

Cheriyath Jyothi Vs Sainudeen and Anr

Court: Supreme Court Of India

Date of Decision: April 24, 2019

Acts Referred: Legal Services Authorities Act, 1987 " Section 19, 20(1) (ii), 20(1) (i) (a), 20 (1) (i)(b)

Citation: (2019) 5 SCC 779 : (2019) 4 JT 538 : (2019) 6 Scale 713 : (2019) 4 AIIMR 491 : (2019) 3 ALT 271 : (2019) 137 ALR 210 : (2019) 4 GLR 2925

Hon'ble Judges: A.M. Khanwilkar, J; Ajay Rastogi, J

Bench: Division Bench

Advocate: A. Raghunath

Final Decision: Dismissed

Judgement

A.M. Khanwilkar, J

1. This appeal takes exception to the judgment and order passed by the High Court of Kerala at Ernakulam dated 4th March, 2015 in O.P.(C)

No.1819 of 2014 (O).

2. Briefly stated, the appellant made a representation to the Secretary, Karakulam Gram Panchayath on 6th May, 2013, complaining that the occupant

in the neighbouring plot had erected an unauthorised building and was using the same as a Plant for making Rubber Sheets on commercial basis. The

appellant claims to be occupying House K.P. No.V/168 of the Karakulam Gram Panchayath in Survey No.43/2A,1A,3 of Vattappara Village. The

representation reads thus:

“Cheriyath Jyothi B.Sc., M.B.B.S.,

the cloister, nr. Rock Park,

Venkode P.O., Vasttappara,

thiruvananthapuram, 695028.

No.jyo/cT/01

May 06, 2013.

To

the secretary, karakulam grama panchayath, karakulam P.O., Thiruvananthapuram Dt.

ILLEGAL HAZARDOUS BUILDING : REQUEST DEMOLITION

Sir,

I. I am the resident of the house KP No.V/168 of the karakulam panchayath KP No.V/168 as well as the 3.37 are plot in survey no.43/2A,1A,3 of

vattappara village on which it stands is fully owned by me.

II. this is to bring to your kind notice the existence of what I presume an unauthorized building being used as a plant for making rubber sheets on a

commercial basis in the plot adjacent to my residence(skech enclosed as appendix A).

III. The above building is in complete violation of the provisions and conditions of the Kerala Panchayath Building Rules 2011 and is a severe health

hazard to those living in the vicinity (as elaborated in Appendix B).

IV. I feel that in the interests of the public the above structure ought to be demolished.

V. my complaints on the matter to Mr. Zainuddin known to be the owner of the plant has fallen on deaf ears.

VI. in view of the above it is hereby requested of you to kindly look into the matter and do the needful at the earliest.

Yours faithfully

Sd.

(C.Jyothi)

Enclosures: 1. Appendix A vide para II and

2. appendix B vide para III.

3. That representation was placed before the Lok Adalat organised by the Thiruvananthapuram District Legal Services Authority, under Section 19 of

the Legal Services Authorities Act, 1987. The Lok Adalat passed the following Award on 23rd August, 2013:

“LOK ADALAT

Organized by the Thiruvananthapuram District Legal Services Authority under Section 19 of the Legal Services Authorities Act (Act 39 of 1987)

THIS THE 23RD DAY OF AUGUST, 2013

Name of Judicial Officer : V. Thulseedharan

Name of member : N. Gopakumar

Name of member : V. Maya

LOK ADALAT CASE No. PL No.2746 of 2013.

From the court/tribunal of No.

plaintiff

petitioner

claimant

Dr. Cheriya Jyothi Rock park, Vengode Vengode, VS, Sainuddin, Rock Park,

Defendant/Respondent

Ã,

Referred under section 20(1) (i) a/20 (1) (i) (b)/20(1) (ii) of the Legal Services Authorities Act (Act 39 of 1987).

This cause referred to the Lok Adalath organized by the Thiruvananthapuram District Legal Services Authority under Section 19 of the Legal

Services Authorities Act (Act 39 of 1987), coming on before us for endeavours for settlement of the dispute between the parties, being subject matter

of this cause, in the presence of the parties and their counsel, and after a full and frank discussion of all issues factual and legal arising from the cause,

the parties having agreed before us that there shall be an award / order / decree in terms of settlement hereto made and the parties and their counsel

herein having, in acceptance of the same signed this in our presence, it is decreed / ordered:Ã,â€

Both parties present. Respondent ready to demolish the existing building possessing the rubber sheeting machinery within a period of 3 months. Failing

which the petitioner may approach the appropriate authority for executing the award.

(sd.) Ã, (sd.) Ã, (sd.) (sd.) (sd.)

