

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA**

THURSDAY, THE 26TH DAY OF FEBRUARY 2015/7TH PHALGUNA, 1936

LA.App..No. 472 of 2013 (C)

(LAR.NO. 1/2011 OF SUB COURT, PERUMBAVOOR DATED 27-02-2013)

APPELLANTS/CLAIMANT NOS.10,8,9,16,24,29,33,35,36,41 TO 46 & 48 TO 50:

1. R.CHANDRAMOHAN NAIR,
HARISREE, CHENGANNOOR KARA,
VIZHINJAM VILLAGE.
2. JOSEPH RAJU,
ELANJIKKAL, EDAVILANGU KARA,
KODUNGALLOOR TALUK.
3. LINCY RAJU, W/O.JOSEPH RAJU,
ELANJIKKAL, EDAVILANGU KARA,
KODUNGALLOOR TALUK.
4. M.T. RATNAMMA,W/O.T.M.JAYAPRAKASH,
MANAKKAL HOUSE, KAVUMBHAGON.P.O.,
THIRUVALLA- 689 102.
5. GEORGE ABRAHAM,
29/2723, PALAMATTOM, PRASANTHY LANE,
POONITHURA.P.O.
6. UDAYABHANU BHASKAR & REMA UDAYABHASKAR,
FLAT NO.2, GRACE APARTMENTS, AISWARYA NAGAR,
THEVARA.P.O., KONTURUTHY, KOCHI-30.
7. SOBHA MOHAN,
C/O.M.MOHAN, SAYUJYA, PRASANTHI NAGAR,
EDAPPALLY.P.O., KOCHI.
8. DILEEP JACOB,
H.NO.3/11, KANYAR VILLA, (P) WARD,
GORAZVASI TALUK, MALAD DESOM, BOMBAY.
9. GRACE JACOB,PUTHENPURACKAL HOUSE,
KALLARVATTAM COLONY, NEDUMKANDAM,
UDUMBANCHOLA TALUK.

L.A.A.NO.472/2013

10. GANAPATHY NAMBOODIRI,
MADASSERRY HOUSE, VIYYOOR.P.O.,
THRISSUR.
11. VIJAYARAJAN.K.R.,
HOUSE NO.KRRA-104, KANDALAKKADU ROAD,
MARADU.P.O., ERNAKULAM.
12. M.N.AGNISARMAN NAMBOODIRI,
MADASSERRY HOUSE, VIYYOOR.P.O.,
THRISSUR.
13. V.K.THANKAPPAN,
FLAT NO.3, SEETHAL APARTMENTS,
THRISSUR.
14. ALPHONSA MATHEW,
NO.70, 6TH CROSS, MALLAPPA LAY OUT,
BABUSAPPALAYA, BANGALORE.
15. LIFFIN JOSEPH,
KAINIKKATTU HOUSE, KOCHUPARAMBIL,
MUNDAMVELI.P.O., KOCHI.
16. P.J.NAMBOODIRI,
AVANI, MEENCHANDA RAILWAY GATE,
KOZHIKODE.
17. PENNY COREA,
L-5/10, CHANGAMPUZHA NAGAR, KOCHI.
18. AZHAKATHU SASTHRASARAMAN NAMBOODIRI,
S/O.ASHTAMOORTHY NAMBOODIRIPAD, KAILAS,
PATTAMBI,PALAKKAD.

BY ADVS.SRI.JOHN JOSEPH
SMT.THANUJA ROSHAN GEORGE

RESPONDENTS/RESPONDENTS 1,2 & CLAIMANTS 19 & 20 IN LAR:

1. THE STATE OF KERALA,
REPRESENTED BY THE DISTRICT COLLECTOR,
ERNAKULAM.
2. THE CHIEF EXECUTIVE OFFICER,
INFOPARK, KUSUMAGIRI, KAKKANAD.
3. P.J.ANTONY, CHOO LACKAL HOUSE,
H.NO.27/67, CHAKKALAKKAL CROSS ROAD,
PERUMANOOR.

