

(2002) 07 KL CK 0106
In the High Court Of Kerala
Case No : W.A. No. 488 of 1996

Vatsan, V.

APPELLANT

Vs

Government of Kerala and Others

RESPONDENT

Date of Decision : 26-07-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 226, 32
Criminal Procedure Code, 1973 (CrPC) — Section 141
Kerala Land Conservancy Act, 1957 — Section 11, 11(1), 11(2), 11(3), 12
Kerala Municipalities Act, 1994 — Section 207

Citation : (2003) 2 KLJ 271

Hon'ble Judges : B.N. Srikrishna, C.J;G. Sivarajan, J

Bench : Division Bench

Advocate : V. Santharam and K. Anilkumar, for the Appellant; Lal George, Government Pleader for Respondents Nos. 1, 2, 5, 6 and 7 and K.P. Dandapani and V.C. Chandrasekharan, for the Respondent

Final Decision : Allowed

Judgement

G. Sivarajan, J.—The second Petitioner in O.P. No. 1407 of 1995 is the Appellant. He along with 23 Ors. has filed the said writ petition seeking the following reliefs:

(i) Issue a writ of certiorari to quash notices dated 10th January 1995 of the 5th Respondent Exts. P-10, P-37, P-42, P-57, P-62, P-68, P-85, P-98, P-106, P-102, P-118, P-124, P-134, P-145 and P-150.

(ii) Issue a writ of mandamus directing the Respondents to allow the Petitioners to carry on their trade in the Ernakulam Boat Jetty area in the respective places where the bunks were originally situated.

(iii) Issue a writ of mandamus directing the Respondents to pay adequate and sufficient compensation for the respective losses of the Petitioners" resulted out of the destruction of the bunks.

The learned Single Judge dismissed the said writ petition by Judgment dated

19th December 1995 holding that the reports filed by the commissioners would generally tend to show that most of the bunks are located in such a way that they cause impediment to free flow of traffic and therefore in the light of the decision of the Division Bench in W.A. No. 847 of 1993 it is not in public interest to permit the Petitioners to squat on the road margins. The learned Single Judge also held that no legal grounds are made out by the Petitioners for grant of the reliefs prayed for by them and declined to exercise the discretionary jurisdiction vested under Article 226 of the Constitution in favour of the Petitioners. Though there were 29 Petitioners, who are similarly situated only the second Petitioner has chosen to file appeal against this Judgment. He has made the other Petitioners as Respondents 1 to 28 in the appeal.

2. The Division Bench at the time of admission of the appeal on 18th March 1996 ordered that Respondents 1 to 28 are unnecessary parties and therefore no notice need be sent to them. In view of the fact that the other Petitioners in the O.P. have not filed any appeal against the Judgment of the learned Single Judge and in view of the fact that the Division Bench at the time of admission of the appeal ordered that Respondents I to 28 in the appeal are unnecessary parties the only person who is aggrieved by the Judgment of the learned Single Judge is the Appellant. In the above circumstances, we are considering this appeal only in relation to the facts of the Appellant's case and the reliefs, if any, will be confined to the Appellant only.

3. The brief facts necessary for decision of the appeal are as follows: The Appellant was a Government servant, who retired from service as a telephone operator in the Government Guest House, Ernakulam. He made an application dated 8th October 1987 to the Cochin Corporation for allotment of space near the Ernakulam Boat Jetty to put up a bunk shop for conducting business in ready made goods. The Corporation by resolution dated 22nd December 1987 decided to allow the Appellant to put up a bunk shop of the size 1.80 x 1.20 metre on the extreme north of the existing bunk shops near Boat Jetty, Ernakulam. The Standing Committee of the Corporation by resolution No. 64 dated 13th January 1988 had fixed the ground rent for the space at Rs. 200 per month. In the light of the said two resolutions the Commissioner, Cochin Corporation had issued proceedings No. M.O.P. 6--21751/87 dated 28th January 1988 (Ext. P-11) granting permission to the Appellant to put up a bunk shop of the size 1.80 x 1.20 metre on the north extreme side of the existing bunk shops near the Boat Jetty, Ernakulam subject to certain conditions. It was specifically provided that the ground rent of Rs. 200 per month has to be remitted in the revenue section of the Corporation, that the Appellant has to execute an agreement in stamp paper and to pay 3 months' ground rent as advance and that on account of the putting up of the bunk shop no damage should be caused to the road nor any obstruction to the pedestrian. It was also provided that as and when the Corporation requires the said land the Appellant shall remove the said bunk at his expense without raising any claim whatsoever in that regard. The Appellant was also required to take necessary licence. Pursuant to the said grant the

Appellant had executed the agreement and also remitted a sum of Rs. 600 towards advance, evidenced by receipt dated 30th January 1988 (Ext. P-12). He was also paying the monthly licence fee regularly. Later when the Appellant had put up an iron shutter to his bunk shop the Cochin Corporation had issued an order dated 28th January 1988 directing the Appellant to remove the said iron shutter. The Appellant then filed O.P. No. 4653 of 1988 before this Court and obtained an interim stay, evidenced by Exts. P-14 and P-15. The said writ petition was later disposed of by Judgment dated 12th September 1988 (Ext. P-16). The stand of the Cochin Corporation was that the Appellant had encroached, on an area outside the sanctioned plan and had put up an iron shutter in front of his bunk and therefore he was asked to remove the iron shutter and surrender the excess area. This Court allowed the Appellant to retain the shutter and made clear that this will not confer any right of permanency on the Appellant. The lease/licence in favour of the Appellant was also renewed for the year 1994-95 which was due to expire on 31st March 1995. While so, 33rd Respondent, the Tahsildar, Kanayannur Taluk issued notice dated 10th January 1995 u/s 11(3) of the Kerala Land Conservancy Act (Ext. P-10 is one such notice) directing the Appellant to vacate the encroachment within 24 hours failing which he will be evicted from the premises by force. The Village Officer, Ernakulam sought to serve notice on the Appellant on 13th January 1995 but since the shop remain closed it was affixed in front of the shop room on the same day. Since 14th being second Saturday and 15th being Sunday the other shop owners were disabled from approaching for any legal remedy and therefore they made a mass representation to the Revenue Minister who was in the Government Guest House, Ernakulam and obtained a stay order (Ext. P-163). According to the Appellant, due to illness, he did not open the shop for one week and he did not know about the notice of eviction. Around 11 a.m. on 15th January 1995, which was a Sunday, a large constabulary of police headed by the Circle Inspector of Police, Central Police Station, Ernakulam surrounded the shops and the Addl. District Magistrate, Ernakulam, Sub Collector, Fort Cochi, Tahsildar, Kanayainur, Village Officer and other staff of the Village Office, Ernakulam also reached the spot and notwithstanding the objections raised by the bunk owners forcefully demolished the shops. According to the Appellant, he and Ors. suffered boundless damages on account of physical destruction of the materials and articles and on account of the mental agony of stress and strains. According to the Appellant, the articles kept in the shops for some extent saved but many have been totally destructed and taken away causing very huge financial loss.

