

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 23RD DAY OF DECEMBER 2015/2ND POUSHA, 1937

L.A.Appeal No. 393 of 2005

AGAINST THE JUDGMENT IN LAR 332/2001 of SUB COURT,
PAYYANNUR DATED 28-02-2005.

APPELLANT:

THIYYA SAMUDHAYA SANGAM SMASHANA
COMMITTEE SANGAM, P.O.KALLIASSERY,
REPRESENTED BY ITS SECRETARY P.JANARDHANAN,
S/O.GOPALAN, RESIDING AT KALLIASSERY AMSOM AND,
DESOM, P.O.KALLIASSERY, DISTRICT KANNUR.

BY ADVS.SRI.B.KRISHNAN
SRI.R.PARTHASARATHY

RESPONDENTS:

1. PANDARAN KUNHIRAMAN, PRESIDENT,
THIYYA SAMUDHAYA SANGAM, P.O.KALLIASSERY,
DISTRICT KANNUR.

2. THE SPECIAL TAHSILDAR (LA) ,
OECF KANNUR.

R1 BY ADV. SRI.KALEESWARAM RAJ

R2 BY SR. GOVT. PLEADER SRI.L. ALOSIOUS THOMAS

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY
HEARD ON 20-10-2015, THE COURT ON THE 23-12-2015
DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON &
K. HARILAL, JJ.**

L.A.A. No.393 of 2005-C

Dated this the 23rd day of December, 2015

JUDGMENT

Harilal, J.

The appellant is the 'C' claimant in L.A.R. No. 332 of 2001 on the files of the Court of the Subordinate Judge of Payyannur. The above reference was made under Sec.30 of the Land Acquisition Act.

2. An extent of 0.4830 Hectares of land in R.S.No.340/2 of Kalliassery Desom, Kalliasseri Village, sub-divisioned as New Sy.No.340/5 was acquired along with other lands, for Pattuvam Water Supply Scheme, OECF, Kannur and a compensation amount of ₹8,71,552/- was awarded for the above item.

However, the said compensation amount could not be apportioned as the right, title and interest over the holding have not been proved with supporting documents. Since there was a dispute regarding the apportionment of the compensation, the Land Acquisition Officer deposited the above amount before the court below and referred the matter for adjudication. Later, notice was issued to the 'A' claimant alone and the amount was released to them as per order dated 30/9/2002. Aggrieved by the release of compensation to the 'A' claimant, the 'C' claimant approached this Court by filing W.P.(c) No.16094/03 and this Court quashed the order dated 30/9/2002 and directed to implead the 'C' claimant in the Land Acquisition Reference. Thus, both 'A' claimant and 'C' claimant entered appearance in the Land Acquisition Reference with the rival claims over the compensation.

3. 'A' claimant filed a written statement contending as follows: 3 acres 59 cents of land

comprised in R.S.No.340/2 in Kalliasseri amsom and desom belongs to the "Kalliasseri Thiyya Samudaya Sangham", the 'A' claimant. From the above land, 0.4839 Hectares was acquired by the Government and 'A' claimant alone is entitled to get the compensation amount of ₹8,71,552/-. Before that, 1 acre from the above land was given to the Government for establishing the Primary Health Centre and at that time the President of the above Sangham was one U. Kunhambu and the Government acquired the above land and started the dispensary. From Ext.A1 proceedings of the Assistant Collector, Thalassery, dated 24/4/1984, the above property was acquired by the Government from the President of the above Sangham/'A' Claimant. That apart, 50 cents of land was given to the Panchayat for establishing a public crematorium by Ext.A2 gift deed executed by U. Kunhambu, the President of 'A' claimant/ Sangham. Thus, from the total extent of 5 acres and 59 cents of land, 1 acre 50 cents of land was given to the

Government and the Panchayat and the remaining 3.59 acres of land was possessed by the above Sangham. So also, there was a dispute as regards the payment of tax for the said property and it was decided, by Ext.A3 proceeding, that the land tax for the above said land must be realised from the 'A' claimant. The 'C' claimant, who claims the right to receive the compensation, is neither the office bearers nor the workers of 'A' claimant. They are having the right to represent the 'Smashanam Committee', a subsidiary Committee constituted by the 'A' claimant and the said Committee is not working now. Thus, 'C' claimant is having right to realise the expenses of the funeral of the dead bodies and the said fact is evidenced by the receipts issued by them. The 'C' claimant has no right to deal with the landed properties. But, recently the 'C' claimant has created some documents fraudulently, in the name of 'Thiyya Samudaya Sangham Smasana Committee Sangham'. Thus, the 'C' claimant has neither title; nor possession

over 3.59 Acres of property, which was in possession of 'A' claimant.

