

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 19TH DAY OF MARCH 2021 / 28TH PHALGUNA, 1942

RP.No.1123 OF 2017(Y) IN WP(C). 30393/2016

AGAINST THE JUDGMENT DATED 03.11.2016 IN WPC 30393/2016 OF HIGH COURT
OF KERALA

REVIEW PETITIONERS/RESPONDENTS 1-3 IN W.P.(C):

- 1 STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY, GOVERNMENT OF KERALA,
SECRETARIAT, THIRUVANANTHAPURAM-695 001.
- 2 THE DISTRICT COLLECTOR
ERNAKULAM DISTRICT, COLLECTORATE, KAKKANAD-682 030.
- 3 THE SPECIAL TAHSILDAR
LAND ACQUISITION, KOCHI REFINERIES LTD., VYTTILA,
TRIPPUNITHURA.

BY SMT. LATHA T. THANKAPPAN, GOVERNMENT PLEADER

RESPONDENTS/PETITIONERS & 4TH RESPONDENT IN W.P.(C):

- 1 MRS. MARY KURUVILA
W/O C.V.KURUVILLA, CHUNDANGAL HOUSE, OPP. TO HIGH COURT
OF KERALA, HIGH COURT ROAD, ERNAKULAM, KOCHI-31.
- 2 C.V.KURUVILLA
S/O VARKEY, CHUNDANGAL HOUSE, OPP. TO HIGH COURT OF
KERALA, HIGH COURT ROAD, ERNAKULAM, KOCHI-31.
- 3 MARTIN KURUVILLA
S/O C.V.KURUVILLA, CHUNDANGAL HOUSE, OPP. TO HIGH COURT
OF KERALA, HIGH COURT ROAD, ERNAKULAM, KOCHI-31.
- 4 MOHAN KURUVILLA
S/O C.V.KURUVILLA, CHUNDANGAL HOUSE, OPP. TO HIGH COURT
OF KERALA, HIGH COURT ROAD, ERNAKULAM, KOCHI-31.
- 5 MADHU KURUVILLA
S/O C.V.KURUVILLA, CHUNDANGAL HOUSE, OPP. TO HIGH COURT
OF KERALA, HIGH COURT ROAD, ERNAKULAM, KOCHI-31.
- 6 THE CHIEF EXECUTIVE OFFICER
INFOPARK, KUSUMAGIRI, KAKKANAD-682 030.

BY SRI. K.J.KURIECHEN

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 05-03-2021, THE
COURT ON 19.03.2021 PASSED THE FOLLOWING:

Dated this the 19th day of March, 2021.

ORDER

The review petition is filed by the respondents in W.P.(C) No. 30393 of 2016 seeking to review the judgment dated 03.11.2016, whereby this Court found that the writ petitioners have not received the amount in the land acquisition proceedings initiated under the provisions of the Land Acquisition Act, 1894 (hereinafter called 'Act, 1894), even though the possession of the property of the writ petitioners were taken pursuant to the LAC Nos. 39/2006, 40/2006 and 45/2006 and the amounts were deposited before the Reference Court on 10.05.2007. However reference files were returned by the Reference Court holding that there is a difference in the extent of property acquired and the documents produced and hence, the reference is returned to the Land Acquisition Officer concerned. Similar and typical orders were passed in all the above land acquisition cases and the orders are apparently dated 08.10.2014 and it was accordingly that a direction was issued to the third review petitioner i.e., the Special Tahsildar, Land Acquisition, Kochi Refineries Ltd., Tripunithura. Apparently, acquisitions were made on the basis of the requisition made by the Chief Executive Officer, INFOPARK,

Kusumagiri, Kakkanad.

2. The contentions raised in the Review Petition is that in re-survey, the land possessed by the writ petitioners were re-fixed and the area had been declared as 21.40 Ares in Re-survey No. 640/3 in Block No. 9 of Kakkanad Village and according to the LAC No. 45/2006 award No. 32/2007 dated 10.05.2007 was passed. According to the Review Petitioners, similar awards were passed after re-fixing the area of the property acquired. However, the awards in LACs were passed after verifying the Basic Tax Register and the thandaper account register, evident from Annexures A 1 to A8 produced along with the Review Petitions.

3. Even according to the Review Petitioners, some errors occurred in re-survey records and perhaps the old survey numbers shown in the other documents were mistakenly written as survey numbers owned by others.

4. The sum and substance of the contention is that once the award was passed by the authority, no award can be passed again, unless it is quashed by a competent judicial forum and therefore, since the awards were passed and the same are still in force, the Act does not allow the authority to pass another award in the same case. It is

also pointed out that even though the writ petitioners had produced the documents before a judicial forum, the Land Acquisition Officer is not permitted to pass the award beyond the area of the land approved by the Superintendent of Survey and Land Records, who is the competent authority.

5. Originally, the resurvey records came into force during 1990-1991 and the beneficiaries had been given sufficient chances and opportunities to raise the objections and cure the mistakes, if any, created in resurvey records. It is also submitted that the writ petitioners have not taken any steps to correct the mistakes occurred, if any, in resurvey records. Since the awards were passed during 2007 and the acquired land had been taken possession by issuing warrant for the enforcement of the eviction and had been handed over to the requisitioning authority, nothing can be done to re-identify the extent of the property. Anyhow, it is an admitted fact that the awards were passed by the Land Acquisition Officer based on Section 31(2) of the Act, 1894 and had been referred to the concerned Sub Court by the Special Tahsildar.

