

(2002) 06 KL CK 0050

High Court Of Kerala

Case No: S.A. No's. 380, 407 etc. of 1991

Vadakkencherry Panchayat

APPELLANT

Vs

Abdul Jabbar

RESPONDENT

Date of Decision: June 20, 2002**Acts Referred:**

- Kerala Panchayat (Acquisition and Transfer of Immovable Properties) Rules, 1963 - Rule 6

Hon'ble Judges: R.Bhaskaran, J**Bench:** Single Bench**Advocate:** S. Ramesh Babu, for the Appellant; K. George Varghese Kannanthanam, N. Muraleedharan Nair and Kurian George Kannanthanam, for the Respondent**Final Decision:** Allowed

Judgement

R. Bhaskaran, J.

In all these second appeals, a common question is involved and hence they were heard together and are being disposed of by this common judgment. The appeals are filed by the Executive Office and President of Vadakkencherry Panchayat. All the suits were by the occupants of the shop rooms owned by the Panchayat. Since the facts are similar in all the cases it is sufficient if the facts in one case is stated. The difference with regard to other cases are only in the dates of entrustment and amounts of rent. In O.S. No. 61 of 1988, the plaintiff was entrusted with room No. 3 of the shopping complex owned by the panchayat. He was the successful bidder in auction conducted by the Panchayat. The monthly rent was fixed at Rs.610/-. Ext. B1 is the agreement executed by the plaintiff and the Executive Officer of the Panchayat. The agreement is for a period of one year from 1.4.1987 to 31.3.1988. It was agreed by the tenant that after the period of one year, the shop room will be surrendered on 31.3.1988 and the advance amount taken back. According to the plaintiff, he was conducting business in the shop room from 1.4.1984 onwards. Subsequently, the Panchayat published a notice on 25.2.1988 showing that the right

to do business in the plaint schedule shop room and other rooms are proposed to be auctioned on 14.2.1988. According to the plaintiff, the defendant Panchayat has no right to put in auction the shop room without giving an opportunity to the plaintiff for option and the action of the Panchayat has no legal validity. It is against the guidelines issued by the Government in respect of shop rooms in the shopping complex owned by the local bodies. Therefore the plaintiff filed the suit for permanent prohibitory injunction restraining the defendant from conducting auction for doing business in the plaint schedule room and also from evicting the plaintiff from the plaint schedule room.

2. The defendant filed a written statement contending that the suit is not maintainable. The plaintiff has executed an agreement in favour of the Panchayat. The plaintiff was informed of about the conduct of the auction and he has signed the auction notice kept by the Panchayat. The plaintiff is free to participate in the auction. The decision of the Panchayat is valid and it is not against the guidelines. The circular relied on by the plaintiff has been amended subsequently. The plaintiff has been relying on the unamended circular. The plaintiff has no right to continue in the shop room after the expiry of the agreement period. It is therefore contended that the plaintiff has no cause of action to file the suit as the right of the plaintiff to continue in possession of the shop room has lapsed.

3. As already stated, all the suits similarly filed against the Panchayat were tried jointly and a common judgment was passed by the trial court. All the suits were decreed. The plaintiff mainly relied on Ext. A2 circular dated 28.12.1985 issued by the Local Administration Department, Government of Kerala. The Panchayat on the other hand relied on Ext. B2 circular dated 13.3.1987 issued by the Government of Kerala. It is the contention of the plaintiff, that as per Ext. P2 circular, after the period of lease, he has got a right of option to continue in the shop room for an enhanced rent of 5% and he will not be dispossessed from the shop room. The option of continuing the tenancy is with the allottee. Only in cases of default or violating the terms and conditions of the lease or for specific economic offences or misconduct like tax evasion or adulteration, he can be evicted. At the end of Ext. A2 circular it is stated that "these guidelines will be strictly followed by the local bodies."

4. The Panchayat on the other hand relied on Ext. B2 circular especially the last clause which says that the guidelines (in Ext. A2) will be strictly followed is dropped from that circular.

5. The trial court as well as the lower appellate court considered the rival contentions of parties and it is found that the Panchayat has no right to deny the plaintiffs' right to do business in the plaint schedule shop rooms.

6. The substantial questions of law raised in all the appeals are the same and they are follows:-

1. Whether the plaintiff has any right to continue in possession of the shop room belonging to the Panchayat after the period fixed in the agreement entered into between the plaintiff and the defendant agreeing to vacate the building after the specific period fixed therein.
2. Whether Ext. A2 circular dated 28.12.1985 would in any way affect the right of the defendant Panchayat to conduct fresh auction to be in possession of the shop room belonging to the Panchayat after the expiry of the period fixed in the agreement.
3. Whether Ext. A2 circular dated 28.12.1985 issued by the Government has any binding force on the defendant Panchayat in respect of their right to reauction the shop room in the light of the subsequent Ext.B2 circular dated 13.3.1987 issued by the Government.
4. Whether Ext. A2 circular issued subsequent to the original agreement executed between the plaintiff and the defendant in respect of their right to be in possession of the shop room belonging to the Panchayat would alter or change the character of the licence/lease of the shop room belonging to the Panchayat.
5. Whether the plaintiff is entitled to get a decree for permanent prohibitory injunction against the defendant regarding the right to be in possession of the shop room belonging to the Panchayat without resorting to the right of appeal provided under " Section 144 of the Kerala Panchayat Act."

