IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

THURSDAY ,THE 21ST DAY OF FEBRUARY 2019 / 2ND PHALGUNA, 1940

LA.App..No. 260 of 2014

AGAINST THE JUDGMENT & DECREE DATED 15.10.2008 IN LAR 107/2006 of II ADDITIONAL SUB COURT,THIRUVANANTHAPURAM

APPELLANT/1ST RESPONDENT IN LAR:

STATE OF KERALA
REPRESENTED BY THE DISTRICT COLLECTOR,
THIRUVANANTHAPURAM

BY ADV.SYAMJIRAM, GOVERNMENT PLEADER

RESPONDENTS/CLAIMANTS AND 2ND RESPONDENT IN LAR:

* **1** **BIJU RAMESH, (DELETED)**
SAMTHRIPTHI,EAST FORT,THIRUVANANTHAPURAM 695 001

THE NAME OF THE 1ST RESPONDENT IS DELETED FROM THE PARTY ARRAY VIDE ORDER DATED 2.12.2014 IN IA 1749/14.

2 **N.RAMA KUMAR, TC 19/1977 (1), SREEHARI, PALAYAM,**
THIRUVANANTHAPURAM 695 001

3 **THE SECRETARY**
THIRUVANANTHAPURAM DEVELOPMENT AUTHORITY,
THIRUVANANTHAPURAM 695 001

R3 BY SRI.K.A. JALEEL
R2 BY SRI J HARIKUMAR

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 21.02.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

State has preferred this appeal against the judgment and decree passed by the Second Additional Sub Court, Thiruvananthapuram, in L.A.R.No.107 of 2006. Main contention raised in the appeal is that instead of considering the extent of property acquired from the possession of the 2nd respondent herein as 0.13 Ares in Survey No.2968/2-1 of Vanchiyoor Village in Thiruvananthapuram Taluk, the reference court wrongly considered the extent as 0.26 Ares and awarded land value for the said extent.

2. Relevant facts are as follows:

A notification under Section 4(1) of the Land Acquisition Act, 1894 was published on 23.11.2003. The land acquisition officer awarded land value at the rate of Rs.3,14,251/- per Are. The reference court, relying on Ext.A1 judgment in L.A.R.No.344 of 2006 of the same court, enhanced the land value to Rs.27,16,998/- per Are and wrongly awarded the said enhanced land value in favour of the 2nd respondent for 0.26 Ares instead of 0.13 Ares, is the appellant's case.

3. Even though a contention has been raised by the appellant State that the land value in L.A.R.No.344 of 2006 relied

on by the court below was subjected to L.A.A.No.68 of 2010 before this Court and the land value was reduced to Rs.21,60,000/- per Are, no material is produced and for that reason, I am not able to enter a finding thereon.

4. Learned counsel for the 2nd respondent contended that there is no mistake committed by the court below in calculating the extent of land acquired from the possession of the 2nd respondent as 0.26 Ares because the document and evidence produced in this case would justify the observation of the court below.

5. On a perusal of the impugned judgment, it can be seen that the court below has considered this issue and awarded compensation for 0.26 Ares to the 2nd respondent.

6. It is submitted by the learned Government Pleader that the 2nd respondent had only title and possession with respect to 0.13 Ares and rest of the land was a Government land or *puramboke*. According to the learned counsel for the respondent, the State does not know whether it is a government land or *puramboke*. In order to clarify, this Court, on 21.11.2018, passed the following order:

Heard the learned Government Pleader

and the learned counsel appearing for the respondents.

2. The dispute is regarding extent of the property acquired from the possession of claimants/respondents in L.A.R No.107 of 2006. It is seen from the records that the contesting respondent herein is the 2nd claimant in L.A.R No.107 of 2006 before the IInd Additional Sub Court, Thiruvananthapuram. From the judgment, it will be clear that the first claimant did not contest the case.

3. Learned Government Pleader submitted that the land acquired from the possession of contesting claimant is only 0.13 Acres, whereas the learned counsel for the claimant would contend that 0.26 Ares of land, including a shop building standing thereon, has been acquired and no more property is left for him in the area. The point of dispute can be resolved by the State producing the plan prepared at the time of acquisition proceedings as well as the documents kept in the concerned Village office relating to the property left behind, if any, after acquisition. The State shall also produce the title deed and basic tax receipts produced by the claimant before the Land Acquisition Officer as part of the award enquiry. These documents shall be produced within three weeks.

7. Since no document is produced to establish that 0.26 Ares claimed by the 2nd respondent does not belong to him in full,

another order was passed by this Court on 29.1.2019, which reads as follows:

> *Heard the learned Government Pleader and learned counsel for the respondents.*
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> *2.Pursuant to an order dated 21.11.2018, the learned Government Pleader obtained thandaper account and plan in respect of the acquired property. Looking into these documents, learned counsel for the claimant would contend that thandaper account clearly shows that 650 sq. links, which is equivalent to 26 sq. metre, was belonging to claimant's title and the entire property had been acquired. Appellant-State takes up a contention that only 13 sq. metre was taken from the possession of the claimant. Neither the plan nor the thandaper account shows as to where exactly the remaining 13 sq. metre lies. Learned Government Pleader wanted to look into the notes to award to ascertain whether the entire property shown in the thandaper account of the claimant had been taken by the State or not. He seeks one months time. It is the grievance of the claimant that approximately Rs.5,00,000/- alone was deposited by the State before the Sub Court concerned. Having regard to the facts and circumstances, I hereby direct the appellant-State to deposit Rs.5,00,000/- (Rupees five lakhs only) more within three weeks from today before the*

court below. The notes to award, if any, shall be produced before this Court within a period of three weeks. If the amount, as directed above, is deposited before the court below, the claimant is permitted to withdraw the amount.

