (C) No.33150 Of 2017

Mavelipuram Resident's Association Kakkanad

APPELLANT

Vs

Greater Cochin Development Authority Kadavanthra

RESPONDENT

Date of Decision : 12-03-2026

Acts Referred:

Constitution of India, 1950 — Article 226

Kerala Public Buildings (Eviction of Unauthorised Occupants) Act, 1968 — Section 2(d), 4, 5, 10, 10(1)

Citation : (2026) 03 KL CK 0731

Hon'ble Judges : P.M.Manoj, J

Bench : Single Bench

Advocate : Babu Joseph Kuruvathazha, P.T.Abhilash, Vipin P.Varghese, Adarsh Mathew, Kevin Mathew George, Meera Elsa George, Merline Mathew

Final Decision : Disposed Of

Judgement

P.M.Manoj, J

1. The writ petition is preferred by the Mavelipuram Residents Association being aggrieved by Exts.P6, P8 and P10 orders, seeking for a direction to quash the same and further seeking for a direction to the respondents not to interfere with the possession and enjoyment of the recreation hall established by the petitioner in the children's park area earmarked in Ext.P2. The petitioner also seeks for a direction to consider and pass appropriate orders on Ext.P11 representation in the light of Ext.P2 layout and Ext.P12 judgment of this Court in Philip George C. v. State of Kerala and Others (2014(2) KLT 116).

2. The petitioner is an Association of the residents of the project mooted by the erstwhile Cochin Town Planning Trust. The Cochin Town Planning Trust issued Ext.P1 public notice inviting the bonafide purchasers by the following offering:

- House plots for sale near the sites for Civil Station, High Court & Govt. Press at Pattupurakkal, Thrikkakara, the future headquarters of Ernakulam

District and the focus of the Thrikkakara- Kalamassery Township Development.

- Within 3 miles from the city and abutting proposed 100 ft. wide Irimpanam-kalamassery road.
- Attractive building sites in a completely planned development area with water and electric supplies, schools, shopping centres, parks & open spaces etc.
- An ideal place for healthy & comfortable living.
- Low prices at (Rs.750/- to 800/- per cent) with easy instalment facilities for payment.
- Applications with earnest money deposit of Rs.500/- to be received from 01.02.73 to 15.02.73.

3. Ext.P1 was published by the erstwhile Town Planning Trust along with a Town Planning Scheme, as evident from Ext.P1(a). In Ext.P1(a) Town Planning Scheme, it is stated that the scheme envisages the development of 70 hectares (173 acres) of land for residential use, with 20 hectares (49.5 acres) allotted for common amenities such as schools, hospitals, shopping centres, parks, open spaces, and recreation centres, so as to make the area a self-contained unit.

4. Later, the Town Planning Scheme for the Pattupurakal area was replaced with the Mavelipuram Housing Scheme. Therein also, the open spaces and children's play areas were meant for common purposes, and the cost for maintaining the public utility spaces shown in Ext.P2, including places for public roads, internal roads, etc., was collected from the petitioner on the basis of the public utility avenues proposed in Ext.P2.

5. The members of the petitioner Association purchased their respective plots and constructed their residential buildings. Thereafter, on finding the need for a recreation hall or a place for common/public utility purposes, the Executive Committee of the petitioner Association decided to raise funds for the construction of a common utility building-cum-recreational hall. Accordingly, they approached the Ministry of Human Resource Development under the Department of Culture of the Government of India.

6. On finding that, for the purpose of availing subsidy/grant from the Government, it was necessary to produce certain documents pertaining to the ownership of the property where the recreation hall was proposed to be constructed, Ext.P3 lease deed was executed for constructing the hall in a portion of the open space in the Mavelipuram Housing Scheme. The said area had already been named 'K.T. George Memorial Park', which forms part and parcel of the children's play area earmarked in Ext.P2.

