

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

Tuesday, the 30th day of June 2020/9th Ashadha, 1942

WP(C) No.12935/2020 (N)

PETITIONERS

1. DR.S.V.MOHAMMED HARIS, AGED 62 YEARS
S/O. KHADER KUNHI, FORSHA, CIVIL STATION P.O. KANNUR 670 002.
2. MASHOOD K.P., AGED 55 YEARS
S/O. ASSU HAJI, RAMLAS BELLAD ROAD, KANNUR 670 001.

RESPONDENTS

1. THE DISTRICT COLLECTOR KANNUR
AND CHAIRMAN, DDMA COLLECTORATE, KANNUR 670 001.
2. THE DISTRICT MEDICAL OFFICER
(H), KANNUR, KANNUR 670 001.
3. THE SUB COLLECTOR,
THALASSERY, KANNUR DISTRICT 670 001.
4. THE TAHSILDAR,
TALUK OFFICE, KANNUR 670 001.
5. THE DISTRICT POLICE CHIEF,
KANNUR 670 001.
6. THE KANNUR MUNICIPAL CORPORATION,
KANNUR REPRESENTED BY ITS SECRETARY 670 001.

Writ Petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to issue an interim stay of all further proceedings pursuant to Ext. P3, pending disposal of the above writ petition.

This petition coming on for admission upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of SRI.M.SASINDRAN, Advocate for the petitioner, GOVERNMENT PLEADER for R1 to R5 and of SMT. MEENA JOHN, STANDING COUNSEL for R6, the court passed the following:

P.T.O.

ANU SIVARAMAN, J.

=====

W.P.(C).No.12935 of 2020

=====

Dated this the 1st day of July, 2020

Order

1. This writ petition is filed challenging Exhibit P3 order of the 1st respondent which directed the taking over of a residential apartment complex as a first line Covid treatment facility. The 1st petitioner is one of the co-owners of the property and the 2nd petitioner is the Managing Partner of the builder. It is stated that all the residential flats, except five, were sold out to different persons and title deeds had been executed. It is submitted that without any notice the 1st respondent has passed an order taking over the residential apartment complex as a first line Covid treatment facility. The learned counsel for the petitioners submits that Exhibit P3 order is against the provisions of Exhibit P4 guidelines issued by the State Government. It is stated that some of the residents had been staying in the property and they had to be vacated before the property could be taken over. It is contended that since the property admittedly consists of residential apartments, the action of the 1st respondent in taking over the property without any notice or prior intimation is completely untenable and violative of the valuable rights of the petitioners as well as the owners of the residential apartments. It is contended that the respondents were duty bound to consider whether there were public buildings, hostels, hotels or other

W.P.(C).No.12935/20

2

available properties convenient for the purpose before such a drastic step had been taken. It is stated that the situation did not warrant the taking over of the residential houses for the purpose of first line Covid treatment centre and that the action is vitiated by complete want of application of mind and arbitrariness in its execution.

2. A statement has been placed on record by the 1st respondent. It is contended that the writ petition is not maintainable, since the petitioners are not owners of individual apartments. It is contended that Exhibit P3 is an order issued under the Disaster Management Act, 2005 (hereinafter referred to as the Act') and that Exhibit P4 are extra-statutory guidelines which do not have any binding force. It is stated that the 2nd petitioner is only the builder of the apartments and the 1st petitioner is an owner of one of the apartments and he is not residing in the building. It is stated that the owners of the apartments have not raised any objection to the taking over of the building and that the increasing number of patients undergoing treatment in the designated Covid care centres made it imperative to take drastic action. It is stated that the existing hospitals in Kannur are now facing shortage of sufficient beds to admit Covid

W.P.(C).No.12935/20

3

patients and a large number of non-resident Keralites are expected to return to the district in the near future and that the arrangement of Covid care facilities are urgently required to tackle the situation. It is stated that it is taking note of all the relevant aspects that the orders have been passed.