L.A.A.NO.472/2013

**4. YAMUNA ANTONY,
W/O.P.J.ANTONY, CHOO LACKAL HOUSE, H.NO.27/67,
CHAKKALAKKAL CROSS ROAD, PERUMANOOR.**

R1 BY GOVERNMENT PLEADER SMT. ROSE MICHAEL

**R2 BY ADVS. SRI.K.A.ABDUL SALAM
SRI.SUNIL V.MOHAMMED**

R3 & R4 BY ADV. SRI.T.R.S.KUMAR

**THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD
ON 01-12-2014 , ALONG WITH LAA.NO. 356/2013 AND CONNECTED CASES,
THE COURT ON 26-02-2015 DELIVERED THE FOLLOWING:**

sts

**T.R. RAMACHANDRAN NAIR &
P.V. ASHA, JJ.**

**L.A.A.Nos.472, 333, 441, 356, 470, 474, 477, 499, 504,
505, 506, 513, 536, 538, 555, 582, 610, 639,
645, 646, 647 and 680 of 2013 and
772 and 839 of 2014**

Dated this the 26th day of February, 2015

JUDGMENT

Ramachandran Nair, J.

All these appeals arise from a reference under Section 30 of the Land Acquisition Act (for short “the Act”). L.A.A. Nos.472, 333 and 441 of 2013 arise from the judgment and decree in LAR No.1/2011 of the Sub Court, Perumbavoor. The same are treated as the main cases and arguments have been heard accordingly. We have heard the appeals together and therefore they are being disposed of by a common judgment.

2. The property acquired in LAR No.1/2011 is having an extent of 1.6960 hectares of land comprised in Sy. No.381/4 of Kunnathunadu Village. The total compensation as per the award of the Land Acquisition Officer, is Rs.3,69,05,908/- which was deposited under

Section 31(2) of the Act.

3. In L.A.A. No.333/2013, the appellant is the 17th claimant before the reference court, in L.A.A. No.441/2013 the appellants are claimants 19 and 20 and in LAA No.472/2013 the appellants are 17 in number who are respectively, claimants 10, 8, 9, 16, 24, 29, 33, 35, 36, 41 to 46 and 48 to 50.

4. The above Land Acquisition Reference was tried along with 28 other reference cases and separate judgments have been rendered. The reference court in the operative portion, has given the split up details as per which each of the claimants have been awarded amounts.

5. The legal issues raised being common, we have heard the appeals together. Learned counsel Shri John Joseph appeared for the appellants in LAA No.472/2013, Shri Varghese Kuriakose appeared for the appellant in LAA No.333/2013, Shri T.R.S. Kumar appeared for the appellants in LAA No.441/2013, Shri K.A. Abdul Salam appeared for the requisitioning authority and Shri Rose Michael, learned Government Pleader appeared for the State and Shri Thomas

Geevarghese P. appeared for the contesting respondents. In the connected appeals also, Shri John Joseph, learned counsel led arguments for the appellants. Shri Abraham Vakkanal, learned Senior Counsel, Shri Varghese Kuriakose, Shri Babu Cherukara and other learned counsel appeared for the respondents and the learned counsel for the requisitioning authority, Shri K.A. Abdul Salam was also heard.

6. First we will come to the contentions raised in LAA No.472/2013. The land involved which was acquired by the State for Info Park belonged to a township project, the promoter of which was a joint stock company, known as Suryanelli Plantations Pvt. Ltd.. They purchased large area of about 50 acres of wet land in Kunnathunadu and Puthencruz villages in Ernakulam District. Pursuant to the advertisements issued by the company in newspapers large number of applicants applied for house plots which were of the size of 3 cents per unit. An applicant can acquire more than one unit also. The brochures published by the company have been marked as Exts.J6 and J7. It is the case of the appellants in LAA No.472/2013 that the prospective buyers paid amounts in advance for which the company

issued acknowledgment receipts. They executed agreements for sale. Majority of them were given sale deeds also except claimants 41 to 51. As far as the house project is concerned, they had offered common amenities like roads, parks, play ground, swimming pool, etc. After developing the plots, the purchasers had to construct the flats also going by the agreement.

