

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

THURSDAY, THE 9TH DAY OF DECEMBER 2021 / 18TH AGRAHAYANA, 1943

WP (C) NO. 27248 OF 2021

PETITIONER:

GIRIJA.N
AGED 55 YEARS
D/O.DEVU GOPALAN, VAAMAL HOUSE,
NETTUR P.O., KODVALLI, THALASSERI, KANNUR-05.

BY ADVS.
P.C.ANIL KUMAR
MANU M.THOMAS (M-1341)
P.SREESHA

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY ITS CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM-695001.
- 2 THE DISTRICT COLLECTOR
KANNUR, COLLECTORATE, THAVAKKARA,
KANNUR, KERALA-670002.
- 3 THE ADMINISTRATOR & DEPUTY COLLECTOR LAND ACQUISITION,
MINI CIVIL STATION, THALASSERY-670105, KANNUR DISTRICT.
- 4 LAND ACQUISITION OFFICER & THE SPECIAL TAHSILDAR (LA),
THALASSERY, MINI CIVIL STATION, THALASSERY-670105.
- 5 THE SECRETARY
THALASSERY MUNICIPALITY, MG ROAD, THALASSERY.
- 6 THE SUB DIVISIONAL MAGISTRATE,
THALASSERY, SUB COLLECTORS OFFICE,
THALASSERY, KANNUR-670101.
- 7 THE TAHSILDAR & EXECUTIVE MAGISTRATE, THALASSERY,
THALASSERY TALUK OFFICE 2ND FLOOR,
MINI CIVIL STATION BUILDING, PALISSERY,
KANNUR DISTRICT, THALASSRY, KERALA-670101.
- 8 INSPECTOR OF POLICE

THALASSERY, THALASSERY POLICE STATION, THALASSERY,
KANNUR-670101.

OTHER PRESENT:

SMT.SURYA BINOY.SR.G.P.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 09.12.2021, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

JUDGMENT

The petitioner says that she was residing in a property now acquired by the National Highway Authority of India (NHAI), as a tenant; and that the tenancy arrangement began with the original owner in favour of his mother several decades ago.

2. The petitioner says that she is not aware of the name or whereabouts of the present owners of the property, since the original landlord died; but that when she made a claim for the benefit of resettlement under Schedule II of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, it has been rejected through Ext.P2 by the Competent Authority for Land Acquisition (CALA), appointed under the provisions of the National Highways Act (NH Act), illegally concluding that she is only a trespasser in the property in question.

3. The petitioner asserts that she cannot be construed to be a trespasser, since she has been in possession of the property in question for the last several decades, on the

strength of valid and germane documents, including the certificates issued by the Local Self Government Institution concerned; and therefore, that the findings in Ext.P2 are egregiously improper. The petitioner, therefore, prays that Ext.P2 be set aside and her claims be directed to be considered by the CALA appropriately.

4. I have heard Sri. E.C.Anilkumar – learned counsel for the petitioner and Smt.Surya Binoy – learned Senior Government Pleader appearing for the official respondents.

5. In answer to the afore plea of the petitioner, the learned Senior Government Pleader raised a preliminary objection that this writ petition is not maintainable without the original owner of the property being on the party array. She submitted that the assertion of the petitioner, that she is not aware who is the present owner, cannot be taken to be true because in Ext.P13 which is the document produced by her - the name and address of the owner has been specifically mentioned. She then added that the CALA cannot be faulted for having issued Ext.P2 because the petitioner did not produce any document to show that she was in possession of

the property as a tenant; and therefore, prayed that this writ petition be dismissed.

6. When I evaluate the afore rival submissions, it is clear that, on one hand, the petitioner claims to be a tenant in the property, but has moved this writ petition without arraying the owners of the same. Obviously, therefore, this Court is not in a position to verify the truth of the petitioner's allegations since it requires an evaluation of relevant documents and factual factors.

7. As far as Ext.P2 is concerned, it is discernible therefrom that certain conclusions have been entered therein by the CALA against the petitioner without causing an enquiry as is contemplated. However, the demand made therein to the petitioner to remove herself from the property certainly cannot be interdicted, since even going by her own pleadings, she is only entitled to rehabilitation under Schedule II of the "Fair compensation Act".

8. In the afore circumstances, I set aside Ext.P2 solely to the extent to which it has found the petitioner to be a trespasser in the property; however, confirming every other

directions and observations therein and record that this has been agreed by Sri.P.C.Anilkumar - learned counsel for the petitioner, also.

9. Resultantly, I direct the CALA to hear the petitioner, as also the owners of the property and take a decision on the claim of the former that she is a tenant of the property in question, based on a proper evaluation of all the documents which she may produce before him; for which purpose, necessary opportunity shall be afforded to both sides.

10. The afore exercise shall be completed by the CALA strictly in terms of the applicable statutory regulations; thus culminating in an appropriate order, as expeditiously as is possible, but not later than four months from the date of receipt of a copy of this judgment.

This writ petition is thus ordered.

**Sd/-
DEVAN RAMACHANDRAN
JUDGE**

ANB

APPENDIX OF WP (C) 27248/2021

PETITIONER EXHIBITS

Exhibit P1	A DOWNLOADED COPY JUDGMENT IN WP 19288/2020 DATED 19.12.2020.
Exhibit P2	A TRUE PHOTO COPY OF THE NOTICE DATED BEARING NO.RDOTLY/928/2020-D DATED 18.11.2021.
Exhibit P3	A TRUE PHOTO COPY OF THE RENT RECEIPT ISSUED IN THE NAME OF THE PETITIONER'S MOTHER.
Exhibit P4	A TRUE PHOTO COPY OF THE CERTIFICATE NO.R/23597/93 DATED 26.11.1993, ISSUED BY THE MUNICIPAL COMMISSIONER OF 5TH RESPONDENT.
Exhibit P5	A TRUE PHOTO COPY OF THE LETTER ISSUED BY THE KSEB.
Exhibit P6	A TRUE PHOTO COPY OF THE PERMANENT RESIDENCE CERTIFICATE DATED 01.08.2019 BEARING NO.R3/19305/2019 ISSUED BY THE 5TH RESPONDENT.
Exhibit P7	A TRUE PHOTO COPY OF THE RATION CARD.
Exhibit P8	A TRUE PHOTO COPY OF THE REPORT DATED 29.01.2018 BEARING NO.DCKNR/104/18/C3 FILED BY THE 2ND RESPONDENT BEFORE THE HON'BLE HUMAN RIGHTS COMMISSION, KERALA.
Exhibit P9	A TRUE PHOTO COPY OF THE ORDER DATED 23.03.2018 OF THE HON'BLE HUMAN RIGHTS COMMISSION, KERALA.
Exhibit P10	A TRUE PHOTO COPY OF THE RR PACKAGE ALLOTTED TO THE PETITIONER.

- Exhibit P11 A DOWNLOADED COPY OF THE 2ND SCHEDULE OF THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013.
- Exhibit P12 A TRUE PHOTO COPY OF THE CERTIFICATE DATED 01.10.2018 BEARING NO.E6/868/11 ISSUED BY THE 5TH RESPONDENT MUNICIPALITY.
- Exhibit P13 A TRUE PHOTO COPY OF THE ORDER NO.DCKNR/6781/2020-C3 DATED 23.10.2020.
- Exhibit P14 A TRUE PHOTO COPY OF THE APPLICATION FILED UNDER SECTION 64 OF THE ACT BEFORE THE 2ND RESPONDENT.