4. This writ petition was grouped along with a batch of writ petitions, O.P. No. 1595 of 1995, etc. Advocate Commissioners were also appointed as per order in C.M.P. No. 3076 of 1995 in O.P. No. 1595 of 1995. Advocate Commissioners, M/s K.K. Denesan and P.J. Joseph submitted two separate reports, both dated 20th February 1995. The Commissioners inspected the site on 4th February 1995. In regard to the Petitioners in O.P. No. 1407 of 1995 the inspection report of Advocate Commissioner Sri. K.K. Denesan states thus:

"Inspection site is near old Boat Jetty at Ernakulam on the western side of Park Avenue Road and the southern side of children's park. No bunks are seen here at the time of inspection, we are told that the bunks were demolished on the small hours of 15th January 1995 (Sunday) by persons brought by the Revenue Authorities in the presence of police and everything there were taken away. We could see only remnants of the demolished bunks. The basement of the demolished structure is identifiable.

Except two, the other bunks were standing in a straight line from south to north on the eastern extremity of the boat jetty canal. The fact that the Petitioners in O.P. No. 1407 of 1995 were conducting business as petty traders in various consumer goods and services, is admitted by all those present at the time of inspection. It is also admitted that the bunks were constructed with the permission of the Cochin Corporation and that the occupants were required to deposit Rs. 1000 as security amount and Anr. sum as 3 months' advance rent, by the Cochin Corporation.

The occupants were asked to pay monthly rent fixed by the Corporation in accordance with the size of the bunks, nature of the business conducted etc. and most of them were paying the rent regularly. The bunks had a plinth area of 8" (east-west) and 5" (north-south). The back side of these bunks were touching the eastern extremity of the canal just on the western side. The canal is used mainly as a jetty for passenger boats.

Regarding the Appellant's bunk which is serial No. 21 it is stated as follows:

Sl. No. 21. Petitioner No. 2 Sri. V. Vathsan is the bunk owner. He was conducting business in ready-made garments, perfumes, etc. from December, 1987 onwards. He says that sanction was accorded to him by the Cochin Corporation to put up and occupy the bunk. He had executed agreement on stamp paper as requested by the Corporation. He has deposited Rs. 1000 as security. Initially the monthly rent was Rs. 200. So he has paid Rs. 600 as advance rent. He states that he had approached this Hon'ble Court on a previous occasion against the direction of the authorities to remove the shutter of his shop and that authorities subsequently abandoned that action in deference to the order passed by this Hon'ble Court. In 1993 the monthly rent was reduced from Rs. 200 to Rs. 105. It was on that date, the security amount of Rs. 1000 was collected from him by the Cochin Corporation. The area of the bunk is 6" x 7?.

In the report of the Advocate Commissioner Sri P.J. Joseph also regarding the Appellant it is stated as follows:

(21) V. Vathsan who is the 2nd Petitioner in the O.P. and his bunk was completely demolished by revenue authority. He was paying Rs. 105 as rent. He informed me that he lost Rs. 20,000 due to the loss of articles. He has been conducting a perfume shop. The bunk was on the northern side of 1st Petitioner. Broken stones and sand is seen at the time of inspection. If the bunk is there it will not cause inconvenience to the public. To certain extent this is helpful to the public.

5. A common statement was filed by the Secretary of the Cochin Corporation in the batch of writ petitions including the writ petition in question. It is stated therein that all the Petitioners in the above said O.Ps. except those in O.P. No. 1407 of 1995 were running bunk shops without the permission of the Corporation by the side of public roads. The rest of the statement relates to the running of the bunk shops by the Petitioners in the other writ petitions without the permission of the Corporation by the side of the public roads with which we are not concerned.

6. The 4th Respondent-Greater Cochin Development Authority has filed a counter affidavit in the present O.P. wherein it is stated that the request of the Petitioners to allow them to carry on their trade in the Ernakulam Boat Jetty area in the respective places where the bunks were originally situated cannot be granted. It further states that as per the Cochin Marine Drive Scheme, the area previously occupied by the temporary shop owners is earmarked for widening of the existing Park Avenue to 36 metres and that as per the scheme, the Public Works Department is the agency to carry out the work. The 4th Respondent also denied their liability to pay any compensation to the Petitioners. None of the other Respondents have filed any counter affidavit or statement in the O.P. However, the Cochin Corporation has filed a counter affidavit in C.M.P. No. 6409 of 1998 in the writ appeal. The definite stand of the Cochin Corporation was that neither the Corporation nor its officials did anything to evict the Petitioners from the premises and therefore there is no cause of action against them. It is further stated that the Appellant has no manner of right over road poramboke, that he was doing business on the strength of a licence granted by the Corporation, that the licence is renewed every year, that in the proceedings issued to the bunk owners in 1994 granting licence for the period from 1st April 1994 it was specifically stated that the bunks located by the side of the National Highway/ State Highway should obtain permission from the respective authorities, that this condition was incorporated in agreements executed by the bunk owners including the Appellant, that the road poramboke at the Boat Jetty is part of the State Highway and so the permission of the P.W.D. officials was necessary for the establishment of the bunk of the Appellant, that the Appellant did not obtain the said permission, that the revenue officials evicted the Appellant admittedly after issuing notice under the Land Conservancy Act and that there is nothing illegal or irregular about the demolition of the Appellant's bunk. It is also stated that even though the Appellant has licence to do business upto 31st March 1995 it was interrupted in January, 1995 by he revenue officials and that if the interruption was wrongful the revenue officials may be responsible to compensate the Appellant. The Corporation also took the-stand that even assuming the closure of the business was wrongful and had suffered damages the remedy of the Appellant is to file a civil suit and that compensation cannot be decided in this proceedings on the basis of conflicting affidavits. The Corporation, according to it, is in no way responsible for the loss suffered by the Appellant. The counter affidavit further proceeds to state that there is no proceedings in the Corporation

ordering or directing the demolition of the bunk and the alleged directions of the District Collector are not the orders of the Mayor and that the Corporation being a statutory authority it is not bound by the ultra vires action of its officers.