The learned counsel for the appellants submitted that the rigour of Ext. A2 has been taken away by Ext. B1 circular modifying it. Further it was argued that the statutory rule (Rule 6 of the Kerala Panchayats (Acquisition and Transfer of Immovable Properties) Rules, 1963, enables only leases for a period not more than three years and the Circular cannot go against the statutory rules. The learned counsel for the appellants also submitted that a Division Bench of this Court has held in [Mathai Syriac Nelco Medicals, Thiruvalla Vs. Kerala State Road Transport Corporation, Thiruvananthapuram and Another](#), that public sector undertakings like K.S.T.R.C. can make and must make utmost income from its properties and where public interest is involved there is no scope for invoking the principle of legitimate expectation.

7. The learned counsel for the respondents submitted that Ext. B1 has not made any substantial change in Ext. A2 circular and the Panchayat is bound by Ext. A2 circular. It is also submitted that when the plaintiffs are in possession as lessees, without evicting them and getting recovery of possession the Panchayat cannot retender the shops, though the learned counsel conceded that such a point was not taken in the courts below. The parties are primarily governed by the agreement executed between them and it stipulates surrender of the building at 5 p.m. on the last day of the lease period. The Panchayat took steps for entrusting those rooms for the subsequent periods and the plaintiffs are also entitled to take part in the new auction and auction notices were given to the plaintiffs also and they have

acknowledged the notice.

8. It is seen that Ext. A2 and Ext. B1 circulars were issued on the basis of observations of this Court in the judgments in the Original Petitions mentioned in the circulars thereunder. It can be seen from Ext. A2 that this Court had desired the Government to evolve a policy in the matter of collections of rent on commercial buildings built by the local bodies. There was no direction from this Court to issue any circulars with such conditions as in Ext. A2. Ext. B2 circular also refers to the judgments of this Court wherein it was found that any profit made by local authorities can be ploughed back for benefitting the public by implementing developmental schemes. In the light of the observations in the subsequent judgments the rigors of Ext. A2 was taken away by deleting the directions for strict implementation of Ext. A2 circular.

9. It cannot be disputed that when the field is occupied by statutory rules, the Government has no power to issue circulars which will go against such statutory rules. Ext. A2 enables the tenant to continue in possession for indefinite period on his expressing the willingness to pay 5% increase in rent every year whereas Rule 6 of the Rules puts the outer limit of the lease period for three years. It is therefore obvious that Ext. A2 circular cannot be given effect to in such a way as to override the statutory provisions. Therefore when the Government issued subsequent circular as in Ext. B1 and the insistence of complying with Ext. A1 circular strictly is given up it only shows that the Government itself has withdrawn the rigor of Ext. A2. There is therefore much force in the contention of the learned counsel for the appellants that the courts below were not justified in law in relying on Ext. A2 circular as statutory rules and thereby ignoring the agreement entered into between the parties.

10. There is also merit in the contention of the counsel for the appellants that there is nothing wrong in the Panchayat in trying to get maximum advantage by entrusting the rooms by public tender and he relies on the Division Bench decision referred to above. That is a case of building owned by K.S.R.T.C. and the local authority and K.S.R.T.C. may not stand on the same footing. But that decision states that when public interest is involved there is no scope for the application of the principle of legitimate expectation. With regard to the contention of the learned counsel for respondents that unless the tenants are evicted from the shop rooms no fresh lease can be granted, it is pointed out by the counsel for the respondents that in such cases the provisions of Public Buildings (Eviction of Unauthorised Occupants) Act, 1968, can be made use of. The words unauthorised occupants are defined as including tenants whose period of tenancy has expired.

11. In view of the above discussion, the substantial questions of law in the memorandum of second appeal on which notices were issued to the respondents do arise for consideration and they have to be answered in favour of the appellants. The reasoning of the courts below that Ext. A2 circular enable the occupant to

continue in possession for indefinite period on their paying 5% increase in rent cannot be supported in the light of Ext. B1 circular and Rule 6 of the Rules mentioned earlier. After the filing of the second appeals, the new Panchayat Raj Act, 1994 and Rules have come into force and the parties will be thereafter governed by the new Act and Rules.

For the reasons stated in the preceding paragraphs, the second appeals are allowed and the judgment and decree of the courts below are set aside and the suits dismissed. There will be no order as to costs in the appeals.