JUDICIAL OFFICER MEMBER MEMBER Plaintiff/Petitioner Defendant/Respondent

Claimant/Appellant Counsel for

Defendant/RespondentÃçâ,¬â€

Counsel for

Plaintiff/Petitioner

Claimant/Appellant

(emphasis supplied)

4. Notably, from the original order sheet it is noticed that, initially, the description of the property belonging to the respondent was given as

Ãçâ,¬Ã“temporary shedÃçâ,¬, which was struck of and instead, was described as Ãçâ,¬Ã“existing buildingÃçâ,¬. Be that as it may, the appellant then approached

the Court of Principal Munsif, Nedumangad, by way of E.P. No.10/2014 in PL No.2726/2013 for executing the award passed by the Lok Adalat. The

Executing Court accepted the grievance of the appellant and issued directions for removal of the structure in the neighbouring plot belonging to the

respondent. The operative order passed by the Court of Principal Munsif reads thus:

Ãçâ,¬Ã“6. Thus the circumstances under which the petitioner filed this petition before the Lok Adalath and circumstances under which the award was

passed reveal that what was intended by the parties is nothing but to demolish it for ever. Admittedly the structure was not demolished. That was born

out from the photographs produced in this case. In such circumstances I find that the award is to be executed through process of court. The decree

holder has to take necessary steps for executing the award and arrange men and machinery to execute the award. Amin is directed to execute award

on 22/07/2014 and file report before Court on 23/07/2014.

5. The respondent assailed the said order before the High Court, inter alia contending that after the award was passed by the Lok Adalat, he had

demolished the "temporary shed", a position which was verified by the Panchayat authorities. He has placed reliance on photographs in support of

this plea. The respondent asserted that he had thereafter applied for permission to construct the structure as per the prescribed norms, and pursuant to

the building plan submitted by him, the same was approved by the competent authority and permit came to be issued on 9th October, 2013. The

respondent asserts that he was permitted to construct the new shed, having plinth area of 9.49 Sq.Mts., after leaving statutory open space, as provided

in the approved plan. In conformity with the said approved plan, the respondent constructed a new structure which was compliant with the

requirements specified as per the permit issued in his favour in that regard. The stand taken by the respondent found support from the affidavit filed by

the Secretary, Karakullam Gram Panchayat, Nedumangad, Thiruvalla. The relevant portion of the said affidavit filed on 9th January, 2015, on behalf

of the Panchayat, reads thus:

"3. It is submitted that as per the above Ext.P3 order petitioner demolished the existing building and applied for a building permit to construct 9.49

sq. meter of building. The plan submitted by the petitioner was approved and Ext.P7 permit was issued. As per the Ext.P7 a petitioner constructed the

building in accordance with the approved plan and permit. The construction was made by the petitioner in accordance with the approved plan and

permit issued by the 2nd Respondent. The 2nd Respondent has not noted any violation of the provisions of the Kerala Panchayath Building Rules,

2011 in the construction, and hence the above building was numbered as K.P. 11/982A. In Ext. P7 permit there was a mistake that instead of stating

commercial purpose it were mistakenly stated as residential purpose. When it was brought into the notice of this respondent, it was rectified as

commercial purpose by order dated 1.12.2014.

4. It is submitted that E.P.No.10/2014 was filed by the 1st Respondent to execute the award of Lok Adalat in PL No.2746/2013. This Respondent is

not a party in the above E.P. And hence this respondent is not aware of the Ext. P10 order. Since this Respondent is not a party to the above E.P.

proceedings, this Respondent could not bring the correct facts to the notice of the Munsiff Court, Nedumangaud.

5. Under the above circumstances this Hon'ble Court may be pleased to accept this statement and order accordingly.

6. Since the appellant contested the factual position stated by the respondent, as well as mentioned in the affidavit filed on behalf of the Panchayat, the

High Court deemed it appropriate to appoint an Advocate Commissioner. The Advocate Commissioner visited the site and submitted his report on 18th

February, 2015, which reads thus:

"BEFORE THE HONOURABLE HIGH COURT OF Kerala

AT ERNAKULAM

O.P. (c) 1819 OF 2014

Report and rough sketch submitted by Advocate M.M. Bashir as per the order of the Hon'ble family court Nedumangadu in EP No.10/2014 dated

11.2.2015.

As per the order of the Hon'ble Family Court Nedumangadu directing me to prepare a sketch and to submit a report regarding the building in

question and also the activities being carried on there. I have visited the disputed property on 13.02.2015 for executing the order of the Hon'ble

court at about 3:30 PM with the presence of both the parties and filing this report with true sense. The disputed property is situated in Vattappara

village which is 5kms far from the Nedumangad court center.

I have prepared a rough plan regarding the disputed property and mentioned the disputed building as (1). The disputed building is a new one when I

was visited the property and having an age of nearly 1.5 years and not working for the same period. The building was made with the permission of the

Karakulam Grama Panchayath. The property if the respondent is lying on the western side of the disputed building. Separating these two properties a

compound wall is there which is constructed of granite and cement hollow bricks having a height of 1.70 meters.

The disputed building is a shed constructed by granite and cement hollow bricks with oralium sheet roof which is used for Rubber Sheet making. In the

shed there are two rubber sheet making machines are fixed and made an open waste water canal which is going to the bio gas tank. The said tank is

having an age of more than 25 years. The difference between the bio gas tank and the disputed shed is 3.70 meters. The shed is situated in the

petitioner's property having a difference of 1.25 meters on the north-western side and 2.10 meters on the south-western side from the property

of the respondent. There is compound wall separating the properties of the petitioner and the respondent. The temporary residential structure of the

respondent is situated 2.35 meters far from the above compound wall. At the time of my visit it is very well noted that there is no harm to the

respondent due to the non working of the disputed shed. It is presume that there will be no damage or harm to the respondent at the present stage.