1. The Superintending Engineer, P.W.D. (Roads and Bridges), Central Circle, Aluva though he was not a party has filed a counter affidavit in the appeal as directed by this Court wherein it is stated that the Park Avenue Road in front of the Children's Park is maintained by the Kerala Public Works Department, Roads Division, Ernakulam; the road is classified as city road with the same status of major district roads of P.W.D. in the Ernakulam District; the P.W.D. is maintaining the Park Avenue Road and the Cochin Corporation has no control over the said road. It further states that a provision to improve and widen the Park Avenue Road is included in the Budget for the years 2002-2003 and the name of the work is shown as "improvements to road from Madhava; Pharmacy Junction to the High; Court Junction and from there to the Fine Arts Hall Junction", covering the road portion in front of the Children's Park. The estimate prepared in this regard includes the widening of the Park Avenue Road, if the land is made available to the Department without any acquisition process. In the current budget an amount of Rs. 70 lakhs is provided and administrative sanction for the same has been issued by the Government as per G.O. (Rt) No. 509/02/P.W.D., dated 14th June 2002. Lastly it is stated that the P.W.D. is not involved in the eviction process in the Children's Park premises.

8. The Tahsildar, Kanayannur Taluk, Ernakulam, who is the 5th Respondent in the appeal had filed a statement on 10th December 1999, wherein the following averments are made. The Executive Committee of the District Council for Child Welfare, Ernakulam in the meeting held on 2nd January 1995 in the Mayor's Chamber, Corporation of Kochi unanimously decided to request the Revenue authorities to remove the encroachment around the Children's Traffic Training Park, Boat Pond and Children's Library Hall in view of the following reasons (1) safety of the children who are visiting the Children's Traffic Training Park and the Toys Museum attached to the Children's Library Hall, (2) the unauthorised encroachment are posing danger to the large number of young children who visit the park and the crowd which collect around there encroachment occupy the ways compelling the children to move into the road, (3) to avoid the traffic congestion in front of the jetty and suburbs and (4) to stopping or curtail anti-social and immoral activities which are going on even in day time in the above areas. On the basis of the above resolution, the Assistant Development Commissioner (G.L. and Ex Officio Secretary), District Council for Child Welfare, Collectorate, Ernakulam by Letter No. D3-15116/93, dated 9th January 1995 requested the Tahsildar, Kanayannur to remove the encroachments; the land in which the encroachment was made is about 12 cents in Sy. No. 1605 of Ernakulam Village and as per the Village records the land belongs to Revenue Department; as per the report No. 30/95, dated 10th January 1995 of the Village Officer there were 31 bunks in the above-mentioned 12 cents; the bunk owners were given notice u/s 11(3) of the Kerala Land Conservancy Act on 13th January

1995 requesting them to vacate on 14th January 1995; except Sri Vathsan, Sri K.D. Antony and T.G. Varghese all bunk owners have vacated voluntarily; the bunks of Sri Vathsan, K.D. Antony and T.G. Varghese were demolished and the demolished parts of the bunks were taken custody of under proper mahazar and sold in public auction; the bunks were situated in Government poramboke land and the eviction was effected after complying all the legal formalities; the reason for invoking the provisions contained in Section 11(3) of the K.L.G. Act was the request made by the District Council for Child Welfare, Ernakulam for urgent steps in the matter; the Appellant is not entitled to get any compensation since he was an encroacher in Government poramboke land.

9. Later a counter affidavit is filed by the Deputy Tahsildar, Kanayannur, Ernakulam, the 3rd Respondent in the appeal. He has stated that he joined as a Deputy Tahsildar, Kanayannur Taluk on 1st February 2002 -and that the counter affidavit is sworn to on the basis of the records available in the Office of the Tahsildar. The averments in paragraphs 2, 3 and 4 of the said counter are the same as in the statement, filed by the 5th Respondent Tahsildar on 10th December 1999. It is further stated that of the 29 persons in the original petition all except the Appellant and two Ors. accepted notice and voluntarily removed the bunks within the stipulated time specified in the notice. The Appellant and two Ors. refused to remove the structure portion of the bunks, though they were very keen in removing the valuables from the bunks. After permitting the Appellant to remove the valuables from the bunks the concerned revenue officials removed the structure of the bunks and took materials used for the construction of the bunk under Government custody after preparing mahazar and inventory. The Appellant was also permitted to remove the trade materials available in the bunk and they had reproved the same also. The mahazar and the inventory were prepared in the presence of independent witnesses and the eviction was sought since the Appellant refused to remove the bunk. The seized articles were sold in public auction by observing the formalities. The Appellant is an encroacher in the Government land; being an encroacher in the Government land, the Appellant has no right to construct any bunk in the Government land; Section 11(3) of the Kerala Land Conservancy Act enables the authorities to evict such unauthorised occupants by following the procedure provided in the Land Conservancy Act. The Appellant was also given notice u/s 11(3) of the Act and sufficient time was given to him for removing the bunk. The Appellant, it is stated, is not entitled to get compensation as claimed since he had encroached upon the Government land.

10. The Appellant has filed a reply affidavit denying various averments made in the counter affidavit and further said: Even if the Government considered it as a Government poramboke, having come to know that the bunks had. been occupied by the Appellant and Ors. for doing business for the last few years on the basis of the permits granted by the Corporation of Kochi they ought to have ascertained the position from the Corporation and sought their permission or should have requested the Corporation to take appropriate steps to evict the

licensees from the said land; the action of the revenue authorities in issuing notice u/s 11(3) of the Land Conservancy Act and removing the bunks by force is arbitrary and high handed action of the executive. According to the Appellant this is not a case where the provisions of the K.L.C. Act can be applied and the authorities had acted without jurisdiction in evicting the Appellant by resort to the machinery of the said Act which is an abuse and mal-exercise of the power. The Appellant also stated that he was laid up of viral fever and that he had not opened the shop for about 10 days before the bunks were removed on 15th January 1995, that he had not removed any goods from the shop, that he did not get any proper notice and sufficient time to remove the goods and that the notice u/s 11(3) was affixed on the Appellant's shop. The Appellant also disputed the inventory/mahazar prepared by the revenue authorities and stated that it is understood that all the bunks were inhumanly destroyed by using gas cutters and removed the destructed materials from the spot and that goods worth Rs. 25,000 kept in the shop is removed by the authorities and the bunk was totally destroyed. The Appellant further stated that the high handed action of the Government authorities with the connivance of the Corporation has to be viewed very seriously and that by the arbitrary action of the authorities the fundamental rights of livelihood of the Appellant and Ors. were infringed and he is entitled to get compensation under public law remedy based on imposing strict liability for contravention of the fundamental rights to which the principle of sovereign immunity does not apply.

