

CHERIYATH JYOTHI

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v.

SAINUDEEN AND ANR.

(Civil Appeal No. 1424 of 2016)

APRIL 24, 2019

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**[A. M. KHANWILKAR AND AJAY RASTOGI, JJ.]**

*Kerala Panchayath Building Rules, 2011:*

*Unauthorised structure – Demolition of – Sought by appellant and also alleging hazardous activities therein – Lok Adalat ordered for demolition – Appellant filed execution petition seeking execution of award of Lok Adalat – Execution court directed demolition of the structure – Respondent challenged the order contending that in compliance with the award of Lok Adalat the illegal structure was demolished and thereafter new structure was constructed after obtaining permission from competent authority – This fact was verified by the Gram Panchayath as well as by the report of Advocate Commissioner – High Court rejected the case of the appellant holding that award was not in the nature of permanent prohibition for putting up any new construction – On appeal, held: The finding of the Execution Court that the structure as it existed at the time of making of the award was still not demolished was in the teeth of the documentary evidence – The scope of the award was limited to removal of the structure as it existed at the relevant time – No direction was issued to forbear legitimate activities.*

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**Dismissing the appeal, the Court**

**HELD:** 1. As noticed from the representation submitted by the appellant to the Gram Panchayath, 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

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- A **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 9<sup>th</sup> October, 2013 (Annexure-P8),**
- B **but also from the affidavit filed on behalf of the Gram Panchayath dated 9<sup>th</sup> January, 2015 and including the factual position stated in the report of the Advocate Commissioner dated 18<sup>th</sup> February, 2015. [Para 9][812-B-F]**
- 2. The Executing Court, however, erroneously opined that**
- D **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. [Para 10][812-G-H; 813-A-C]**
- 3. The scope of the award was limited to removal of the structure as it existed at the relevant time. No direction has been**
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**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, there is no infirmity in the impugned judgment of the High Court.**

**[Para 11][813-D-E]**

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1424 of 2016.

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From the Judgment and Order dated 04.03.2015 of the High Court of Kerala at Ernakulam in OP (C) No. 1819 of 2014.

Cheriyath Jyothi, Appellant-in-person.

A. Raghunath, Adv. for the Respondents.

The Judgment of the Court was delivered by

**A. M. KHANWILKAR, J.**

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1. This appeal takes exception to the judgment and order passed by the High Court of Kerala at Ernakulam dated 4<sup>th</sup> March, 2015 in O.P.(C) No.1819 of 2014 (O).

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2. Briefly stated, the appellant made a representation to the Secretary, Karakulam Gram Panchayath on 6<sup>th</sup> 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.43/2-1-3 of Vattappara Village. The representation reads thus:

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“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

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

**ILLEGAL HAZARDOUS BUILDING : REQUEST  
 DEMOLITION**

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A 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.43/2-1-3 of vattappara village on which it stands is fully owned by me.

B 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).

C 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).

D 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. Zain-ud-din 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.

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Yours faithfully

Sd.

(C.Jyothi)

Enclosures: 1. Appendix A vide para II and  
2. appendix B vide para III.”

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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 23<sup>rd</sup> August, 2013:

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“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 23<sup>RD</sup> DAY OF AUGUST, 2013

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CHERIYATH JYOTHI v. SAINUDEEN AND ANR. 807  
[A. M. KHANWILKAR, J.]

Name of Judicial Officer : V. Thulseedharan A

Name of member : N. Gopakumar

Name of member : V. Maya

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

From the court/tribunal of B

No.

plaintiff

petitioner

claimant C

Dr. Cheriyath Jyothi Vs. Sainuddin,

Rock park, Vengode Rock Park, Vengode

Defendant/Respondent D

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:- F

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.** G

(sd.)

(sd.)

(sd.)

JUDICIAL OFFICER

MEMBER

MEMBER

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A	(sd.)	(sd.)
	Plaintiff/Petitioner	Defendant/Respondent
	Claimant/Appellant	
B	Counsel for	
	Plaintiff/Petitioner	
	Claimant/Appellant	Counsel for
		Defendant/Respondent"
C		(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 "temporary shed", which was struck off and instead, was described as "existing building". 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:
- "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.
- G 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 9<sup>th</sup> 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 9<sup>th</sup> 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 2<sup>nd</sup> Respondent. The 2<sup>nd</sup> 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. 11/982-A. 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 1<sup>st</sup> 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.”

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- A        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 18<sup>th</sup> February, 2015, which reads thus:

B        **"BEFORE THE HONOURABLE HIGH COURT OF  
Kerala  
AT ERNAKULAM  
O.P. (c) 1819 OF 2014**

- C        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.

- D        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.

- E        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.

- G        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

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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 18<sup>th</sup> day of February 2015.

sd.  
M.M. Bashir  
Advocate Commissioner”

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.

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- A        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 9<sup>th</sup> October, 2013 (**Annexure-P8**), but also from the affidavit filed on behalf of the Gram Panchayath dated 9<sup>th</sup> January, 2015 and including the factual position stated in the report of the Advocate Commissioner dated 18<sup>th</sup> February, 2015.

- G        10. The moot question is the width of the award passed by the Lok Adalat dated 23<sup>rd</sup> 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.

Kalpana K. Tripathy

Appeal dismissed.