4. The 'C' claimant also filed a statement contending as follows: The 'C' claimant is an Organisation registered under the Societies Registration Act in the name 'Thiyya Samudaya Sangham Smasana Committee Sangham' and the same is functioning within the limits of Kalliasseri Panchayat. The 'A' claimant is the President of the Kalliasseri Panchayat 8th Ward 'Thiyya Samudaya Sangham', which is an unregistered Sangham functioning only within the 8th Ward of the Kalliasseri Panchayat and it has got 2 cents of landed property comprised in R.S.No.305/1A of Kalliasseri Village. Thus, the 'A' and 'C' claimants are two different and distinct Organisations, though the aim and object of them are same. The 'C' claimant has started its service in the Kalliasseri Panchayat in the year 1968. The 'C' claimant got right and possession over 5.18 Acres of land in R.S.No.340/2 of Kalliasseri Village by

an oral entrustment made by 'Erambala Tarwad' in the year 1960. Thereafter, they got 'jenmam' right over the above property, by Ext.A1 purchase certificate No.8069/77, issued by the Land Tribunal No.IV, Taliparamba. The said purchase certificate is issued in the name of the then President of 'C' claimant by name 'U. Kunhambu' and the full name of the 'C' claimant is shown in the purchase certificate as 'Thiyya Samudaya Sangham Smasana Committee Sangham'. While the 'C' claimant was in possession and enjoyment of the 5.18 Acres of property, 50 cents out of it had been gifted to the Kalliasseri Panchayat to construct a public graveyard vide document No.2008/81. Later, 1 acre of property also had been orally gifted to the very same Panchayat, to start a Primary Health Centre. After accepting the gift deed, the Panchayat had started a Primary Health Centre in the said one acre of property and the other 50 cents is being used as the graveyard. After the above said two transfers of the property, the extent of the property in

the possession and enjoyment of the 'C' claimant is 3.68 Acres. The first President of the 'C' claimant U. Kunhambu has assumed that post till 1988. One Pandaran Kunhiraman represented the 'C' claimant in 1985-86 and he was the Vice President of the same from the year 1988 to 2000. While Kunhambu was the President of the 'A' claimant, Pandaran Kunhiraman and some other office bearers have close nexus with the President of the 'A' claimant. Taking undue advantages from that situation, the above said Kunhiraman in collusion with Kunhambu began to pay basic tax of the said property in the name of the 'A' claimant, though the actual owner of the property was 'C' claimant. The said Pandaran Kunhiraman had never been the President or the Secretary of the 'C' claimant at any point of time. When the dispute is pending, the Government has acquired 1.19 Acres of land from the 'C' claimant. Thus, according to them, the 'C' claimant alone are the owners in possession of the land acquired by the Government and thereby

they are entitled to get compensation due under the acquisition.

5. The 'A' claimant again filed an additional statement denying the claim raised by the 'C' claimant over the acquired property and further averred that at the time of acquisition, the 'C' claimant was not in existence as the same was registered in the year 2001 only. Thus, the 'C' claimant was registered in the year 2001, for the sole purpose of grabbing the compensation amount due to the 'A' claimant. So far the land tax is collected from the 'A' claimant only. Initially, a separate committee has been formed for the purpose of maintaining the burial ground situated in the 50 cents of land and the committee was known as 'Bikkiriyam Paramba Smashana Committee' and the same was not a registered society. The members and workers of the said Committee subsequently formed the 'C' claimant with a new name as shown in the purchase certificate and got registered in the year 2001, with an intent to grab the compensation amount

due under the land acquisition proceedings. Thus, the 'A' claimant prayed for rejecting the claim of 'C' claimant.