11. We have heard the learned Counsel appearing for the Appellant and the learned Counsel appearing for the Respondents, who have adopted the stand taken in their respective pleadings. Certain decisions are also relied on by them.

12. The following admitted facts emerge from the pleadings in this case. The bunk shop of the Appellant is located in a plot of 12 cents situated on the western side of the Park Avenue Road beyond the iron wall which separates the Park Avenue Road and the Children's Park, on the southern side of the Children's Park and the northern side of the Boat Jetty. The Cochin Corporation had permitted the Appellant to put up a bunk of the size 1.80 metre x 1.20 metre on the extreme north of the existing bunk shops in the Ernakulam Boat Jetty on a ground rent of Rs. 200 per month subject to certain conditions as per proceedings dated 28th January 1988. Based on the said permission the Appellant had put up the bunk after executing the required agreement and after remitting the advance rent. The licence for conducting business in the bunk shop was also obtained. The agreement is valid up to 31st March 1995. The Appellant was also conducting business in the said shop. The revenue authorities had issued a notice u/s 11(3) of the K.L.C. Act giving 24 hours time for removing the bunk shops from the premises in question. Since the Appellant's bunk shop was closed on 13th January 1995 notice was affixed in front of the bunk shop of the Appellant. On 15th January 1995 the revenue authorities, with the police aid had cut and removed the structure of the bunk belonging to the Appellant. The Appellant claimed damages for the destruction of the bunk and the loss of goods

caused. However, there is a dispute regarding the ownership of the plot where the bunk shop was located. The Corporation claims that the place belongs to it whereas the revenue authorities claims that it belongs to Government. A resolution of the said issue has some relevance in the matter of adjudicating the main issue. The stand of the Appellant is that his bunk shop was an authorised one and that his means of livelihood is deprived otherwise than by a just and fair procedure established by law.

13. In order to appreciate the rival contentions urged by the parties it is necessary to advert to the relevant provisions of the Kerala Municipality Act, 1994 and to the provisions of the Kerala Land Conservancy Act, 1957. In the case of a land belonging to the Cochin Corporation either by vesting u/s 207 of the Municipality Act or otherwise power is conferred on the Corporation under the Municipality Act itself for dealing with the said property. Section 364 of the Act provides that no person shall build any wall or erect any fence or other obstruction, or projection, or make any encroachment in or over any street. u/s 365 all streets vested in or maintained by a Municipality shall be open to all members of the public. Section 367 provides for removal of encroachment. Sub-section (3) of Section 367 provides that where the Secretary is satisfied that any road or public street including footpath, if any, thereof belonging to the Municipality or vested in it or otherwise is encroached upon by any person in any form, either temporarily or permanently so as to cause obstruction or hindrance or inconvenience to traffic and users of the street, the Secretary may summarily evict such encroachments and may seize and dispose of any belonging or article that may be found on such road or street and no person shall be entitled to claim compensation for any action taken by the Secretary in this behalf. Subsection (2) of Section 368 confers power on the Municipality to grant licence subject to such conditions and restrictions as it may think fit, for the temporary erection of pandals and other structures in a public street vested in the Municipality. Sub-section (3) also confers power on the Municipality to lease roadsides and street margins vested in it for occupation on such terms and conditions and for such period as it may fix. However, Sub-section (4) restricts the said power being exercised if the same is likely to be injurious to health or cause public inconvenience or otherwise materially interfere with the use of the road as such. Sub-section (5) confers power on the Government to issue notification, restrict and impose such control in, as they may think fit, the exercise by Municipalities in general or by any Municipality in particular, of the powers under sub-sections (1) and (3). Sub-section (6) enables the Secretary, on the expiry of any period for which a licence has been granted under this section, to cause any projection or construction put up under Sub-section (1) or Sub-section (2) to be removed, and the cost thereof shall be recovered in the manner provided in Section 538 from the person to whom the licence was granted. Section 371 provides that no person shall hawk or expose for sale in any public place or in any public street within a municipal area any article whatsoever whether it be for human consumption or not except under a licence granted by the Municipality in this

behalf. Section 376 provides that where any person without the previous sanction of a Municipality occupies any land belonging to it or vested in it or under its control, he shall, from time to time, pay in respect of such occupation such sums by way of penalty as may be -demanded by the Municipality subject to such limits as may be prescribed. Sub-Section 3(a) of Section 376 provides that any person unauthorisedly occupying any land for which he is bound to pay a penalty under Sub-section (1) in respect of such occupation, may be summarily evicted by the Secretary and any crops or other product raised on the land shall be liable to forfeiture and any building or structure erected or anything deposited thereon, shall also, if not removed by him, after such written notice as the Secretary may deem reasonable, be liable to forfeiture and any property so forfeited shall be disposed of by the Secretary in accordance with such procedure as the Council may direct. Sub-section (3) also gives power on the Secretary to evict such occupation summarily. It also provides the mode of such eviction. The Secretary has to issue a notice on the person in occupation of the land or to his agent calling upon him to vacate the land within a reasonable time to be fixed by the Secretary. If there is failure to comply with the said notice the Secretary can depute a subordinate to remove any person who may refuse to vacate the same and if there is any resistance from any person the Secretary has to report to the Collector the said fact and thereupon the Collector has to hold a summary enquiry and if he is satisfied of any such resistance being continued issue warrant for arrest of such person and may send him to jail for a period not exceeding 30 days to prevent the continuance of such resistance.