7. It is contended that Ext.P3 is a sham document executed between the petitioner and the 1st respondent for the purpose of securing a grant/subsidy from the Central Government, so as to reduce the financial burden of the

petitioner in constructing the recreation hall. The tenure of the lease deed was fixed at 30 years, and the lease rent was Rs.10/- per year. Accordingly, the petitioner paid a total lease amount of Rs.300/- for the entire period of 30 years. Subsequently, the grant was sanctioned in the name of the petitioner by the Central Government. By utilising the said grant, along with its own funds, the Mavelipuram Association Hall was constructed in K.T. George Memorial Park, adjoining the children's park, as shown in Ext.P2, for the recreational and common purposes of the members of the petitioner Association.

8. In the meanwhile, for allotting 25 cents of property to the EMS Co-operative Library, Thrikkakara, the 1st respondent sought the consent of the petitioner Association, which was also granted. Later, it came to be known that the said property was sold to the EMS Co-operative Library by accepting the market rate prevailing at that time.

9. Even thereafter, on finding a further requirement of 25 cents, the EMS Co-operative Library approached the Association seeking sanction for 25 more cents from the property in their possession meant for public purposes, which is adjacent to K.T. George Memorial Park and lies by the side of the existing building of the EMS Co-operative Library. In this regard, the petitioner preferred Ext.P5, expressing their no objection for granting such space in the year 2008.

10. Thereafter, by a representation dated 23.02.2017, it is contended that the petitioner requested the 1st respondent to renew Ext.P3 agreement. Though Ext.P3 was a sham document, as the 1st respondent had no right over the property comprised in Ext.P2 scheme, which, according to the petitioner, was vested in them, the petitioner was informed by letter dated 23.03.2017 that the lease period had expired on 04.12.2016 and that, as per the terms and conditions of the lease deed, the property had become the property in possession of the 1st respondent. It was further stated that the petitioner had no right over the said property and they were directed to remove, within seven days, anything stored in the building constructed in the said property and to hand over the keys to the 1st respondent.

11. The same was responded to by Ext.P7 reply, wherein the petitioner specifically set out the background of the Housing Scheme, the vesting of the open spaces for residential purposes, and the ownership in respect of the Mavelipuram Residents Association Hall. It was also mentioned in the said letter about the illegal sale conducted by the GCD A to the EMS Library, and the petitioner further requested that the respective share of the members of the petitioner Association, which was allegedly collected illegally by the 1st respondent from the sale of the property to the EMS Library, be paid to them.

12. In response to the said reply, Ext.P8 notice was issued by the 3rd respondent under the provisions of the Kerala Public Buildings (Eviction of Unauthorised Occupants) Act, 1968, (for short 'the Act') directing the

petitioner to offer an explanation as to why eviction proceedings should not be initiated against them from the disputed property. It was also stated that if no explanation was offered within the stipulated time, eviction would be effected under Section 5 of the said Act.

13. The petitioner submitted Ext.P9 reply, wherein it was specifically contended that the property would not come within the ambit of the Act, as the same was envisaged as part of the schemes covered under Exts.P1 and P2, over which, according to the petitioner, they are the owners. It was further contended that Ext.P3 lease deed was executed only for the purpose of availing financial assistance from the Central Government, on remitting Rs.300/- towards the total lease consideration, and that the said document was only a sham document. It was also stated that the said 20 cents of land was not being used for any unauthorised purpose and the respondents were requested to refrain from proceeding with eviction.

14. Even thereafter, by issuing Ext.P10, the respondents declined the contentions of the petitioner. It was stated therein that the said 20 cents of land is intended for recreational activities for the residents, whereas the property assigned to the petitioner under the lease deed falls within the residential area earmarked for multi-storied flats under the Town Planning Scheme. It was further stated that, upon the expiry of the lease period, the property along with the building therein would vest with the authority as per the terms of the lease. Therefore, the property in dispute is liable to be recovered from the petitioner. Under such circumstances, the petitioner submitted Ext.P11 representation, reiterating their contentions. However, the same has not yet been considered.