6. The evidence of 'A' claimant consists of the oral evidence given by A.W.1 and A.W.2 and the documentary evidence - Exts.A1, A2, A3(a) to A3(j), A4 to A9, A10(a), A10(b) and A11 to A13. The evidence of 'C' claimant consists of the oral evidence given by R.W.1 and R.W.2 and the documentary evidence - Exts.B1 to B40(e). After considering the evidence on record, the court below rejected the claim raised by the 'C' claimant on a finding that the 'A' claimant succeeded in proving the title and possession over the property acquired by the 'B' claimant; whereas the 'C' claimant who was not in existence at the time of acquisition miserably failed to prove the title and possession over the property and thereby the 'A' claimant is entitled to get compensation from the 'B' claimant. In this appeal, the 1st respondent has filed I.A. No.1217/2012 under Order 41 Rule 27 to accept

the additional documents produced along with the said petition and the said application would stand allowed and the documents are marked as Exts.R1(a) to R1(f). The legality, propriety and correctness of the findings, whereby the court below rejected the claim raised by the 'C' claimant, are under challenge in this appeal.

7. Sri. B. Krishnan, the learned counsel for the appellant/'C' claimant advanced arguments challenging the findings that the 'C' claimant failed to prove the title and possession over the property. The learned counsel drew our attention to Ext.B1 certified copy of the purchase certificate issued by the Land Tribunal and contended that Ext.B1 is more than sufficient to prove the title and possession of the 'C' claimant over the acquired property, as the same is seen issued in the name of the 'C' claimant. Therefore, the court below ought to have found that 'jenmam' right was assigned in favour of the 'C' claimant and not in the name of the 'A' claimant. Thus, Exts.B1 to B3 clearly established that the 'jenmam'

assignment was made in favour of the 'C' claimant, the learned counsel urged.

8. Per contra, Ms. Aruna.A., the learned counsel appearing for the 'A' claimant advanced arguments to justify the findings of the court below that the 'A' claimant was the absolute owner in possession of the acquired land. The learned counsel placed reliance on Exts.A1 to A3 which show that one acre of land was gifted to the Government for establishing the Primary Health Centre by virtue of Ext.A1 and further 50 cents of property was gifted to the Panchayat by virtue of Ext.A2, by 'A' claimant. Further drew our attention to Exts.A3(a) to A3(i) and R1(a) to R1(f) land tax receipts and contended that the acquired property was in possession and enjoyment of the 'A' claimant and thereby the 'A' claimant alone is entitled to get compensation from the 'B' claimant. Besides, the learned counsel contended that, at the time of acquisition in the year 1998, 'C' claimant was not in existence and 'C' claimant was registered under the

Societies Registration Act in the year 2001 only with an intent to grab compensation.

9. In view of the rival contentions, the question to be considered is, whether there is any illegality or impropriety in the finding that 'A' claimant is entitled to get compensation. Put it differently, whether the court below is justified in finding that 'A' claimant had succeeded in establishing the title and possession over the acquired property, at the time of acquisition.

10. It is the case of the 'A' claimant that 'C' claimant has no independent or distinct entity, as it was a subsidiary Committee constituted by 'A' claimant for the proper management and supervision of 'smashanam' which was established by the Panchayat in the 50 cents of property gifted to Panchayat by 'A' claimant. That Committee was known as 'Bikkiriyan Paramba Smashana Committee' and continued up to 2001, till the registration of 'C' claimant in the name 'Thiyya Samudaya Sangham Smashana Committee Sangham'. At the time when

Ext.A6 purchase certificate was issued, one U. Kunhambu was the President of both 'A' Claimant and 'Bikkiriyam Paramba Smashana Committee'. Since he was the President of both the 'A' Claimant and its subsidiary Committee, the purchase certificate happened to be issued in the name 'Thiyya Samudaya Sangham Smashana Committee Sangham' with a slight variation in the name. Taking advantage of the said variation in the name shown in Ext.A6 purchase certificate, 'Bikkiriyam Paramba Smashana Committee' adopted the name shown in Ext.A6 purchase certificate and got registered under the Societies Registration Act in that name, in the year 2001, with an intent to grab compensation due under the land acquisition to the 'A' claimant. That apart, Exts.A1 and A2 would show that, earlier, out of 5.68 Acres, 'A' claimant gifted one acre of the property to the Government for establishing a Primary Health Centre and 50 cents was gifted to the Panchayat for establishing a graveyard respectively. So also, Exts.A3

(a) to A3(i) tax receipts show that the 'A' claimant has been paying the property tax. Thus, the claim raised by the 'A' claimant mainly rests on Exts.A1, A2, A6 and A3(a) to A3(i).