7. When delay occurred in the matter and according to them, as the company was not responding to the requests made by the buyers, they formed an association, viz. Suryanelli Sundale Township Investors Society, Reg. No.ER 477 and took steps in the matter. Some of the members of the association approached the Kerala State Consumer Disputes Redressal Commission alleging deficiency in service and unfair trade practice. Ext.J12 is the order passed by the Commission dated 19.12.2000. The Commission took the view that the price received by the promoter company included the price of the house plot allotted to the buyers as well as contribution of the buyers towards expenses for developing the township project. Certain directions were issued by the Commission. The important direction

was to the company to make ready the house plots within six months from the date of order and also to provide all the promised common amenities within six months from the time of building houses by the buyers of house plots. In the alternative, the Commission permitted that the buyers could take possession of the project land and develop it by themselves and recover compensation from the company by taking out execution proceedings. The order was not appealed against and it became final. It is the case of the appellants that subsequently the company did not take any steps in the matter and therefore the buyers through the association employed qualified surveyors who conducted a survey for fixing the boundaries of the township land and to separate the house plots, roads and land left for common amenities. This has happened in 2003-2004. According to them, the plots were then divided and possession was taken also.

8. It is at that point of time news spread that the property is sought to be acquired and the notification under Section 4(1) of the Act was issued in 2007 (20/9/2007). The claims and objections were submitted before the Land Acquisition Officer. Apprehending that the

company may obtain compensation by raising false claims, a suit was filed in Sub Court, Perumbavoor to restrain the Land Acquisition Officer from disbursing any amount to the company. After the suit was filed, the Land Acquisition Officer deposited the amount in the court under Section 31(2) and made a reference under Section 30 of the Act.

9. Claimant No.17 before the reference court, is the appellant in LAA No.333/2013. She had raised a claim for compensation with regard to 5 ares of land in the present L.A.A. She had obtained sale deed in respect of certain extent including 5 ares of land involved in this case, from the company and she is the wife of a Director also. Claimants 19 and 20 are purchasers of land from her. All the three had filed claims before the reference court. The appellants in LAA No.472/2013 objected to their claims by contending that the sale deeds have been created fraudulently. They submitted that claimant Nos.17, 19 and 20 have no title over the property. The reference court allowed the claims of claimants 19 and 20 (appellants in LAA No.441/2013) awarding a sum of Rs.45,71,894/-. Challenging

the same, LAA No.472/2013 has been filed. Claimants 19 and 20 are the appellants in LAA No.441/2013. Their appeal is concerned with that part of the judgment of the reference court whereby part of their claims have not been accepted. They claimed that they had purchased 77.91 ares (192.43 cents) of property comprised in Sy. No.381/4 and 379/8 of Kunnathunadu Village as per sale deed Nos.3239/2005, 3240/2005 and 3241/2005 of S.R.O., Puthencruz. They paid full consideration to the 17th claimant. They have already obtained compensation from the Special Tahsildar in respect of 19.71 ares of land in Sy. No.379/8 of Kunnathunadu Village. The first appellant thereafter executed sale deed also in favour of Info Park, viz. the requisitioning authority, after getting full compensation. The remaining part of the compensation was deposited before the reference court. The appellants have filed detailed claim statements also.

10. Before the reference court, claimants 41 to 51 filed impleading petitions stating that they had interest in the acquired property as agreement holders. They are referred to as agreement holders hereinafter. Their claims have been objected to by the

appellants in LAA No.441/2013, before the reference court and evidence was adduced by both sides. The reference court allowed the claim of claimants 41 to 51 except claimant No.47 which is under challenge in the said appeal.

11. The case of the appellants in LAA No.333/2013 is that she had purchased properties as per Ext.Q1 document. The appellant contends in the appeal that the rejection of her claim is unjustifiable as the sale deed is a valid one.

12. As regards claimants 41 to 51, the appellants in LAA Nos.333/2013 and 441/2013 have got a contention that the reference court was not justified in allowing their impleading applications since they were not claimants before the Land Acquisition Officer. They cannot get impleadment before the reference court also.

13. A reading of the judgment of the reference court will show that various claimants have been examined and documents were marked which they had produced in support of their claims. A.Ws.1 to 44 have been examined as witnesses. The details of evidence, viz. documentary evidence and the names of witnesses are given in

paragraph 37 of the judgment. Paragraph 36 shows that the points raised are five in number. The first point is whether any of the claimants are entitled to get proportionate compensation for the common areas and common amenities alleged to be set apart by the promoters of the housing scheme. The second point is whether agreement holders 41 to 51 are entitled to get compensation.