3. It is stated that the builder had submitted an application for obtaining an occupancy certificate, but the occupancy certificate and the final Fire NOC have not been obtained by the petitioners so far. It is stated that only two families were residing in the building without any approved occupancy certificate and the two families have been moved to their respective residences before bringing the suspected patients into the building.
4. The learned Standing counsel appearing for the 6th respondent corporation submits that no occupancy certificate had been issued in respect of the building in question.
5. I have considered the contentions advanced. Section 34 Of the Disaster Management Act, 2005 empowers the district authority to take appropriate steps to provide relief in response to any

W.P.(C).No.12935/20

4

threatening situation or disaster. Section 65 of the Act reads as follows:-

"65 Power of requisition of resources, provisions, vehicles, etc., for rescue operations, etc.- (1) If it appears to the National Executive Committee, State Executive Committee or District Authority or any officer as may be authorised by it in this behalf that—

(a) any resources with any authority or person are needed for the purpose of prompt response;

(b) any premises are needed or likely to be needed for the purpose of rescue operations; or

(c) any vehicle is needed or is likely to be needed for the purposes of transport of resources from disaster affected areas or transport of resources to the affected area or transport in connection with rescue, rehabilitation or reconstruction,

such authority may, by order in writing, requisition such resources or premises or such vehicle, as the case may be, and may make such further orders as may appear to it to be necessary or expedient in connection with the requisitioning.

(2) Whenever any resource, premises or vehicle is requisitioned under sub-section (1), the period of such requisition shall not extend beyond the period for which such resource, premises or vehicle is required for any of the purposes mentioned in that sub-section

(3) in this Section,-

(a) "resources" includes men and material resources;

(b) "services" includes facilities;

(c) "premises" means any land, building or part of a building and includes a hut, shed or other structure or any part thereof;

(d) "vehicle" means any vehicle used or capable of being used for the purpose of transport, whether propelled by mechanical power or otherwise."

W.P.(C).No.12935/20

5

6. It is not in dispute that the unprecedented situation we find ourselves in calls for drastic measures. The promptness and thoroughness of the steps taken by all concerned in this State has brought accolades from all over the world. However, it is worth remembering that in times of calamity as in all other situations, action of statutory authorities require to be guided by the principles of fairness and lack of arbitrariness, especially where the individual rights of the citizens are being dealt with.
7. The pleadings placed on record by the 1st respondent would show that the requirement of the building is for housing of Covid patients in the light of the increasing number of patients in the district. A Division Bench of this Court in the decision reported in **State of Kerala vs Biju Ramesh** [2016 KHC 436] has held that the power under Section 65 can be exercised even in anticipation of an emergency situation and the invocation of the power does not have to wait till a disastrous situation has already occurred. It is also clear that a notice and hearing is not contemplated or required for exercise of the power in a situation of emergency.

W.P.(C).No.12935/20

6

8. However, the rights of owners of individual properties have to be balanced with the public interest even in a case where urgent steps are to be taken for making arrangements for dealing with a situation. The petitioners, who are a co owner of the property, who owns an apartment in the building and the builder of the apartment complex, for which no occupancy certificate has been issued cannot be termed as strangers who have no right to approach this Court challenging Ext P3.
9. Ext P3 order is seen dated 28.6.2020. It is now admitted that no notice preceded the same. It is contended that by 30.6.2020, the two families, who were admittedly residents in the building , were evicted and patients have already been admitted in the facility. The order as also the statement does not disclose whether the relevant aspects, including viable alternatives, have been taken into consideration before passing an order in the nature of Exhibit P3. No reason is stated why the action had to be taken in such a hasty manner without any manner of notice being issued to the owners of the apartments, the owners of the property or the builder who, according to the respondents, have not obtained occupancy certificates. The pleadings on record and the arguments advanced do not disclose any situation which

W.P.(C).No.12935/20

7

warranted such hasty action without notice and without considering availability of any alternatives for the purpose. The non statutory nature of the guidelines issued by the government cannot be relied on by the respondents to justify the impugned order or the actions taken pursuant thereto.

10. There will, accordingly, be a stay of Ext P3 and all steps taken pursuant thereto. However, the respondents shall be at liberty to take appropriate action in terms of Section 65 of the Act, after putting the petitioners and the representatives of the owners of the apartments on notice and after considering their objections as well.

Writ petition is admitted. Learned Government Pleader takes notice for respondents 1 to 5. Smt.Meena John takes notice for the 6th respondent. Post on 17.07.2020.

sj

R
01-07-20

11/7/20

True Copy

Sd/-

ANU SIVARAMAN, JUDGE


ASSISTANT REGISTRAR

WP(C) No.12935/2020 (N)

EXHIBIT P3 - A TRUE COPY OF THE ORDER NO. DCKNR/3383/2020/DMI, DATED 28-06-2020 OF THE FIRST RESPONDENT.

EXHIBIT P4 - A TRUE COPY OF THE G.O.(MS) 955/2020/LSGD DATED 25-05-2020 ALONG WITH THE RELEVANT EXTRACTS FROM THE GUIDELINES.