The property of the petitioner is filled with yielding rubber which is not taking yield for the last 1.5 years. The number of trees is nearly 50.

This report is submitting before Hon'ble family court nedumangad along with order and the rough plan. Dated this the 18th day of February 2015.

sd.

M.M. Bashir

Advocate Commissioner

Ã,

7. Indeed, the appellant contested the correctness of the said report. However, the High Court after taking into account the relevant material and

including the report submitted by the Advocate Commissioner, concluded that the purport of the award passed by the Lok Adalat did not preclude the

respondent from constructing a new structure after taking due permission from the competent authority in that regard. The High Court rejected the

argument of the appellant that the award was in the nature of a permanent prohibition from putting up any construction on the plot occupied by the

respondent. Having so held, the High Court, taking note of the apprehension of the appellant that the respondent may start operating Rubber Sheet

making machinery, which would inevitably cause air and water pollution, granted liberty to the appellant to take recourse to the remedy as may be

permissible in law. The High Court also observed that such proceedings be decided on its own merits and in accordance with law. The view so taken

by the High Court is the subject matter of challenge in this appeal.

8. The appellant has argued the matter in person. Although the respondents have been served and respondent No.2 is represented through counsel,

none appeared when the matter was called out for hearing.

9. We have considered the relevant material placed on record and on considering the same in its proper perspective, we find no reason to interfere

with the final conclusion recorded by the High Court in allowing the writ petition and setting aside the order passed by the Executing Court. As noticed

from the representation submitted by the appellant to the Gram Panchayath, the core grievance was with regard to the unauthorised structure erected

on the plot occupied by the respondent and which was being used as a Plant for making Rubber Sheets on a commercial basis. The grievance

essentially was that the structure was in complete violation of the provisions and conditions of the Kerala Panchayath Building Rules, 2011 and also

contributed to severe health hazards to those living in the vicinity. However, the Panchayath was essentially concerned with the unauthorised structure

erected on the subject plot by respondent No.1. That grievance stood redressed by the award passed by the Lok Adalat recording the assurance given

by respondent No.1 that he would demolish the existing structure within a period of three months. The fact that the structure, as it existed on the date

of making of the award, was removed by respondent No.1 is reinforced from the stand taken by the Panchayath in its affidavit. Furthermore,

respondent No.1 admittedly, constructed a new building on the same plot after taking prior permission of the competent authority in that regard, which

presupposes that the structure as existed thereat in August, 2013 was removed, without which the new building could not have been erected. The fact

that permit was granted to respondent No.1 to construct the new building is not only supported by the permit dated 9th October, 2013 (Annexure A, P8),

but also from the affidavit filed on behalf of the Gram Panchayath dated 9th January, 2015 and including the factual position stated in the report of the

Advocate Commissioner dated 18th February, 2015.

10. The moot question is the width of the award passed by the Lok Adalat dated 23rd August, 2013. It is, in our opinion, obviously limited to removal

of the existing structure on the stated plot occupied by respondent No.1 within three months. That structure, as aforesaid, came to be removed, which

fact is reinforced from the circumstances discussed hitherto. The Executing Court, however, erroneously opined that the structure, as it existed at the

time of making of the award, was still not demolished. That finding is in the teeth of the documentary evidence and the assertions made on affidavit by

respondent No.1 as well as the Gram Panchayath and including the factual position mentioned in the report of the Advocate Commissioner. The High

Court rightly rejected the argument of the appellant that the effect of the award was to completely prohibit putting up of any structure/building on the

stated plot occupied by respondent No.1, irrespective of the permission granted by the competent authority in that regard. The High Court was right in

observing that whether respondent No.1 had constructed the structure as per the permit was a matter to be considered by the competent authority

who had issued such a permit and it would be open to the appellant to approach that authority for appropriate reliefs, if so advised. Similarly, insofar as

the nuisance likely to be caused to the appellant due to the activities of the respondent in the form of air pollution, water pollution, noise pollution or any

other infringement of right, the appellant must take recourse to the appropriate remedy in that regard. Further, those proceedings will have to be

decided on its own merits. The view so taken by the High Court is, in our opinion, unexceptional.

11. We hold that the scope of the award was limited to removal of the structure as it existed at the relevant time. No direction has been issued to

respondent No.1 to forebear from carrying on his legitimate activities, including business activities, from the stated plot occupied by him. If the

activities of the respondent are in violation of any law or regulation, it would be open to the appellant to approach the concerned statutory authority or

appropriate forum and seek relief in that regard as per law. Thus, we find no infirmity in the impugned judgment of the High Court.

12. In view of the above, this appeal is dismissed but with the observations made hitherto. No order as to costs.

All applications are also disposed of.