
(2026) 02 KL CK 1689
In the High Court Of Kerala
Case No : Writ Petition (C) No. 31589 Of 2022

N. Rajendran

APPELLANT

Vs

State Of Kerala Represented By The Principal Secretary

RESPONDENT

Date of Decision : 10-02-2026

Acts Referred:

Disaster Management Act, 2005 — Section 65, 66, 66(1)

Citation : (2026) 02 KL CK 1689

Hon'ble Judges : Viju Abraham, J

Bench : Single Bench

Advocate : P.K.Vijayamohanan, Aiswarya V.S., Nima Jacob

Final Decision : Allowed

Judgement

Viju Abraham, J

1. The above writ petition has been filed challenging Ext.P6 award passed by the Arbitrator under the Disaster Management Act, 2005 (hereinafter referred to as 'the Act 2005'), being aggrieved by the determination of the quantum of compensation payable in connection with the building requisitioned for institutional quarantine/COVID containment, invoking Section 65 of the Act 2005.

2. The brief facts necessary for the disposal of the writ petition are as follows:

The petitioner is the Proprietor of a lodging house having 25 rooms in Kayamkulam Municipality. The 3rd respondent, in his capacity as the Chairman of the District Disaster Management Authority, exercising the powers under Section 65 of the Act 2005, issued an order for the taking over of the above lodging house of the petitioner for institutional quarantine, by order dated 02.06.2020. Following the said order, the building was taken over by the Village Officer, Kayamkulam, with its 25 keys to the rooms and the key to the compound, as evident from Ext.P1. The petitioner contends that, going by Section 66(1) of the Act 2005, whenever any authority requisitions any premises, there shall be paid to the person interested compensation, the amount of which shall be determined

by taking into consideration the rent payable in respect of the premises, etc. Based on the same, the petitioner has preferred Ext.P2 claim towards the rent of the rooms. Since there was no payment of rent, the petitioner has approached this Court, filing W.P.(C)No.22844 of 2020, seeking appropriate direction for payment of the rent and surrender of the premises. In view of the repeated orders issued by this Court, the building under the custody of the 3rd respondent for 155 days, i.e., for the period from 02.06.2020 to 03.11.2020, was handed over to the petitioner. Later, an amount of Rs.4,50,000/- was released as compensation, and Rs.4,32,000/- was transferred to the account of the petitioner after deducting the Service Tax of Rs.18,000/-. Extensive damage was caused to the electronics and electrical items, the beddings, fittings and fixtures of the rooms, and for repairing and reconditioning the same, the petitioner had to expend an amount of Rs.4,22,395.26/-. Thereupon, the petitioner has approached the Arbitrator as provided under the first proviso to Section 66(1) of the Act, 2005 and pursuant to the direction issued by this Court in W.P. (C)No.7566/2021, Ext.P5 claim raised before the Arbitrator was disposed of as per Ext.P6. The petitioner submits that Ext.P6 is against the spirit of Section 66(1) of the Act, 2005. The petitioner submits that two Government Orders were issued by the 1st respondent regarding the payment of compensation for the premises requisitioned for quarantine purposes. The essential grievance raised by the petitioner is that though rent has been paid for the period from 02.06.2020 to 03.11.2020, the amount was fixed based on Ext.P4 Government Order, wherein the petitioner has not been paid rent for 25 rooms for 155 days in possession of the District Disaster Management Authority at the rate of Rs.500/- per room per night, and the claim was limited to 14 days or the number of days that the individual stayed in the facility, whichever is lesser and thus, the compensation for the 25 rooms taken over by the 3rd respondent for the entire period was not paid, alleging non-occupancy. The petitioner submits that the fixation of rent on the basis of Ext.P4 is absolutely arbitrary and unjust, and it is in the said circumstances that the petitioner has approached this Court.

3. The petitioner relies on the judgment of this Court in *Manager, Aided U.P. School and Another v. T.N.Mahesh and Another* [2004 KHC 1614], the judgment of Uttarakhand High Court in *Rajeev Lochan Shah v. State* [2023 KHC 3074] and the decision in *SR Educational & Charitable Trust v. State of Kerala* [2025 (5) KHC 592] in support of his contentions.

4. A detailed counter affidavit has been filed by the 2nd respondent Arbitrator, wherein it is admitted that the lodging house of the petitioner was taken over by the District Collector, but based on Ext.P4 Government Order it is contended that the payment for individual cases shall be limited to 14 days or the number of days that the individual stayed in the facility, whichever is lesser and the rate of compensation has been fixed based on the guidelines issued in Ext.P4 Government Order. It is also stated that the 2nd respondent, while considering the arbitration petition, awarded the compensation at the rate of Rs.500/- per room per night for the days of actual occupation and whatever amount legally

due to the petitioner has been paid and therefore, the writ petition is without any basis.