15. It is contended by the petitioner that, by Ext.P12 judgment in Philip George (supra), this Court had categorically held that plots meant for public purposes in a scheme proposed for a housing project, after acquisition of property for the housing scheme, cannot be converted for any purpose other than that mentioned in the scheme. In the light of the said judgment, it is contended by the petitioner that Ext.P2 layout of the scheme provides a recreational area, pursuant to which the members of the petitioner Association purchased their respective plots. Therefore, the recreational area where construction has been effected for the Mavelipuram Residents Association Hall is an integral part of Exts.P1 and P2 scheme. Hence, according to the petitioner, the 1st respondent cannot claim any right over the said property. Even then, for certain public purposes, the petitioner had already granted consent to the respondents to utilise portions of the land, as in the case of the EMS Co-operative Library and the Onam Park.

16. The petitioner further relies on the decision of this Court in Shasthri Nagar Colony Welfare Committee and another v. The Calicut Development Authority and another (2005 KHC 2094). In the said case, the layout prepared by the respondent Calicut Development Authority was approved by the Town

Planner, since it was in compliance with the Kerala Municipality Building Rules. As per the said Rules, 15% of the total area (as per the Building Rules then in force) and 10% (as per the present Rules) should be provided as recreational open space for residential development. In the approved layout, 88 cents of land was earmarked for recreational parks and nursery. The recreational space was intended for the benefit of the residents of the housing colony, which is also a statutory requirement. It was further held that the area provided as per the layout should be maintained as recreational space, and if any change is required, a revised layout must be approved.

17. In the instant case, the recreational space is contemplated under Exts.P1 and P2, and the petitioner has constructed a building for recreational purposes after availing financial assistance from the Central Government. For that purpose, a sham document was created. On the strength of such document, the respondents are now attempting to evict the petitioner from the said property, which was originally meant for the recreational purposes of the residents.

18. It is further contended, relying on the decision in *Dr. G.N. Khajuria and others v. Delhi Development Authority and others* (1995 KHC 952), wherein the Apex Court held as follows:

“That it was not open to the DDA to carve out any space meant for park for a nursery school. We are of the considered view that the allotment in favour of respondent No.2 was misuse of power, for reasons which need not be adverted. It is, therefore, a fit case, according to us, where the allotment in favour of respondent No.2 should be cancelled and we order accordingly. The fact that respondent No.2 has put up some structure stated to be permanent by his counsel is not relevant, as the same has been done on a plot of land allotted to it in contravention of the law.”

19. On the strength of the above finding, it was argued that the space in question, namely 20 cents of land in Sy.No.324 of Thrikkakara South Village, forms part of the open space provided under Exts.P1 and P2 Scheme, which is to be utilised for the recreational purposes of the residents represented by the petitioner. The reservation of open space for parks and playgrounds is universally recognised as a legitimate exercise of statutory power, rationally related to the protection of residents of the locality from the ill effects of urbanisation. With these contentions, it is argued that Exts.P6, P8 and P10 are liable to be quashed, and the respondents may be directed to renew the lease deed.

20. Per contra, the learned counsel appearing for the respondents contended that the writ petition is not maintainable, since the impugned proceedings were initiated under the provisions of the Act, as evident from Ext.P8, which was issued under Section 4 of the said Act. The Act contemplates the issuance of a notice to show cause against the proposed order of eviction. It empowers the Estate Officer to issue a notice in writing calling upon the persons concerned to

show cause as to why an order of eviction should not be made, if he is of the opinion that such persons are in unauthorised occupation of any public building.

21. In this regard, it is further contended that, as per Section 2(d) of the Act, the term "public building" is defined to mean:

"any building or part of a building belonging to, or taken on lease or requisitioned by, or on behalf of, the Government or a local authority or a company or a company or a corporation and includes -

(i) the garden, grounds, and outhouses, if any, appertaining to such building or part of a building;

(ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof; (and)

(iii) all buildings, whether residential or non-residential irrespective of categories or types, constructed by individuals or co-operative societies or other institutions with the aid of any loan from the Government."

22. Moreover, Section 5 of the Act contemplates the eviction of unauthorised occupants. Under the said provision, in pursuance of the notice issued under Section 4, and after considering any evidence produced by such person in support of their claim and after giving reasonable opportunity to adduce evidence, the Estate Officer may, on the date fixed for the purpose, pass an order of eviction, recording the reasons therefore.