14. The Kerala Land Conservancy Act, 1957 is a uniform law for checking the unauthorised occupation of Government lands. u/s 3 of the said Act all public roads, streets, lanes, and paths, etc. and all lands whosoever situated, save in so far as the same are the property of categories mentioned as (a) to (e) are Government lands. Explanation IV to the said section states that the lands belonging to, inter alia, a municipal corporation, shall be deemed to be the property of Government within the meaning of this section. Under Sub-section (2) of Section 3 all unassessed lands within the limits of private estates used or reserved for public purposes or for the communal use of villagers, and all public roads and streets vested in any local authority shall, for the purpose of this Act, be deemed to be the property of Government. Section 5 provides that from and after the commencement of this Act it shall not be lawful for any person to occupy a land which is the property of Government, whether a poramboke or not, without permission from the Government as may be empowered in this behalf. Section 8 deals with levy of assessment on lands which are the property of Government unauthorisedly occupied. Section 11 of the Act which deals with the eviction of unauthorised occupation. Under Sub-section (1) any person unauthorisedly occupying any land for which he is liable to pay a fine u/s 7 and an assessment or prohibitory assessment u/s 8 may be summarily evicted by the Collector and any crop or any other building or structure erected or anything deposited thereon shall also if not removed by him after such written notice as

the Collector may deem reasonable, be liable to forfeiture. Sub-section (2) of Section 11 provides for the mode of eviction and Sub-section (3) dispenses with the procedure provided under Sub-section (2) of Section 11 provided the circumstances mentioned therein exist. Section 12 of the Act casts a duty on the Collector to give notice to the occupant or other person likely to be affected by the order, and record any statement which such occupant or person may make and any evidence which he may adduce within a time before passing an order under the Act and all orders passed by the Collector under the Act shall be in writing and under his hand. However, the proviso thereto dispenses with the above requirement when the Collector takes action under Sub-section (3) of Section 11. By notification No. LRD4--18737/57/Rev. dated, 1st October 1958 published in Kerala Gazette, dated. 7th October 1958 Part I page 3074 "Taluk Tahsildars" are authorised to exercise the powers of a "Collector" under this Act and hence the expression "Collector" occurring in this Judgment shall mean the Tahsildar, Kanayannur Tahk.

15. A reading of the provisions of the Kerala Municipality Act, 1994 and the Kerala Land Conservancy Act 1957 referred to above would clearly demonstrate that the provisions regarding eviction of unauthorised occupation from the land belonging to the Municipality or the Government are similar. Thus the only difference is that, if the eviction of unauthorised occupation is from the land belonging to or vested in the Municipality or over which the Municipality has control such eviction can be made only under the provisions of the Municipality Act, 1994 discussed above. If it is found that the land in question belongs to or vested in the Municipality or over which the Municipality had any control then, on the facts of the case there is no unauthorised occupation attracting the provisions of Section 376(3) of the said Act. The Appellant can be evicted only in terms of the agreement entered into between him and the Cochin Corporation. Such an event has not taken place.

16. Here it must also be noted that prior to the enactment of the Kerala Municipality Act, 1994, by virtue of the provisions of Explanation IV to Section 3 of the K.L.C. Act even the land belonging to a Municipal "Corporation is deemed to be the property of Government within the meaning of the said section and all public roads and streets vested in local authority for the purpose of this Act shall be deemed to be the property of the Government. However, Section 207 of the Kerala Municipality Act, 1994 made a departure from the said position. Section 207 of the Kerala Municipality Act starts with a non obstante clause "notwithstanding anything contained in the Kerala Land Conservancy Act, 1957 or in any other law for the time being in force" and says that the lands mentioned therein shall stand transferred to and vested absolutely in the Municipality. Thus in respect of lands belonging to a Municipality the provisions of the K.L.C. Act, 1957 has no application since 30th May 1994, i.e., the date of commencement of the Kerala Municipality Act, 1994 and the procedure provided in the Municipality Act, 1994 has to be applied for eviction of unauthorised encroachment of property vested in the Municipal Corporation.

17. The Cochin Corporation, it would appear from Est. P-11 proceedings assumed that it is the owner of the land in which the Appellant has put up the bunk or at any rate the control of the said land is vested in it. It is for that reason the Corporation gave the space to the Appellant for putting up the bunk on ground rent. Since the Appellant was occupying the said land as a lessee/licensee of the Cochin Corporation and since there was a valid licence for the period upto 1st April 1995 the Appellant was liable to be evicted only in -accordance with the terms of the licence. The provisions of Section 368 had no application in the case of the Appellant. The stand of the Cochin Corporation is that it had not taken any steps to evict the Appellant from the place where his bunk is located and that it had not consented to the eviction of the Appellant from the premises. It is their further case that the eviction was effected by the revenue authorities only. Though the Appellant has alleged: that the eviction is the result of the collusive action of the Municipal authorities and the revenue authorities there is no material to arrive at the said conclusion. As such the Cochin Corporation cannot be faulted for the action of the revenue authorities in evicting the Appellant from the premises.

18. In the circumstances, the action of the revenue authorities invoking the provisions of the K.L.C. Act can be justified only if the land in question belongs to the Government. The Cochin Corporation claims that the 12 cents of land where the bunks were put by the Appellant and Ors. have vested in the Cochin Corporation by virtue of Section 207 of the Kerala Municipality Act, 1994 as per which all public roads, streets, etc. and the land adjacent to it not being private lands appertaining thereto in municipal area other than roads classified as National Highways and other roads classified as State Highways by the Government shall stand transferred to, and vest absolutely in the Municipality. Section 207 thus excludes land adjacent to roads classified as National Highways and other roads classified as State Highways by the Government. The fact that the Park Avenue Road situated in front of the Children's Park is maintained by the P.W.D. is not disputed. According to the Public Works Department the road is classified as a city road with the same status of major district roads of P.W.D. The Cochin Corporation has also stated that the road poramboke of the boat jetty is part of the State Highways and therefore the permission of the P.W.D. officials was necessary. Though the authorities were taking the stand that the Park Avenue road has got the status of National Highways/State Highways no material has been placed on record to show that the Government has classified the Park Avenue Road in front of the Children's Park either as National Highway or as State Highway. In the above circumstances, it will not be safe to conclude the question as to whether it is a National Highway or a State Highway either way. According to us, a resolution of the said dispute also will not solve the problem, for, admittedly the plot where the Appellant's bunk shop is located beyond the Park Avenue Road, the footpath and the iron wall separating the road from the Children's Park in Sy. No. 1605. In other words, the bunk in question is located in a plot separated from the road by an iron" wall. The revenue records also

show that the 12 cents of land in which the bunks are put up is part of a larger extent of 81 cents of land which is described as "maithanam poramboke" and not as "road poramboke". Thus even assuming that the Park Avenue Road and the footpath had vested in the Cochin Corporation u/s 207 of the Kerala Municipality Act, 1994 a further question will arise as to whether the plot in question can be treated as land adjacent to the public road mentioned in Section 207. Admittedly the plot in question abuts the Park Avenue Road and footpath. There will be some difficulty in accepting the stand that all lands other than private lands adjacent to a public road beyond the road and footpath will vest in the Cochin Corporation u/s 207. The Taluk Office, Ernakulam, the District Court and the Subordinate Courts, Maharaja's College, General Hospital, Telephone Exchange, Revenue Tower Building under construction, Government Law College, etc. abuts the Park Avenue road on the eastern side. Can it be said that by virtue of the provisions of Section 207 of the Kerala Municipality Act, 1994 all those lands and buildings be treated as vested in the Cochin Corporation? An answer to this question requires further probe which we are not inclined to undertake in this proceedings. For the purpose of this case we will proceed as if the land in question belongs to the Government.

