
(2021) 01 KL CK 0479

In the High Court Of Kerala

Case No : Writ Petition (C) No. 29020 Of 2020

M/S Symphony Hospitality Management Pvt. Ltd

APPELLANT

Vs

Tahasildar, Taluk Office And Ors

RESPONDENT

Date of Decision : 21-01-2021

Acts Referred:

Kerala Land Conservancy Act, 1957 — Section 11(3), 12

Citation : (2021) 01 KL CK 0479

Hon'ble Judges : Raja Vijayaraghavan V, J

Bench : Single Bench

Advocate : Joby Cyriac, Mable C Kurian

Final Decision : Disposed Of

Judgement

1. These writ petitions have been filed by Symphony Hospitality Management Pvt. Ltd., a Company registered under the provisions of the Companies

Act, 1956 and engaged in the hospitality business. Under challenge are the proceedings initiated by the respondents invoking the provisions of the Land

Conservancy Act, 1957 and the Rules framed thereunder. The solitary contention of the petitioner is that action for eviction initiated by the

respondents alleging that the petitioner has encroached upon Kadal Puramboke cannot be sustained for failure to comply with the provisions under the

Acts and Rules. The petitioner specifically contends that the eviction proceedings initiated cannot be continued with, without issuing a final order

accompanied by a notice in Form C as required by Rule 11 of the Kerala Land Conservancy Rules, 1958.

2. According to the petitioner, they are in title and possession of property having a total extent of 2.25 Acres of land within the limits of Mararikulam

North Village, Cherthala Taluk. The property has been purchased on the strength

of Exts.P7 to P13 sale deeds. The property purchased as aforesaid lies contiguous and the petitioner is running a home stay therein after obtaining permits and licences from the local authority. The petitioner states that Ext.P3 notice under Section 12 of the Kerala Land Conservancy Act was served on the petitioner informing them that they have encroached upon 7.20 Ares of Kadal puramboke in Sy. No. 662/2, 75 sq.m. in Sy.No.662/5 and 33.03 Ares of unsurveyed land within the limits of Mararikulam North Village. According to the petitioner, the aforesaid Kadal Puramboke as well as unsurveyed land are lying contiguous to the property owned by the petitioner and is required for the beneficial enjoyment of the petitioner. On receipt of the notice, the petitioner is stated to have issued Ext.P4 reply seeking for some time to produce the records. Later, Ext.P5 reply was submitted informing that the kadal puramboke in the possession of the petitioner is required for beneficial enjoyment and also pointing out that the petitioner has already filed an application seeking assignment of such land. According to the petitioner, without considering the request of the petitioner, the respondents have proceeded to evict the petitioner from the said property. When eviction proceedings were initiated arbitrarily, without passing a final order, they approached this Court and filed W.P.(C) No. 24344 of 2017 and this Court by order dated 21.7.2017 granted an interim order as prayed for. However, on 21.7.2017 itself, the respondents entered the property of the petitioner and demolished certain buildings. The petitioner states that while the writ petition was pending, Ext.P7 notice was issued by the respondents under Rule 11(3) of the Land Conservancy Rules calling upon the petitioner herein to remove the fencing put up by them and to vacate the encroachments. Immediately thereafter, the petitioner approached this Court and filed W.P.(C) No. 29020 of 2020 seeking to direct the respondents to refrain from proceeding with the eviction proceedings pursuant to Ext.P3 notice without passing a final order as contemplated under the Act.

3. The 3rd respondent has filed a counter wherein it is stated that the petitioner has encroached upon Kadal Puramboke property in Mararikulam North Village and have put up temporary and permanent construction. Based on a complaint lodged by a neighbour that the petitioner had encroached upon portions of Kadal Puramboke in Sy. No. 662/10, land conservancy

proceedings were initiated and the encroachments were removed. When detailed inspection was carried out by the revenue authorities it was revealed that the petitioner had encroached upon property comprised in Sy. No.