23. Such an order can be challenged under Section 10 of the Act. If the petitioner is aggrieved by Exts.P6, P8 and P10, the remedy available to them is to file an appeal under Section 10(1) of the Act before the District Collector, and therefore, a writ petition under Article 226 of the Constitution of India is not the appropriate remedy. The contention with respect to the nature of Ext.P3 lease deed as a sham document is also not a matter to be adjudicated by this Court under Article 226 of the Constitution. It is a matter to be considered by the competent Civil Court for declaring the nature of such document, as contended by the petitioner.

24. It is further contended that, in the light of the dismissal of the writ petition by judgment dated 01.07.2025, the property in question, along with the building thereon, has been taken into possession by the respondents and is now completely under their control. However, permission has been granted, as per the direction of this Court, for utilising the same. It is also not disputed by the counsel that the members of the Association are using the Mavelipuram Residents Association Hall on a day- to-day basis for yoga classes and other recreational activities. In such circumstances, it is contended that the writ petition is liable to be dismissed with costs.

25. However, in reply, the learned counsel for the petitioner submitted that, as

held by the Apex Court in *Vareed Jacob v. Sosamma Geevarghese* (2004 KHC 639), when a suit is restored, all interlocutory orders and their operation during the period between the dismissal of the suit for default and its restoration shall stand revived. In this regard, on the factual circumstances, it is contended that the property is still in the possession and control of the petitioner Association, since the key of the auditorium has been entrusted to the security personnel appointed by the Association. Hence, the alleged possession by the respondents is factually incorrect.

26. I have heard Sri.Babu Joseph Kuruvathazha, the learned counsel appearing for the petitioner and Sri.Vipin P.Varghese, the learned counsel appearing for the respondents.

27. The question that arises for consideration in this writ petition is whether the action of the respondents in taking possession of the Mavelipuram Residents Association Hall on the ground that the term of the lease has expired is legally sustainable or not. Primarily, the nature of the project itself, as evident from Exts.P1 and P2, has to be examined.

28. It can be seen from Ext.P1 that, in order to attract prospective purchasers, it was offered that in the completely planned development area with water and electricity supply, other amenities such as schools, shopping centres, parks and open spaces would also be provided. Further, in Ext.P1(a), the original promoter of the scheme, namely the Cochin Town Planning Trust, stated that common amenities such as schools, hospitals, shopping centres, parks, open spaces and recreational centres would be made available so as to make the area a self- contained unit. This indicates that the scheme envisaged the development of 70 hectares of land for residential use, out of which 20 hectares of land were allotted for common amenities as mentioned above.

29. Even in the proposed plan of the scheme, as evident from Ext.P1(a), it can be seen that the block marked as Item No.4 is earmarked for a community centre and recreational area. Similarly, in Ext.P2 layout plan, open spaces are provided for public purposes, including recreational purposes. Going by the decision of this Court in *Shasthri Nagar Colony Welfare Committee* (supra), it was observed that the reservation of open spaces for parks and playgrounds is universally recognised as a legitimate exercise of statutory power, rationally related to the protection of the residents of the locality from the ill effects of urbanisation. It was further observed that the statutes in force in India and abroad, reserving open spaces for parks and playgrounds, reflect a legislative attempt to eliminate the misery arising from disreputable housing constructions caused by rapid urbanisation.

30. In the case at hand, open spaces have already been provided for recreational purposes. The members of the petitioner Association are stated to have been attracted by the offers made by the erstwhile Cochin Town Planning Trust, on the basis of the amenities proposed under the scheme, including open

spaces, parks and shopping centres, as evident from Exts.P1 and P1(a). However, for the purpose of availing financial assistance from the Central Government, it is contended by the petitioner that a document was created solely to establish that the said property was in their possession.