19. The learned senior Government Pleader appearing for the revenue authorities has placed before us the relevant files regarding the eviction of the Appellant and other bunk owners. Perusal of the same disclosed the following details: The Tahsildar, Kanayannur on 10th January 1995 received a letter dated 9th January 1995 from the District Council for Child Welfare, Collectorate, Ernakulam pointing out the encroachment around the Children's Park, Boat Pond and Children's Library: Hall, Ernakulam and requesting him to take immediate steps to remove the said encroachments. It is also stated that a copy of this letter is being sent to the District Collector, Ernakulam for information as he is the Chairman of the District Council for Child Welfare and that the matter is exceptionally urgent. The Tahsildar on 10th January 1995 itself called for a report from the Village Officer, Ernakulam on the said request. The Village Officer submitted a report on the same date. The report showed that the location of the bunk shops is in between Boat Jetty and Children's Traffic Training Park and on the western side of Shanmughom Road, there are 30 bunk shops located in 12 cents of land which is part of a large extent of 81 cents of land in Sy. No. 1605 described as "maithanam poramboke"; the 12 cents of land in which bunk shops are put up has not been allotted to any department as per the records; different businesses are being conducted in all the 30 shops; out of the 30 bunk owners a few of them were conducting business in other parts of the city and are now doing business in the present bunks after obtaining permission from the Cochin Corporation on payment of ground rent; there is electricity connection in some of the bunks; in two shops there are telephone connections also. A list of bunk shop owners with details are also attached to the report. A rough sketch showing the survey numbers and the location of the petty shops were also enclosed. The list shows that the Appellant is SI. No. 9 in the list; the shop is seen locked, ground

rent of Rs. 105 is paid to the Cochin Corporation; duration of occupation 3 years. When these details are brought on record a prudent officer properly instructed in-law would have immediately contacted the Cochin Corporation and sought clarification from them in the matter. So far as the Appellant is concerned he was in occupation of the bunk in the land in question since 1987, i.e. over 7 years on the date of eviction under valid agreement entered into with die Cochin Corporation. The Children's Park, Boat Pood, Children's Library, etc. were there since 1987. As such nothing presented the revenue authorities to request the Cochin Corporation to terminate the case/licente agreement and to evict the bunk owners. The Collector also in the alternative, could have issued notice u/s 11(2) of the K.L.C. Act to the Appellant and passed an order as contemplated u/s 12 of the said Act in which case the Appellant would have got an effective opportunity to put forward his case before the Collector. These salutary safeguards are not seen complied with.

20. The Collector had invoked the provisions of Section 11(3) of the K.L.C. Act as is evident from the notice Ext. P-10. The note file produced contains the proceedings of the Tahsildar, dated 10th January 1995 extracted therein below:

NOTE

Sub.--District Council for Child Welfare, Ernakulam, Encroachment around the Children's Library Hall, Ernakulam,--Eviction--Regarding.

Ref--Letter No. D3-15116/93, dated 9th January 1995 of Assistant Development Commissioner.

As directed the Village Officer, Ernakulam has submitted the details of encroachers around the Children's Traffic Training Park and Boat Pond and Children's Library Hall at Ernakulam.

The Village Officer, Ernakulam has submitted a list of 30 encroachers. All the encroachers may be removed with the 11(3) Notice for summary eviction.

This is seen approved only on 13th January 1995 (whose initial is not clear).

21. Sub-section (3) of Section 11 of the Kerala Land Conservancy Act 1957 reads thus:

(3) Notwithstanding anything contained in Sub-section (2) where the Collector is of opinion in any case falling under Sub-section (1) that it is expedient in the public interest to take urgent action without following the procedure laid down in Sub-section (2) he may, after recording his reasons for so doing, issue a notice to the person in occupation calling upon him to vacate the land within such period as may be Specified in the notice, and if the land is not vacated within the said period, any officer authorised by the Collector may enter upon the land and take possession of the same, if necessary by using such force as the circumstances may justify.

This is a special provision to meet an emergent situation of public interest and to

take urgent action for eviction of unauthorised occupation of Government land without following the procedure laid down in Sub-section (2) of Section 11 read with Section 12. This being a provision which can be abused by the Collector inbuilt safeguards are made in the sub-section itself. Firstly, the Collector has to form an opinion as to whether it is expedient in the public interest to take urgent action without following the procedure laid down in Sub-section (2) and secondly, he has to record his reason for forming such opinion. The aforesaid two aspects are condition precedent for invoking Sub-section (3) of Section 11. It is only thereafter the Collector can issue a notice to the person in occupation calling upon him to vacate the land within such period as may be Specified in the notice and on failure to comply with the notice any officer authorised by the Collector can enter upon the land and take possession of the same even by using such force as the situation may justify.

22. It is far too well-settled by the decisions of the Supreme Court right from *E.P. Royappa Vs. State of Tamil Nadu and Another*, *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, and other cases that the procedure prescribed by law for deprivation of the right conferred by Article 21 must be fair, just and reasonable. The following observations of the Supreme Court in *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, (Para 40), are relevant:

Just as a mala fide act has no existence in the eye of law, even So, unreasonableness vitiates law and procedure alike. It is therefore essential that the procedure prescribed by law for depriving a person of his fundamental right, in this case the right to life, must conform to the norms of justice and fair play. Procedure, which is unjust or unfair in the circumstances of a case, attracts the vice of unreasonableness, thereby vitiating the law which prescribes that procedure and consequently, the action taken under it. Any action taken by a public authority which is invested with statutory powers has, therefore, to be tested by the application of two standards: The action must be within the Scope of the authority conferred by law and Secondly, it must be reasonable. If any action, within the scope of the authority conferred by law, is found to be unreasonable, it must mean that the procedure established by law under which that action is taken is itself unreasonable. The Substance of the law cannot be divorced from the procedure which it prescribes for, how reasonable the law is, depends upon how fair is the procedure prescribed by it.