662/5 and 662/10 and large extent of unsurveyed land in Mararikulam North Village. As per existing rules, Kadal Puramboke property cannot be

assigned for beneficial enjoyment of the property. The construction which has been carried out is in clear violation to the Coastal Regulation Zone

(CRZ) Rules, 2019 as well. The Taluk Surveyor as well as the Village Officer were asked to measure out the exact extent of encroachment and it

was found that 7.20 Ares of Kadal puramboke in Sy. No. 662/2, 75 sq.m. in Sy.No.662/5 and 33.03 Ares of unsurveyed land within the limits of

Mararikulam North Village have been encroached upon. Ext.R3(c) notice in Form B was issued to the petitioner and the same was served. The

Operations Manager for and on behalf of Smt. Laly Mathew appeared and lodged their statement. The petitioner was not able to produce any records

justifying their encroachment of the Kadal Puramboke as well as the unsurveyed land. It is stated that in the year 2010, the petitioner had been evicted

in accordance with law and it was thereafter that they had again encroached upon certain portions necessitating in the initiation of fresh proceedings.

According to the respondents, there is no merit in the contentions advanced by the petitioner.

4. I have heard Sri.Joby Cyriac, the learned counsel appearing for the petitioner and Smt. Mable C. Kurian, the learned Government Pleader.

5. Sri. Joby Cyriac, the learned counsel appearing for the petitioner relying on the judgment of this Court in Holy Cross Church v. Tahsildar, North

Paravur¹ contended that no action for eviction of an encroacher under the Land Conservancy Act can be initiated unless the final order accompanied

by notice in Form C is served on him as required under Rule 11.

6. The learned Government Pleader has vehemently opposed the prayer. It is submitted that the records reveal that the property covered under 662/2,

662/5 and about 33.03 Ares of Kadal Puramboke in unsurveyed land have been encroached upon by the petitioner. Even before this Court, the only

contention of the petitioner is that the Kadal Puramboke encroached upon by the petitioner is required for the beneficial enjoyment of their property. It

is contended that Kadal Puramboke cannot be assigned for carrying out

commercial activities or for any other purpose and therefore, the request of the petitioner to interdict the encroachment in view of the request submitted by the petitioner for assignment of land cannot be entertained.

7. I have considered the submissions advanced.

8. The contention of the petitioner is that they are having title and possession over about one Acres of land within the limits of Mararikulam North

Village where the petitioner is conducting a home stay resort. They have admitted in no uncertain terms that they are also in possession of Kadal

Puramboke as well as unsurveyed land. Their contention appears to be that their application for assignment of such land is pending before the

authorities concerned and in that view of the matter, they are not liable to be evicted. The said contention has no legs to stand. The petitioner has no

right to encroach upon Kadal Puramboke to further their commercial interest. From the counter, it appears that the petitioner has put up temporary as

well as permanent constructions violating Rules as well as the CRZ regulations. The justification of the petitioner that the encroached upon portions

are required for the beneficial enjoyments of the property cannot be sustained.

9. The second contention of the petitioner is as regards the violation of the provisions of the Land Conservancy Rules. The prayer of the petitioner in

both these writ petitions is for a direction to the respondents to refrain from proceeding to remove the encroachment without serving a final order

under Form C of the Land Conservancy Rules.

10. Rule 11 of the Land Conservancy Rules, 1958 reads as follows:

â??Rule 11. The final order of the Collector shall be in writing in his own hand and shall contain the reasons for the decision. The decision shall be

communicated to the party in writing and simultaneously, a notice in Form C appended to these Rules shall be served on him requiring him to vacate

the land within a specified period. The notice shall also contain a direction that everything found on the land encroached upon shall be forfeited to the

Government in the event of the encroacher failing to vacate the land within the period specified.

11. Admittedly, in the instant case, Ext.P3 notice has been issued under Section 12 of the Act by the 3rd respondent. No orders under Form C and in

accordance with Rule 11 has been served on the petitioner. Though the respondents contend that the revenue authorities are well justified in invoking

Section 11(3) of the Act, there are no materials to show that the procedure contemplated therein has been followed. This Court had passed an interim order in favour of the petitioner on 21.7.2017 and hence, the respondents were not able to proceed further. In that view of the matter, I direct the respondent concerned to serve the final order under Rule 11 of the Land Conservancy Act stating the reasons for the decision accompanied by a notice in Form C calling upon the petitioner to remove themselves from the encroached land. The entire exercise shall be completed within a period of thirty days from today.

12. It is made clear that the respondents shall not cause any damage to the property owned by the petitioner and covered under the title deeds in their favour.

With the above directions, these Writ Petitions are disposed of.