11. Per contra, the 'C' claimant places reliance mainly on Exts.B1 certified copy of the purchase certificate, B2 application filed before the Land Tribunal, B5 certificate of registration and B10 to B40. According to the 'C' claimant, 'Thiyya Samudaya Sangham Smashana Committee Sangham' is having an independent and distinct legal entity, different from that of 'A' claimant and the purchase certificate was issued to the 'C' claimant on that basis. It is their case that 'Thiyya Samudaya Sangham Smashana Committee Sangham' has been working since 1968 and they have gifted one acre of property to the Government for establishing the Primary Health Centre and 50 cents of property to the Panchayt for establishing the graveyard.

12. Though, 'C' claimant claimed that they have

been functioning since 1968, all the documents produced by the 'C' claimant, which relate to and cover the period up to 2001 stand in the name of 'Bikkirian Parambu Smasana Committee' and none of the documents pertaining to 'Smashana Committee' up to 2001, till the registration of the 'C' claimant under the Societies Registration Act, refers to the name of 'Thiyya Samudaya Sangham Smashana Committee Sangham'. More particularly, Exts.B11 to B40 refer to the name of 'Bikkiriyen Paramba Smashana Committee' only. Had 'C' claimant been functioning from 1968 onwards in that name itself with an independent entity, how all those records happened to be referred, in the name 'Bikkiriyen Paramba Smashana Committee'? If the contention raised by the 'C' claimant was true and correct, certainly, they could have produced the documents in their own name, instead of the name of 'Bikkiriyen Paramba Smashana Committee' as seen in Exts.B11 to B40. Therefore, we have no hesitation to rule out the

existence and independent entity of 'C' claimant up to 2001, till the registration, in that name, under the Societies Registration Act. How 'Bikkiriyan Paramba Smashana Committee' got converted to 'Thiyya Samudaya Sangham Smashana Committee Sangham'? No satisfactory explanation was forthcoming from the pleadings or evidence of 'C' claimant. If that be so, 'C' claimant cannot assert right to title and possession over the acquired property, when Exts.B11 to B40 documents stand in the name of 'Bikkiriyan Paramba Smashana Committee'.

13. It is true that Exts.B1 certified copy of purchase certificate, B2 certified copy of application in O.A.No.4865/76 and B3 certified copy of Rule 11 Form stand in the name of 'C' claimant. But, all other documents relating to the property evidenced by Exts.B11 to B40 stand in the name of 'Bikkiriyan Paramba Smashana Committee'. Apart from Exts.B1 to B6, no other document is seen produced to establish the independent and distinct entity and the

existence of 'C' claimant before the registration. Going by Exts.B11 to B40, we are satisfied that the 'Smashana Committee' was known as 'Bikkiriyam Paramba Smashana Committee' and never known as 'Theeya Samudhaya Sangham Smashana Committee Sangham' as claimed by the 'C' claimant, though the purchase certificate is seen issued in that name. In that view of the matter, their claim that they are the original 'Sangham' who is entitled to get the compensation amount cannot be accepted. Though the Ext.B1 certified copy of the purchase certificate stands in the name of 'Theeya Samudhaya Sangham Smashana Committee Sangham', they could not produce the original purchase certificate as they were not in possession of the same and the original certificate was produced by 'A' claimant as Ext.A6. The possession of the original purchase certificates in the hands of 'A' claimant goes a long way, to fortify their contentions. How the original purchase certificate (Ext.A6) happened to be in the custody of 'A' claimant,

if the same was issued to 'C' claimant. No explanation was forthcoming from 'C' claimant, in this respect.

14. The above view is further supported by the absence of any claim from 'C' claimant for compensation before the competent authorities, till the disbursement of the compensation amount to 'A' claimant. From 1998 till filing of objection before the 'B' Claimant, 'C' claimant kept quite watching the acquisition proceedings knowingly or unknowingly. The belated claim draws an inference suspecting the bona fides and genuineness of the claim also. Though the 'C' claimant has produced Ext.B10 minutes book and placed reliance on them, as rightly held by the court below, going by Ext.B10 minutes book and receipt book, it is seen that the same are not properly maintained and many of the pages in it are kept blank and thereby no reliance can be placed on those minutes books or receipt books.