23. We have already narrated the factual situation in regard to the occupation of the Government land by the Appellant and other similarly situated persons and also the circumstances under which the Collector has invoked Sub-section (3) of Section 11. We have also extracted the proceedings of the Collector in the Note file for invoking the said sub-section. We are unable to justify the action of the Collector in invoking the said sub-section. There was enough materials in the form of a report by the Village Officer before the Collector to show that the Appellant and other similarly situated persons were conducting business in the bunk shops put up in the Government land on the basis of agreements entered

into between the occupants including the Appellant with the Cochin Corporation. The report of the Village Officer clearly showed that the Corporation has allotted space for putting up bunk shops to die Appellant on ground rent and that they are in occupation of the bunks for about three years. We are surprised to note that in spite of such a report obtained as provided under the proviso to Section 12 the Collector was not willing to ascertain from the Cochin Corporation the real position and the circumstances under which the land belonging to the Government was allotted to the Appellant and Ors. for putting up bunk shops on ground rent before any further action was taken in the matter. We find that the proceedings of the Collector in the Note file extracted earlier do not contain any opinion or a finding regarding the urgent nature of the public interest for invoking Sub-section (3) of Section 11. There is only a reference to the communication received from the Assistant Development Commissioner of District Council for Child Welfare regarding the need for vacating the unauthorised encroachment urgently and the report of the Village Officer. Thus it is clear that the Collector has not complied with the conditions precedent for invoking Sub-section (3) of Section 11 contained therein. That apart, the facts disclosed reveal that the Collector has formed an opinion immediately on receipt of the communication from the Council for Child Welfare and decided to evict the Appellant and Ors. without following the procedure prescribed in Section 11(2) read with Section 12 of the Act treating the Appellant as an unauthorised occupant. This also shows that there is total non-application of the mind as to the serious consequences that may flow from the administrative decision. This can also be treated as a case of "legal mala fides". The appropriate course according to us was for the Collector to request the Cochin Corporation to terminate the lease/licence arrangement with the Appellant and to get vacant possession as provided under the Municipality Act, 1994 or to get their consent for proceedings under the Act. This is not seen done. We accordingly hold that the action of the Collector in taking proceedings u/s 11(3) of the Land Conservancy Act, 1957 for summary eviction of the Appellant is per se illegal, arbitrary, high handed and also suffers from legal mala fides. Here the observation of Frankfurter, J. in *Viteralli v. Seton* 3 L.Ed. 2d 1012 , quoted at page 578 of *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, at page (Para 40) that "He that takes the procedural sword shall perish with the sword" must apply.

24. This takes us to the next question as to whether the illegality committed by the revenue authorities has resulted in the infringement of the fundamental right of the Appellant guaranteed under Article 21 of the Constitution. Admittedly the Appellant had been conducting business in the bunk shop at the time of removal of the bunk. The Appellant's case is that he had invested all his savings and retiral benefits, besides bank loans, in the said business, that he was eking his livelihood with the income derived from the said business and that by the illegal action of the Collector he was deprived of his right to life thereby infringed his fundamental rights guaranteed under Article 21 of the Constitution. He claimed

compensation for the infringement of the fundamental right under Article 21 of the Constitution and for other loss sustained by him. He had estimated such loss to the tune of Rs. 75,000. The Respondents contended that the loss if any caused has to be established by the Appellant in a duly constituted civil suit and this Court in this proceedings will not be justified in awarding compensation.

25. A Constitution Bench of the Supreme Court in *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, at page 577 (Para 40), considered a batch of writ petitions filed by pavement dwellers and slum dwellers in the city of Bombay challenging the decision of the Bombay Municipal authorities to demolish their huts as violative of Articles 19 and 21 of the Constitution. They also sought a declaration that the provisions of Sections 312, 313 and 314 of the Bombay Municipal Corporation Act, 1888 are invalid as violative of Articles 14, 19 and 21 of the Constitution. The Petitioners contended that the Respondents should be directed to withdraw the decision to demolish the pavement dwellings and the slum hutments and were they are already demolished, to restore possession of the sites to the former occupants. A contention was advanced on behalf of the Petitioners that the eviction of pavement dwellers and slum dwellers will lead to the deprivation of their employment, their livelihood and therefore to the right to life. The contention in short was that right to life guaranteed under Article 21 includes the right to livelihood. The Supreme Court accepted the said contention observing that the sweep of the right to life conferred by Article 21 is wide and far reaching; an equally important facet of that right is the right to livelihood because no person can live without the means of living; if the right to livelihood is not treated as part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation; such deprivation could not only denude the life of its effective content and meaningfulness but it would make life impossible to live. It was held that any person who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Article 21.

26. In the present case the removal of the Appellant's bunk was effected otherwise than in accordance with a just and fair procedure established by law. However, in order to attract Article 21 of the Constitution it has to be established that the Appellant's means of livelihood had been deprived by the illegal removal of the bunk. Though the Appellant has averred so the said averments have not been denied by the Respondents effectively. Hence we have to take it that the Appellant's right to livelihood had been deprived by the removal of the bunk by the orders of the Collector. Consequently it follows that the Collector has infringed the fundamental rights of the Appellant under Article 21 of the Constitution.

27. It is by now settled by a series of decisions of the Supreme Court that award of compensation in a proceeding under Article 32 by the Supreme Court or by the High Court under Article 226 of the Constitution is a remedy available in

public law, based on strict liability for contravention of fundamental rights to which sovereign immunity does not apply. Rudul Sah Vs. State of Bihar and Another, , Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others, , State of Maharashtra and Others Vs. Ravikant S. Patil, , and Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, . In Nilabati's case mentioned supra the Supreme Court after a review of the earlier decisions as also other decisions of English Courts held that "on this principle, the view is unanimous, that enforcement of the constitutional right and grant of redress embraces award of compensation as part of the legal consequences of its contravention". The distinction between the liability of the State in public law for compensation and the liability in-private law for compensation was brought out in Para 17 at page 762 thus:

17. It follows that "a claim in public law for compensation" for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of Such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is "distinct from, and in addition to, the remedy in private law for damages for the tort" resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and?alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution.

28. Dr. A.S. Anand, J. (as His Lordship then was) in his concurring; Judgment has set out the purpose of such grant as follows:

The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making monetary amends" under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of "exemplary damages" awarded against the

wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a Suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.

Again the apex court in *D.K. Basu Vs. State of West Bengal*, . observed that a mere declaration of invalidity of an action or finding of custodial violence or death in lock up does not by itself provide any meaningful remedy to a person whose fundamental right to life has been infringed and "it must proceed further and give compensatory relief, not by way of damages as in a civil action but by way of compensation under the public law jurisdiction for the wrong done, due to breach of public duty by the State of not protecting the fundamental right to life of the citizen. To repair the wrong done and give judicial redress for legal injury is a compulsion of judicial conscience". The principle laid down in *Nilabati Behera's* case supra was reiterated in Para 44 of this Judgment and further observed in Para 54 at page 443 as follows:

Thus, to sum up, it is now a well-accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts.