14. On a detailed discussion, the reference court found against the claimants as regards the first point and held that various claimants are entitled to get compensation in terms of the sale deeds they have obtained from the company. The above view was taken in the light of the conclusion arrived at that the title deeds produced by the claimants do not show anything so as to find that they acquired proportionate share in the common area and amenities. With regard to the claim of the 17th claimant, it was found that she is the wife of one of the directors of the company and the sale deed in her favour was obtained fraudulently. In the course of discussion it was found that claimants 42 to 46 and 48 to 51 have paid the entire sale consideration and document charges to the company. As regards claimant No.41, it was

held that he had paid around 80% of the consideration as per the agreement and is entitled to get compensation for the plot covered by the agreement in his favour. As regards claimant No.47, it was found that he had already received a sum of Rs.7 Lakhs from the company and settled his claims. In paragraph 89 it was held that as far as claimants 19 and 20 are concerned, they will be entitled for amounts for the balance area left after the claims of claimants 41 to 46 and 48 to 51 are adjudicated.

15. Learned counsel for the appellants in LAA No.472/2013, Shri John Joseph led arguments for the allottees as well as the agreement holders. Detailed argument note has also been filed.

16. While tracing out the history of the entire issue, it is submitted that the parties were attracted by the offer made by the company in the brochures Exts.J6 and J7. The site of the proposed project has also been shown therein. It will show that the company will have to construct a bridge over Kadambrayar. It is submitted that the offer being one for common amenities and common areas including for park, play ground as well as swimming pool, etc. and as the

amounts have been collected by the beneficiary for the same from each of the plot owners, they have a right to collect compensation for the common area. It is submitted by the learned counsel for the said allottees that when plots are divided each individual plot will have the advantage of having access to the adjoining property through the other common areas thus utilising it for the benefit of the plot owners. If that be so, the common amenities and facilities being an integral part of the allotted plots, they have got equitable title to those items of properties and therefore they alone are entitled for compensation. The company cannot claim any amount.

17. Learned counsel submitted, by heavily relying upon Ext.J12 order passed by the Commission, that the order of the State Consumer Disputes Redressal Commission (for short “the Commission”) has become final and the same is binding on the parties who approached the Commission as well as the persons claiming under them. Learned counsel invited our attention to the detailed findings of the Commission whereby the Commission found in favour of the plot owners for common amenities and ultimately issued directions also for

implementation of the project. It is submitted that the findings of the Commission will act as res judicata in respect of the present proceedings. It is emphasised by the learned counsel that once the Commission's findings have given right to the plot owners and declared their rights for the common areas and common amenities, the same is a binding order and the reference court was bound to render justice by accepting those findings. Learned counsel therefore submitted that the respondents cannot be heard to say that they have got a right in the property. The Company could not have transferred any item of property to any person including claimants 17, 19 and 20. It is also submitted that the fraudulent nature of the transaction is evident as one of the directors have transferred the property to the appellant in LAA No.333/2013 from whom the appellants in LAA No.441/2013 have purchased the property. It is submitted that the findings of the reference court in favour of the agreement holders will show that their claims have been accepted. The same yardstick will have to be applied as far as other items of properties purchased by claimants 19 and 20.

18. Learned counsel heavily relied upon the provisions of Kerala Apartment Ownership Act. It is submitted that once the project is fulfilled and the flats are constructed, it will be covered by the various provisions of the Apartment Ownership Act. The Act being a comprehensive one, even if in this case the project has not been fulfilled, the principles under the said Act could be applied, so that the benefit will be available only to the appellants in LAA No.441/2013 for compensation for the common areas and common amenities. Our attention was invited to the detailed provisions of the Apartment Ownership Act in this connection. It is submitted that for deciding the legal issue the general principles under the Transfer of Property Act, 1882, are not at all attracted. This Court will have to consider the various aspects by taking cue from the provisions of the Apartment Ownership Act and not merely by going by the title to the property as per the sale deed alone. It is therefore submitted that the finding by the reference court that the appellants are entitled for compensation for plot of land covered by respective sale deeds alone, is not correct. It is submitted that the failure of the promoter company to complete the

project cannot go against the plot owners. Particular reference was made to certain provisions of the Apartment Ownership Act, viz. Sections 4, 6, 10 and 26.