6. That apart, it is contended that notifications under Sections 4(1) and 6(1) were published in accordance with the Act, 1894 and the

acquisition proceedings were completed. Therefore, passing of a fresh award may give rise to a further question as to whether the provisions of Act 30 of 2013 will be applicable in passing a fresh award, particularly in view of Section 24 of Act 30 of 2013. Therefore, it was submitted that the said crucial fact could not be brought to this Court during the course of arguments and the error has crept in.

7. I have heard Smt. Latha T. Thankappan for the State and its officials and Sri. K. J. Kuriachen appeared for the writ petitioners, and perused the pleadings and documents on record.

8. It is significant to note that the writ petition was disposed of on the basis of the submission made by the learned Special Government Pleader, on instructions, that awards will be passed in accordance with the report of the references within a time frame. It is an admitted fact that awards were passed under Section 31(2) of the Land Acquisition Act, 1894 and the amounts were deposited in the reference court. Obviously, the writ petitioners have not participated in the acquisition proceedings before the Land Acquisition Officer. It was accordingly that the methodology provided under Section 31(2) was employed by the Land Acquisition Officer and the amounts were deposited. Anyhow, the reference court found that there is difference

in the extent of the property acquired and the title deeds produced by the writ petitioners and it was accordingly that awards were returned to the Land Acquisition Officer obviously for identifying the said issue and to pass appropriate orders/awards. The order is dated 08.10.2014, evident from Ext. P18.

9. During the course of argument, learned counsel appearing for the writ petitioners have submitted that similar orders were passed in regard to the other land acquisition cases also. Anyway, it is an admitted fact that the amounts were deposited before the reference court on 10.05.2007 and the awards were returned probably for passing appropriate orders/awards, taking into account the extent of property shown in the title deed of the property. It is also an admitted fact that the references returned were received by the Land Acquisition Officer and having not passed any orders/award, the writ petition was filed by the petitioners seeking appropriate directions. It is quite clear and evident from the judgment that it was on the basis of the submission made by the learned Special Government Pleader that a direction was issued to the Land Acquisition Officer to pass awards as per the return of the references mentioned within two months from the date of receipt of a copy of the judgment.

10. Taking note of the statutory benefits that the writ petitioners are entitled to get as per law, the writ petitioners were already directed to produce the original title deeds before the Land Acquisition Officer in order to enable him to pass awards. It is also significant to note that the orders passed by the Reference Court are not challenged by the Government and its officials. Which thus means, the orders passed by the court were acceptable to the review petitioners and the Review Petitioners, in my considered opinion, ought to have passed appropriate orders/awards, instead of keeping the references returned pending for several years. Therefore, from the facts and circumstances, it is quite clear and evident that there is no error apparent on the face of the record or any other legal infirmities justifying review of the judgment.

Needless to say, Review Petition fails and accordingly, it is dismissed.

sd/-
SHAJI P. CHALY,
JUDGE.

Rv

APPENDIX

PETITIONERS' EXHIBITS:

ANNEXURE A1	TRUE COPY OF THE DECLARATION U/S.6 OF THE ACT DATED 06/10/2006.
ANNEXURE A2	THE TRUE EXTRACT COPY OF THE BASIC TAX REGISTER IN SY. NO.640/1 AND 2 WHICH IS POSSESSION BY THE 2ND PETITIONER.
ANNEXURE A3	A TRUE EXTRACT COPY OF THE TANDAPER ACCOUNT NO.813 IN SY. NO.640/1 AND 2.
ANNEXURE A4	THE TRUE EXTRACT COPY OF BASIC TAX REGISTER IN SY. NO.640/3(OLD SY. NO.382/2) WHICH IS POSSESSED BY THE 1ST PETITIONER.
ANNEXURE A5	THE TRUE EXTRACT COPY OF THE TANDAPER ACCOUNT NO.814 IN SY. NO.640/3.
ANNEXURE A6	TRUE EXTRACT COPY OF BASIC TAX REGISTER IN SY. NO.641/25 WHICH IS POSSESSED BY PETITIONERS 2 TO 5.
ANNEXURE A7	THE TRUE EXTRACT COPY OF THE TANDAPER ACCOUNT NO.2552 IN RE-SY. NO. 641/25.
ANNEXURE A8	TRUE COPY OF THE MAHAZAR PREPARED AT THE TIME OF POSSESSION OF THE PROPERTIES IN LAC NO.39/2006.
ANNEXURE A9	TRUE COPY OF THE MAHAZAR PREPARED AT THE TIME OF POSSESSION OF THE PROPERTIES IN LAC NO. 40/2006.
ANNEXURE A10	TRUE COPY OF THE MAHAZAR PREPARED AT THE TIME OF POSSESSION OF THE PROPERTIES IN LAC NO. 45/2006.

RESPONDENTS' EXHIBITS: NIL

/True Copy/

PS To Judge.

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