5. I have heard the rival contentions on both sides.

6. It is an admitted case that, based on Ext.P1 order issued by the District Disaster Management Authority, the lodging house having 25 rooms in Kayamkulam Municipality owned by the petitioner was taken over in connection with COVID-19 pandemic. Going by Ext.P6 award and the counter affidavit filed, the compensation has been fixed based on Ext.P4 order, granting compensation at the rate of Rs.500/- per room per night for the days of actual occupation, subject to the conditions in Ext.P4 that payment for individual case shall be limited to 14 days or the number of days that the individual stayed in the facility, whichever is lesser. Therefore, the question to be considered is as to whether the determination of compensation based on Ext.P4 Government Order is in accordance with the law.

7. Ext.P3 is the 1st order issued by the Government providing guidelines for payment of expenditure to institutional quarantines. Clause III of the said Government Order dealing with 'requisition of premises and resources' and the Sub-clauses 1, 2 and 3, which are relevant for consideration of the case is extracted below:

"1. If the District Disaster Management Authority has requisitioned any premises(hotels, lodges, resorts, auditoriums etc) and availed the resources thereof under Disaster Management Act,. 2005, the Authority has to provide compensation under Section 66 of the Disaster Management Act, 2005.

2. The DDMA has to consider the factors laid under Section 66 of the Disaster Management Act, 2005 and fix the compensation amount and do the needful to ensure adequate payment of compensation.

3. For tourism sector assets, the DDMA may be assisted by the Tourism Department to fix the compensation."

(underline supplied)

Going by sub-clause (1), if the District Disaster Management Authority has requisitioned any premises including hotels, lodges, etc., and availed the resources thereof under the Act, 2005, the Authority has to provide compensation under Section 66 of the Disaster Management Act, 2005 and the District Disaster Management Authority has to consider the factors laid under Section 66 of the Disaster Management Act, 2005 and fix the compensation amount and do the needful to ensure adequate payment of compensation. Ext.P3 Government Order specifically mandates that the compensation is to be fixed on the basis of the provisions in Section 66 of the Act, 2005. Section 66 deals with 'payment of compensation', which reads as follows:

"66. Payment of compensation - (1) Whenever any Committee, Authority or

officer, referred to in sub-section (1) of section 65, in pursuance of that section requisitions any premises, there shall be paid to the persons interested compensation the amount of which shall be determined by taking into consideration the following, namely:--

(i) the rent payable in respect of the premises, or if no rent is so payable, the rent payable for similar premises in the locality;

(ii) if as consequence of the requisition of the premises the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change:

Provided that where any person interested being aggrieved by the amount of compensation so determined makes an application within the thirty days to the Central Government or the State Government, as the case may be, for referring the matter to an arbitrator, the amount of compensation to be paid shall be such as the arbitrator appointed in this behalf by the Central Government or the State Government, as the case may be, may determine:

Provided further that where there is any dispute as to the title to receive the compensation or as to the apportionment of the amount of compensation, it shall be referred by the Central Government or the State Government, as the case may be, to an arbitrator appointed in this behalf by the Central Government or the State Government, as the case may be, for determination, and shall be determined in accordance with the decision of such arbitrator."

(underline supplied)

Going by Section 66, compensation has to be determined based on the rent payable in respect of the premises and going by the proviso, any person aggrieved by the amount of compensation so determined, can make an application to the Central Government or the State Government, as the case may be, for referring the matter to an arbitrator, who shall determine the amount of compensation to be paid. The second proviso provides that, when there is any dispute as to the title to receive the compensation or as to the apportionment of the amount of compensation, the application has to be filed before the Central Government or the State Government, as the case may be, who shall refer the matter to an arbitrator for determination. The mandate of Section 66 is that the compensation has to be fixed based on the rent payable in respect of the premises. Admittedly, the lodging house is having 25 rooms, each fetching a rent of Rs.500/- has been in the possession of the Disaster Management Authority for 155 days, i.e., from 02.06.2020 to 03.11.2020. A reading of Section 66 reveals that compensation has to be fixed based on the rent payable in respect of the premises. In Ext.P6 award of the arbitrator, the rent entitled for each room was found to be Rs.500/- per room per night. Going by the mandate of Ext.P3 Government Order and Section 66 of the Act, 2005, the petitioner is entitled to compensation, fixing the rent at the rate of Rs.500/- for the 25 rooms for 155 days, i.e., from 02.06.2020 to 03.11.2020.