15. We are inclined to accept the contention that Ext.A6 purchase certificate happened to be issued with

slight variation in the name and it was so occurred when U. Kunhambu was the President of both 'A' claimant and 'Bikkiriyam Paramba Smashana Committee'. This is the inference that can be gathered from the evidence of A.W.2, the then President of both 'A' claimant and the 'Bikkiriyam Paramba Smashana Committee'. We are of the opinion that A.W.2 is the star witness who is competent to swear the circumstances under which the purchase certificate happened to be issued in the name of 'Theeya Samudhaya Sangham Smashana Committee Sangham'. He was the President of 'A' claimant from 1955-56 to 1983. At the same time, he was the President of the 'Bikkiriyam Paramba Smashana Committee' also. Needless to say, the purchase certificate was issued and the application for the same was filed, when he was the President of both Committees. Ext.A1 gift deed was also executed when he was the President of 'A' claimant. When he was examined, he has deposed that he was also

unaware of the reason by which a slight variation was occurred in the name shown in Ext.A6 purchase certificate and Ext.B2 application filed before the Land Tribunal. He has no case that 'C' claimant was in existence at that time and Ext.A6 purchase certificate was issued in the name of 'C' claimant or Ext.B2 application was filed in the name of 'C' claimant. He has deposed that though in Ext.B2 application the name of the applicant is shown as 'Theeya Samudhaya Sangham Smashana Committee Sangham', the purchase certificate was obtained by 'A' claimant. On an analysis of the cross-examination of A.W.2, it could be seen that 'C' claimant miserably failed to impeach his credibility and nothing brought out to discredit or suspect the evidence given by him. We are also inclined to place reliance on the oral evidence of A.W.2. Merely on the reason that the name shown in Ext.A6 purchase certificate and the name of 'C' claimant are one and the same, it cannot be held that 'C' claimant was in existence at the time of the

issuance of the purchase certificate, in the light of Exts.B10 to B30, which stand in the name of 'Bikkiriyan Paramba Smashana Committee'.

16. More importantly, the above view is further supported by the execution of the gift deeds with respect to one acre of property, in favour of the Government for establishing Primary Health Centre and 50 cents of property in favour of Panchayat for establishing graveyard, by the 'A' claimant, as per by Exts.A1 and A2 respectively. Had the 'C' claimant been the owner in possession of the property, the 'A' claimant would not have executed Exts.A1 and A2 gift deeds. It is pertinent to note that no evidence had been brought on record to show any objection from the part of 'C' claimant against the said gifts and no sufficient explanation was forthcoming from 'C' claimant as regards the execution of Exts.A1 and A2, particularly when they claimed ownership and possession of the entire 5.18 Acres of property from 1968 onwards and the conferment of 'jenmam' right

by Ext.A6 purchase certificate.

17. In the above analysis, we hold that 'A' claimant has succeeded in establishing the title and possession over the acquired property. On the other hand, the 'C' claimant miserably failed to prove that 'C' claimant was in existence with an independent and distinct entity at the time when the acquisition was effected. We are also inclined to observe that 'C' claimant has put forward the claim merely on the reason that the name shown in the purchase certificate is their name. Here also, it is pertinent to note that the acquisition of the property was in the year 1998 and the registration of the 'C' claimant under the Societies Registration Act was in the year 2001 only, that too by adopting the name shown in Ext.A6. In the absence of independent evidence as regards the existence of 'C' claimant at the time of acquisition, the resemblance in the name is of no consequence at all, particularly when all the other documents produced by the 'C' claimant as

Exts.B10 to B40 refer to the existence of 'Bikkiriyan Paramba Smashana Committee', the subsidiary Committee of 'A' claimant only. There is no illegality or impropriety in any of the findings in the impugned judgment so also we do not find any kind of perversity in the appreciation of evidence. This appeal is devoid of merits.

Hence this appeal stands dismissed.

Sd/-
(P.R. RAMACHANDRA MENON, JUDGE)

Sd/-
(K. HARILAL, JUDGE)

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P.S. to Judge