8. On 8.2.2019, yet another order was passed in the following terms:

Heard the learned Government Pleader and learned counsel for the respondents.

2. This Court, when the matter was admitted on 04.03.2015, passed the following order in the stay petition:

> *"It is submitted by learned Govt. Pleader that certain portion of the amount has been deposited. We direct to deposit 50% of the total amount decreed within a period of two months. There will be a stay as prayed for, for a period of six months"*

However, the matter is now placed before a single Judge in accordance with the valuation. Since the parties did not bring this fact to the notice of the Court, an order was happened to be passed on 29.01.2019 directing the appellant State to deposit Rs.5,00,000/- within three weeks from that date. So far the order has not been complied with. According to the claimant, he is entitled to get an amount of Rs.30,63,830/-, whereas the State would

> *say that the claimant will be entitled to get Rs.9,50,000/- only. This is a matter to be decided in appeal. Appeal is adjourned at the instance of the appellant State on the ground that documents are available to show that property acquired from the possession of the claimant is 0.13 Ares and not 0.26 Ares as claimed by the claimant. The State cannot be allowed to prolong the matter without depositing atleast the amount ordered by this Court on 29.01.2019. Therefore, the appellant shall deposit Rs.5,00,000/- (Rupees five lakhs only) before the reference court within a period of ten days from today. If the document ordered to be produced as per order dated 29.01.2019 is not produced before this Court within a period of ten days from today, the appeal will be disposed with available records.*

9. In a purported compliance of the above order, an affidavit has been filed by the Special Tahsildar, Additional LA Unit, Thiruvananthapuram. Along with the affidavit, Form No.9(b) notice and an order passed by the Thiruvananthapuram Development Authority, with one Dr.Biju Ramesh on the party array, have been produced. In sofar as Form No.9(b) notice is concerned, it would only show that 2.02 Ares have been acquired from the joint possession of Biju Ramesh and the 2nd respondent. It does not show as to who possessed what extent of property out

of 2.02 Ares. Therefore, this notice will no away improve the case of the State. In sofar as Annexure-A3 (Thiruvananthapuram Development Authority's proceedings) is concerned, it can be seen that the 2nd respondent was not a party to the proceedings and he was not heard. Therefore, it does not bind him.

10. Learned counsel for the 2nd respondent drew my attention to the written statement filed by the 2nd respondent before the Sub Court, wherein he has specifically raised a claim of title in respect of 0.26 Ares. At the time when he was examined as AW-1 before the court below, he asserted his contentions in the written statement. And strangely, there was no cross examination on that point. Another party in the proceedings namely, Biju Ramesh did not contest the case.

11. In this factual background, learned counsel for the 2nd respondent, relying on Sections 3 and 4 of the Kerala Land Conservancy Act, 1957 (in short, the Act), contended that the evasive affirmation by the Special Tahsildar, Additional LA Unit, Thiruvananthapuram, in paragraphs 5 and 6 of her affidavit dated 18.2.2019 that 0.13 Ares claimed by the State may be a *puramboke* land or a Government land, cannot be accepted, as the State has no definite case. It is also submitted that in spite of

issuing a direction by this Court, no material is produced to substantiate that 0.13 Ares now claimed by the State belongs to the Government either as *puramboke* or as Government land.

12. Sections 3 of the Act defines property of Government. Section 4 of the Act defines *puramboke*. The title deed produced before the land acquisition officer, along with basic tax, would show that the 2nd respondent was claiming title in respect of 0.26 Ares and he was paying revenue for that extent. This is not a disputed fact even as per the records in the proceedings. Except the statement that 0.13 Ares belongs to the Government and not to the 2nd respondent, there is no reliable material produced to substantiate the appellant's contention. Moreover, when AW-1 was examined, no question to this effect was put to him to elicit answers favourable to the contentions now raised by the State. That apart, no independent evidence was adduced by the State to substantiate that 0.13 Ares of land belong to the Government either as Government land or as *puramboke*.

13. Learned counsel for the 2nd respondent would contend that this appeal is an after thought and it was filed with a delay of 1774 days, and that too, after the 2nd respondent had filed a writ petition and Contempt petition before this Court as W.P.

(C).No.1832 of 2013 and Con.Case (C).No.1086 of 2014. This appeal is filed in order to cause trouble to the 2nd respondent and also to justify the unjustifiable stand taken by the revenue officials at the time of acquisition. These contentions are denied by the Government Pleader.

14. Learned Government Pleader requested for a remand to the court below for producing more documents to substantiate the appellant's case.

Having regard to the facts and circumstances, I find no justification for remanding this case at this distance in time, especially when the State had enough opportunity to establish its case before the court below. Not only they did not challenge the case of the claimant, but also they did not adduce any evidence to establish the case set up.

In the result, I find no merit in the appeal and hence, it is dismissed. It goes without saying that the claimant is entitled to withdraw the amount in deposit lying before the court below.

All pending interlocutory applications will stand dismissed.

Sd/-

A.HARIPRASAD

jv **JUDGE**

APPELLANT'S ANNEXURES:

ANNEXURE-A1 COPY OF THE NOTICE IN LAC 421/04

ANNEXURE-A2 COPY OF THE SIGNATURE OF ACKNOWLEDGEMENT

ANNEXURE-A3 COPY OF THE DECISION OF THE HIGH LEVEL COMMITTEE