31. Even in Ext.P1, it can be seen that the lowest price fixed by the Cochin Town Planning Trust for plots within the scheme area, with development facilities, ranged from Rs.750/- to Rs.800/- per cent. However, Ext.P3, which is a lease deed with respect to 20.02 cents of land for the purpose of constructing a recreation centre, was executed on a lease rent of Rs.10/- per annum, and the total amount realised for the entire period of thirty years was Rs.300/-. From this itself, it appears that the contention of the petitioner that the document is a sham document has some force. However, by Ext.P5(a), the petitioner Association approached the present promoter of the scheme, who had executed the lease deed and who had succeeded to the scheme from the erstwhile Cochin Town Planning Trust, namely the GCDA, seeking renewal of the lease by admitting that the lease had expired on 05.12.2016, and requesting them to take necessary steps to renew the lease period.

32. Instead of considering the said request, by Ext.P6 the respondents sought to enforce the lease conditions by directing the petitioner to vacate the building, remove the articles of the Association within seven days, and to hand over the key. This was replied to by the Association as per Ext.P7, wherein the history of the project, the usage of the open space, the ownership of the hall, the sale of property by the GCDA to the EMS Library, and the construction of Mavelipuram Onam Park with the consent of the property owners were explained. It was also contended that the expenses for the development of the area were realised from the property owners. Even then, according to the petitioner, the proceeds of the sale were taken by the GCDA, which was requested to be disbursed among the property owners. However, in Ext.P8 notice issued under Section 4 of the Act, it was again reiterated that the period of lease for thirty years had expired on 04.12.2016, and that a decision had been taken to evict the petitioner from the hall constructed by them in 20 cents of land in Sy. No.324/17. It was further stated that if no explanation was offered within the stipulated ten days, further steps would be initiated against the Association under Section 5 of the Act.

33. Even the reply submitted by the Mavelipuram Residents Association was not properly considered and, by Ext.P10, it was intimated that the respondents had proceeded with the eviction proceedings. Thereafter, Ext.P11 representation was submitted reiterating the contentions raised in Ext.P7. However, the same was not considered and further orders were passed. Immediately thereafter, the writ petition was filed and an order of status quo as on that date was obtained from this Court.

34. There is no dispute with respect to the funds raised by the petitioner for constructing the recreational hall, namely the MRA Hall, with financial

assistance from the Central Government. Merely due to the non-renewal of the lease, it is not proper on the part of a public authority like the GCDA to adopt a Shylockian attitude and take possession of the recreational area meant for the development project, as evident from Exts.P1, P1(a) and P2, and that too in the guise of the dismissal of the writ petition for default.

35. In fact, the Apex Court in *Vareed Jacob* (supra) held that upon restoration of a suit, all interlocutory orders prevailing at the time of dismissal will also stand restored. The said principle would apply in the present case as well, since on admitting the writ petition this Court had granted an order directing that status quo as on that date shall be maintained with respect to the property mentioned in the writ petition. Upon restoration of the writ petition, unless it is expressly declared by this Court that the interim orders will not survive, it has to be treated that the possession and enjoyment of the hall continue with the Association. Even though the petitioner had approached this Court seeking permission to utilise the hall for Onam celebrations, when the Association had already been in possession, such possession has been ignored on the basis of the proceedings referred to above.

36. Since the area in which the construction was effected was earmarked for public or recreational purposes in the original scheme, the GCDA cannot claim ownership of the said land or the building constructed therein at the cost of the Association merely on the ground that the lease deed has expired, and that too without considering the request made by the petitioner for renewal of the lease deed. The question regarding the validity of the contention that the lease deed is a sham document is not separately dealt with herein.

37. From the above discussion, it can be seen that the initiation of proceedings under the provisions of the Act, and the issuance of Exts.P6, P8 and P10, cannot withstand the test of law, as the same amounts to arbitrary action on the part of the respondents. After having offered the area for recreational purposes to attract prospective purchasers under the scheme, the subsequent steps taken through the impugned proceedings are in effect an attempt to alter the scheme originally offered to the petitioners. Under such circumstances, Exts.P6, P8 and P10 are set aside. The GCDA cannot claim ownership of the MRA Hall, which was constructed at the cost of the petitioner Association, merely on the ground of the expiry of the lease deed.

The writ petition is disposed of accordingly.