

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. A.J.DESAI

&

THE HONOURABLE MR.JUSTICE V.G.ARUN

TUESDAY, THE 7TH DAY OF NOVEMBER 2023 / 16TH KARTHIKA, 1945

WA NO. 821 OF 2022

AGAINST THE JUDGMENT IN WP(C) 30393/2016 & ORDER IN
RP.1123/2017 OF HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS 1 TO 3 IN WPC:

- 1 STATE OF KERALA REPRESENTED BY THE CHIEF
SECRETARY, GOVERNMENT OF KERALA, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695 001
- 2 THE DISTRICT COLLECTOR
ERNAKULAM DISTRICT, COLLECTORATE,
KAKKANAD, PIN - 682 030
- 3 THE SPECIAL TAHSILDAR
LAND ACQUISITION, KOCHI REFINERIES LTD.,
VYTTILA, TRIPUNITHURA, PIN - 682 038

BY SPL.GP (LAA) SMT.SUDHA DEVI N.

RESPONDENTS/PETITIONERS & 4TH RESPONDENT:

- 1 MRS. MARY KURUVILA
W/O. C.V. KURUVILA, CHUNDANGAL HOUSE,
OPP. TO HIGH COURT OF KERALA, HIGH COURT ROAD,
ERNAKULAM, KOCHI, PIN - 682 031
- 2 C.V. KURUVILA
S/O. VARKEY, CHUNDANGAL HOUSE,
OPP. TO HIGH COURT OF KERALA, HIGH COURT ROAD,
ERNAKULAM, KOCHI, PIN - 682 031

- 3 MARTIN KURUVILA
 S/O. C.V. KURUVILA, CHUNDANGAL HOUSE,
 OPP. TO HIGH COURT OF KERALA, HIGH COURT ROAD,
 ERNAKULAM, KOCHI, PIN - 682 031
- 4 MOHAN KURUVILA
 S/O. C.V. KURUVILA, CHUNDANGAL HOUSE,
 OPP. TO HIGH COURT OF KERALA, HIGH COURT ROAD,
 ERNAKULAM, KOCHI, PIN - 682 031
- 5 MADHU KURUVILA
 S/O. C.V. KURUVILA, CHUNDANGAL HOUSE,
 OPP. TO HIGH COURT OF KERALA, HIGH COURT ROAD,
 ERNAKULAM, KOCHI, PIN - 682 031
- 6 THE CHIEF EXECUTIVE OFFICER
 INFOPARK, KUSUMAGIRI, KAKKANAD, PIN - 682 030
- BY ADV K.J.KURIACHAN
 ADV. K.V.RASHMI FOR R6

 THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
07.11.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 7th day of November 2023

V.G. Arun, J.

The writ petitioners/respondents herein were the owners of various extents of properties purchased under Exts.P1 to P6 sale deeds. By virtue of the sale deeds, the respondents became the owners in possession of a total extent of 7 Acres 13 cents (288.48 Ares) in Kakkanad Village. The properties were lying contiguously and as a compact plot. The entire plot was acquired by the Government pursuant to a notification under Section 4(1) of the Land Acquisition Act issued in the year 2003. Thereafter, awards were passed determining the compensation payable to each respondent. In the award thus passed, the extent of the property belonging to the respondents got interchanged and the total extent of land got reduced from 288.48 Ares to 284.90 Ares. On receipt of notice in the Land Acquisition References, pursuant to the deposit of the award amount under Section 31(2) of the Act, the respondents

appeared before the Sub Court and filed statements pointing out that the awards were not in conformity with the extent owned by the respondents as per their title deeds. The Sub Court, after verification of the title deeds and the awards, found merit in the objection and, therefore, returned the reference for curing this defect and passing a fresh award in accordance with the extent shown in the title deeds.

2. Aggrieved by the delay in passing the award in terms of the Sub Court's direction, the respondents filed the writ petition. By the impugned judgment, the learned Single Judge directed to pass awards in terms of the direction issued by the Sub Court while returning the references within two months from the date of receipt of a copy of the judgment.

3. The learned Special Government Pleader contends that there is no provision enabling the passing of a fresh award and further that it is practically impossible to pass fresh awards at this point of time, after surveying and measuring the properties based on the title deeds, since buildings have come up in the acquired property and the topography has changed completely.

It is further contended that objections were not raised by the respondents in time and, therefore, the demand for passing of fresh award is liable to be rejected. Finally, it is submitted that the amount of compensation was deposited way back in 2007 itself and the delay in disbursal of the amount is solely attributable to the respondents.

4. The learned counsel for the respondents submitted that the acquisition was challenged up to the Supreme Court unsuccessfully. Thereafter, the respondents appeared before the reference court and pointed out the anomaly with respect to the description and the extent of their properties as per the title deeds and the awards. Thereupon, the court realised the mistake in the award in comparison with the original title deeds produced by the respondents and directed to return the reference so that the boundaries and extent in the awards could be corrected in accordance with the description in the title deeds. Being so, the respondents cannot be found to be at fault for the delay in disbursal of the amount.

5. It is also pointed out that as far as the award is

concerned, the extent of property acquired from the respondents is inter-changed and when the total extent is taken into consideration, there is a shortage of 4 Ares as per the re-survey. Learned counsel fairly submitted that the respondents do not intend to pursue the issue and would be satisfied if the amount in deposit is disbursed to them, reserving the respondents' right to seek enhanced compensation and interest on the amount deposited.

6. We heard learned counsel for the requisitioning authority also.

Taking into account the chequered history of the case and the fact that the compensation amount has been lying idle, without carrying interest from 2007 onwards, we deem it appropriate to accept the suggestions put forth by the parties and dispose of the appeal with the following directions:

- i) The respondents shall jointly file an affidavit expressing their willingness to receive the amount in deposit.
- ii) On such affidavit being filed, the reference court shall direct disbursal of the amount to the respondents, subject to all

the respondents acknowledging receipt of the amount.

iii) The respondents' right to seek interest on the amount deposited and enhanced compensation is left open to be agitated in appropriate proceedings.

Pending interlocutory applications, if any, shall stand closed.

Sd/-

A.J. Desai
Chief Justice

Sd/-

V.G. Arun
Judge

vpv

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P.A. to Judge