* * * *

The objective is to apply balm to the wounds and not to punish the transgressor or the offender.

* * * *

The quantum of compensation will, of course, depend upon the peculiar facts of each: case and no strait-jacket formula can be evolved in that behalf.

In *R.D. Upadhyay v. State of A.P.* (2001) 3 S.C.C. 437, the Supreme Court in the case of *Ajoy Ghosh*, a lunatic under-trial prisoner found that there has been complete violation of the statutory provisions contained in the Prisoners Act, 1900, the Code of Criminal Procedure and the Indian Lunacy Act, 1912 in dealing with the case of *Ajoy Ghosh* and directed the State of west Bengal as an interim measure to pay a sum of Rs. 2 lakhs. While doing so it was observed as follows:

We are conscious of the fact that money award can be calculated only to make good financial loss. It is not an award for the sufferings already undergone which are incapable of calculation in terms of money. Money compensation may be awarded so that something tangible may be procured to replace something of the like nature which has been destroyed or lost. Money award cannot, however, renew a physical frame that has been battered and shattered due to callous attitude of Ors. . All that the courts can do in such cases is to award such sums of money, which may appear to be giving of some reasonable compensation, assessed with moderation, to express the court's condemnation of the tortuous

act committed by the State.

(underlining ours)

In Lucknow Development Authority Vs. M.K. Gupta, , the Supreme Court held that no functionary exercising statutory powers can claim immunity, except to the extent protected by the statute itself and that public authorities acting in violation of constitutional or statutory provisions oppressively are accountable for their behaviour. The following passage from the said Judgment is also illuminating.

The jurisdiction and power of the courts to indemnify a citizen for injury suffered due to abuse of power by public authorities is founded on the principle that, "an award of exemplary damages can serve a useful purpose in vindicating the strength of law". An ordinary citizen or a common man is hardly equipped to match the might of the State or its instrumentalities. That is provided by the rule of law. It acts as a check on arbitrary and capricious exercise of power. A public functionary if he acts maliciously or oppressively and the exercise of power results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it. He who is responsible for it must suffer it. Compensation or damage may arise even when the officer discharges his duty honestly and bona fide. But when it arises due to arbitrary or capricious behaviour then it loses its individual character and assumes social significance. Harassment of a common man by public authorities is socially abhorring and legally impermissible. It may harm him personally but the injury to Society is far more grievous. The award of compensation for harassment by public authorities not only compensates the individual, satisfied him personally but helps in curing social evil. It may result in improving the work culture and help in changing the outlook.

29. A Single Bench of this Court in O.P. No. 5172 of 1990 (Judgment dated 27th August 1997) in the case of a poor tailor whose tailory shop was demolished as per orders of the Sub Divisional Magistrate otherwise than in accordance with the provisions of Section 141 of the Criminal Procedure Code had granted pecuniary compensation for the injury, loss and suffering to the tune of Rs. 75,000 to the Petitioner and the State of Kerala was directed to pay the same on the principles of strict liability relying on the principles laid down by the Supreme Court in Lucknow Development Authority Vs. M.K. Gupta, , in Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, , and other decisions of the Supreme Court. Similarly Anr. Single Bench of this Court in K.V. Joseph v. State of Kerala (1997) (1) KLT 582, granted pecuniary compensation of Rs. 465 lakhs assessed by the Commissioner towards cost of construction of the building demolished by an unruly mob on account of the failure on the part of the Police and the State machinery to prevent threat to the security of life and property of the-Petitioner therein relying on the principles laid down by the Supreme Court in V.M.K. Gupta's case and D.K. Basu's case-mentioned supra.

30. We have already held that the invocation of Section 11(3) of the K.L.C. Act and the further steps taken for removing the bunk put up by die Appellant are wholly illegal, arbitrary, highhanded and unjustified. Since the bunk of the Appellant was removed on 15th January 1995 pursuant to the notice u/s 11(3) dated, 10th January 1995 no useful purpose will be served by quashing the said notice. Similarly since the land from which the bunk was removed is required for public purposes mentioned in the counter affidavits of the Greater Cochin Development Authority and the Superintending Engineer, P.W.D. it will not be possible to direct the revenue authorities to restore the Appellant's bunk to the place where it was located prior to its removal. Hence the relief restoration of the bunk shop to the original place and permitting the Appellant to conduct business therein cannot be granted. This; is all the more so for the reason that as per the agreement entered into between the Appellant and the Cochin Corporation itself the Appellant is liable to remove the bunk and vacate the premises as and when sought for by the Cochin Corporation. In other words, the Appellant had no vested right to remain in the land in question for indefinite periods. The only relief that can be pressed by the Appellant is the relief by way of compensation. In the above circumstances, in the light of the principles laid down by the Supreme Court discussed above the Appellant is entitled to compensation for the infringement of his right to life guaranteed under Article 21 of the Constitution otherwise than in accordance with the just and fair procedure provided u/s 11(2) read with Section 12 of the Kerala Land Conservancy Act, 1957. Certainly on account of the removal of the bunk and the destruction of the bunk material the Appellant had to find out Anr. place for the conduct of his business and also to spend substantial amounts for setting up the business. He might have also suffered mental agony due to the unforeseen and untimely removal of the bunk and lose of valuables such as the bunk and some articles of trade. All these are on account of the illegal, mala fide and high handed action of the Collector. If this high handed action of the Collector goes unpunished certainly it will tantamount to giving imprimatur of the courts. The court's condemnation of the tortious act committed by the State can be expressed only by giving a reasonable compensation. As observed by the Supreme Court in D.K. Basu's case supra the quantum of compensation will depend on the peculiar facts of each case and no straight jacket formula can be evolved in that behalf., The Appellant claims that he had incurred a total loss to the tune of Rs. 75,000 of which Rs. 25,000 represent the value of goods stocked in the shop. Considering all the circumstances of the case we direct the State of Kerala to pay a sum of Rs. 25,000 to the Appellant as compensation for the infringement of his fundamental rights guaranteed under Article 21 of the Constitution by the illegal act of the revenue authorities of the State. The compensation granted above is based on the principle of strict liability for contravention of fundamental right to which sovereign immunity does not apply. This is without prejudice to the right of the Appellant to claim damages in tort.

The Judgment of the learned Single Judge is set aside and the Writ Appeal is

allowed to the extent indicated in this Judgment.