

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

CRP.No.597 of 2009

AGAINST THE ORDER IN E.P.No.70/1999 IN LAR 4/1996 of SUB COURT,
OTTAPPALAM DATED 18.06.2009

REVISION PETITIONER:

VASUMATHI, AGED 82 YEARS,
W/O. PORUTHIYIL DECEASED GOPI VAIDYAR, M.A.PHARMACY,
RAJA STREET, COIMBATORE, TAMILNADU.

BY ADV. SRI.D.ANIL KUMAR

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY THE
CHIEF SECRETARY, THIRUVANANTHAPURAM.
2. THE REVENUE DIVISIONAL OFFICER,
OTTAPALAM.

BY GOVERNMENT PLEADER SMT.LILLY LESLIE.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON
03-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.BHAVADASAN, J.

Civil Revision Petition No.597 OF 2009

Dated this the 3rd day of September, 2015.

O R D E R

Aggrieved by the order dated 18.06.2009 in E.P.No.70/1999 in Land Acquisition Reference No.4/1996 of Sub Court, Ottapalam, the decree holder has come up in revision.

2. Dissatisfied with the Award granted by the Land Acquisition Officer, the owner of the property approached the court for enhanced compensation and he was awarded Rs.6,84,236.60 as enhanced compensation under three heads namely, Rs.3,28,412/- towards land value, Rs.79,789.83 towards additional land value under Section 23(1A) of Land Acquisition Act and Rs.98,523.60 towards 30% solatium under Section 23(1)(2) of Land Acquisition Act and Rs.2,57,301/- as compensation under the head of injurious affection to the remaining property of the land owner. The amount fell due on 16.03.1996.

3. It is not in dispute that an amount of Rs.4,40,122/- was deposited on 11.11.1999. The court, on evaluation of the materials and on the basis of the calculation statement filed by both sides, found that a balance amount of Rs.1,48,246/- was still due. The execution petition was then posted for depositing that amount to 20.02.2008.

4. While things stood so, the decree holder filed a new statement as per which she claimed that the amount due to her is Rs.6,17,898.10. Obviously, she based her claim on the basis of the decision in **Gurpreet Singh vs. Union of India** (2008 (1) KLJ (SC) 463). Learned Government Pleader had filed a statement contending that the entire amount has been paid and no further amount is due and the revised statement filed by the decree holder is only to be rejected.

5. The court below held that the decision referred to above has no retrospective effect and cannot be applied to the facts of this case. The court below also found that the amount deposited on two occasions were accompanied by appropriation statements and therefore even if the decision applies, the requirement is

satisfied and therefore had rejected the claim of the decree holder.

6. Learned counsel appearing for the revision petitioner contended that in spite of the best efforts made by him, he was unable to find the appropriation statement which was referred to by the lower court. Learned counsel also contended that even assuming that there is appropriation statement filed before the court, that would not suffice unless notice of appropriation was given to the decree holder.

7. Learned counsel appearing for the revision petitioner, drawing attention to the decision referred to above, pointed out that the decision by Apex Court was rendered on 19.10.2006 though reported late and therefore the statement filed on 04.04.2008 should have been taken into consideration by the court below. The lower court has only observed that appropriation statements have been filed before court. There is no finding that intimation of the same was given to the decree holder so as to deprive her of the opportunity to appropriate the amount according to her choice. If, as a matter of fact, no notice

of appropriation is given to the decree holder, the principle laid down in the above decision applies to the case and it is the option of the decree holder to appropriate the amount of his choice.

8. Learned Government Pleader, on the other hand, pointed out that the lower court has observed that two deposits were accompanied by appropriation statements and that would suffice to meet the requirements of law. Moreover, it is contended that the decree holder withdrew the amount without any demur and that would show the acquiescence on the part of the decree holder.

9. The plea of estoppel and waiver cannot stand. If, as a matter of fact, the decree holder is statutorily entitled to certain benefits, the plea of estoppel and waiver is not available. It could not be said that the statute in question confers personal benefits on the person concerned to waive the benefit. It is a social legislation.

10. Coming to the second aspect, learned counsel appearing for the revision petitioner is justified in his submission that the observation of the court below that the decision has no

retrospective effect and therefore cannot be applied to the facts of the case is clearly wrong. It is to be noticed that the decision was rendered on 19.10.2006 while the matter was pending before court though the decision was reported in the journal rather late. The Apex Court had clarified that the decision is only with respect to the matters already disposed of and not in respect of the matters which are pending before court. So, that ground also cannot stand.

11. Coming to the third ground, deposits were accompanied by appropriation statements. If the principles laid down in the decision referred to above is to be applied, statements of the court will be sufficient to meet the requirements. The decision in no less terms says that the mode of appropriation which the Land Acquisition Officer wants, should be brought to the notice of the decree holder and then alone it can be said that the decree holder does not have right to appropriate the amount according to his choice. In the case on hand, there is no finding that the mode of appropriation was brought to the notice of the decree holder. If that be so, it

cannot be said that the decision does not apply. Anyhow, since it has been observed by the court below that appropriation statements have been filed, it becomes necessary to ascertain whether it was brought to the notice of the decree holder or not.

For the above reasons, this petition is allowed and the impugned order is set aside and the matter is remanded to the lower court for fresh disposal in accordance with law and in the light of what has been stated above. The parties shall appear before the lower court on 07.10.2015. The court below may make every endeavour to dispose of the matter as expeditiously as possible, at any rate, within a period of two months from the date of appearance of the parties.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

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P.A to Judge