8. But the said amount has not been paid to the petitioner in full, relying on Clause III of Ext.P3 and Ext.P4 order issued by the Government regarding payment of compensation. The stand taken in Ext.P6 is that, going by Clause III of Ext.P3, for tourism sector assets, the District Disaster Management Authority shall seek assistance of the Tourism Department to fix the compensation, and it is based on the said clause in Ext.P3, that Ext.P4 consequential order was issued. A perusal of Ext.P4 would reveal that the Director of Tourism has furnished the rates to be given as financial support to the institutions and examining the same, the Government have issued Ext.P4 guidelines in addition to the guidelines already issued as per Ext.P3 and rates to be given as financial support to accommodation units. Ext.P4 would further provide that payment for an individual case shall be limited to 14 days or the number of days that the individual stayed in the facility, whichever is lesser and Ext.P4 order further provides payment of Rs.500/- per room per person for non-classified hotels/ lodges, etc., like the building owned by the petitioner. Ext.P4 can only be a Government Order in relation to payment of compensation to the hotel/tourist homes owners, where an individual has stayed for a certain period because of the quarantine and restriction in connection with the COVID-19 pandemic and this cannot be extended to the case of the petitioner, wherein the whole building was taken over by the authorities. It is not in dispute that the District Disaster Management Authority has every right to take over a building, and the petitioner cannot object to the same going by the provisions of the Act 2005 and that the same was in possession of the authorities for 155 days. So, the taking over of the building from the petitioner is a case of compulsory acquisition, by the force of law and therefore when the building as a whole is in the possession of the Disaster Management Authority, they are bound to pay the rent for all the rooms in the building for the period it was in their possession irrespective of whether the rooms were occupied or not. When Section 66 of the Act, 2005 provides that compensation has to be calculated on the basis of the rent payable in respect of the premises, I am of the view that rent has to be paid for all rooms which was in their possession for 155 days and fixing a cut off by way of Ext.P4 Government Order, limiting payment for an individual case for a period of 14 days or the number of days that the individual stayed in the facility, whichever is lesser, is totally impermissible as the provisions of a Statute cannot be modified by way of an executive order.

9. A Division Bench of this Court in *Manager, Aided U.P. School's case* cited *Supra*, was considering an issue as to whether by way of an administrative order, the provisions of the Kerala Education Act could be stayed by the State Government, and the Court held that the State Government cannot by an executive order, stay the operation of a Rule. When Section 66 of the Act, 2005 mandates that the compensation has to be decided on the rent payable in respect of the premises, I am of the view that the entitlement of the petitioner for Rs.500/- per day for 25 rooms for 155 days in possession of the District Disaster Management Authority cannot be denied on the basis of Ext.P4

Government Order. The Uttarakhand High Court in Rajeev Lochan's case cited Supra while considering the impact of a Government Order, which provided that the payment could be made to owners of the premises only when there is actual occupation of the patients, vis-a-vis Section 66 of the Act, 2005, held in paragraphs 10 and 15 as follows:

"10. A conjoint reading of both S.65 and S.66 makes clear that it was within the jurisdiction of District Administration to requisition the hotel of the present petitioner and it is also apparent from the plain reading of the S.66 of the Act that whenever any authority has requisitioned any premises by resorting the provision of sub-S.1 of S.65 then the persons interested shall be paid compensation, the amount of which shall be determined by taking into consideration the rent payable in respect of the premises, or if no rent is so payable, the rent payable to similar premises in the locality; if as consequence of the requisition of the premises the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change would be paid to him.

xxx xxx xxx

15. Thus, it is clear that statute enacted by the Indian Parliament authorises the District Administration to requisition any property for use in a pandemic situation and for such requisition adequate compensation should be paid. In this case, it is not disputed that while petitioner's hotel was requisitioned, the authorities fixed the rent at the rate of Rs.950/- per day per room and Rs. 150/- for meals for a day. It is also not disputed that the hotel was never used by the District Administration for the purpose of quarantine and / or isolation. However, S.66 of the Act does not lay down that in case the premise is requisitioned and it is not used in - actuality then the person interested shall not be entitled to the compensation. Whenever, the premises is requisitioned then the person interested, i.e., petitioner is interested, is entitled to receive the compensation for the same as per S.66 of the Act, 2005. The G.O. relied heavily upon by the learned counsel for the State cannot override the provisions enacted by the parliament as the parliament is supreme in law making. Any government orders passed is in violation or in teeth of such provision of Central enactment then G.O. will not be countenanced by the Court. Hence, the writ application is meritorious and deserves to be allowed."

(underline supplied)

In Rajeev Lochan's case cited Supra, the Court held that Section 66 of the Act 2005 does not lay down that in case the premise is requisitioned and it is not used in-actuality, then the person interested shall not be entitled for the compensation and further held that whenever the premises is requisitioned, then the person interested, is entitled to receive the compensation for the same as per Section 66 of the Act, 2005 and the Government Order cannot override the provisions of the Act, 2005.

10. In the light of the above, the petitioner is entitled to succeed and is entitled to get Rs.500/- per day for 25 rooms, for 155 days, ie, from 02.06.2020 to 30.11.2020 and Ext.P6 order to the extent it denied the same to the petitioner is set aside. There will be a consequential direction to the 3rd respondent to pay compensation to the petitioner at the rate of Rs.500/- per day for 25 rooms, for the period from 02.06.2020 to 03.11.2020. The balance amount, over and above the amount already paid, together with 6% interest from the date on which the rent became due, shall be paid to the petitioner, within a period of one month from the date of receipt of a copy of this judgment.

With the above said directions, the writ petition is allowed.