19. It is submitted that when the project is implemented, certain percentage of the total area will form the common area. It can go from 20% to 40%. Therefore, it is submitted that this Court can adopt a method to award compensation proportionately to allottees by upholding their rights for such percentage of area. Learned counsel specifically contended that the principles of res judicata will apply as far as the order passed by the Commission is concerned and the same will be binding on the reference court. He relied upon the following judgments in that context:

NITCO Roadways Ltd. v. United India Insurance Company Ltd. (2006 (IV) CPJ 369), **Khoda Bhai Mani Bhai v. United India Insurance Company Ltd. And another** (1997 (II) CPJ 108 (Guj), **Branch Manager, LIC and another v. Savitha Ravi** (2000 (III) CPJ 357, **Reliance**

Industries Ltd. v. Neera Maheswari (2006 (III) CPJ 67 (NC), **Dr. Kaligounder v. N. thangamuthu** (2004 (III) CPJ 29 (NC) and **Hazarilal v. State Bank of India** (2000 (II) CPJ 189).

20. It is contended that the above decisions will go to show that the principles of res judicata applies to Consumer Forums and for its proceedings. Learned counsel also invited our attention to Section 13 of the Consumer Protection Act to show that the Consumer courts also have trappings of a civil court. As far as the contention regarding application of the principle of waiver also, it is submitted that the promoter company is bound by the principle of waiver since the company had waived their rights as it has become dormant and has not taken any steps to abide by the order passed by the Commission. He relied upon Ext.J5 communication from the Registrar of Companies to support his contention that the company is dormant. It is further submitted that since the reference court was convinced about the fraudulent nature of the transaction in favour of 17th claimant, the appellant in LAA No.333/2013, the same yardstick will apply as far as

the appellants in LAA No.441/2013 are also concerned.

21. It is submitted that on behalf of claimants 41 to 51 there was an application before the Land Acquisition Officer produced as Ext.J17, which was forwarded by the learned counsel of the plot owners for raising their claims. Learned counsel relied upon the evidence of A.W.42 who was engaged by the Association to survey the land. It is therefore submitted that the evidence adduced will go a long way to help the court in finding that the claimants are justified in raising the claim.

22. The above arguments were opposed by the learned counsel for the appellants in LAA Nos.441/2013 and 333/2013 and Shri K.A. Abdul Salam, learned counsel appearing for the requisitioning authority.

23. First we will refer to the contentions of Shri Varghese Kuriakose who appeared for the appellant in LAA No.333/2013. Learned counsel submitted, by referring to the provisions of the Apartment Ownership Act, that none of the provisions will apply to the facts of this case. The said Act envisages only apartments after its

construction and not with respect to any items of land meant for building flats. Learned counsel invited our attention to the definition clause under Section 3. It is submitted by referring to Section 5(2) of the Apartment Ownership Act, that each apartment owner shall execute a declaration that he submits his apartment to the provisions of the Act and a deed of apartment in relation to his apartment in the manner prescribed for the purpose. It is submitted that as per Section 6(1) of the said Act, each apartment owner shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the declaration and the other provisions of the said section details the manner in which the said percentage can be determined. It is submitted that since none of those contingencies have happened here, the aid of the Apartment Ownership Act cannot be sought for. The property in question, according to the learned counsel, was remaining as such. It has never been fully filled up even by the association of plot owners. It is submitted that no reliance can be placed on Ext.J12 order of the Commission, about the same. Learned counsel vehemently contended that the order passed by the Commission cannot be substituted as a

declaration of title of the plot owners. There, the issue was considered under the provisions of Consumer Protection Act, as deficiency of service alone was the core issue. It can have no application to the question raised before the reference court under the Land Acquisition Act.

24. Learned counsel further submitted that Ext.J12 order cannot be called in aid to the contentions of the plot owners and the agreement holders. At any rate, learned counsel submitted that the order Ext.J12 will not create any interest in the land. It is submitted that the property has been classified by the Land Acquisition Officer as wet land without any road access. It was remaining without any further developments also. It is also submitted that the complainants before the Commission had done nothing after the passing of order, to execute it and the order passed as Ext.J12 cannot be termed as a declaration under Section 34 of the Specific Relief Act. They should have obtained a decree declaring their right which is absent herein.

25. It is submitted that the reference court rightly found that the plot owners have only the right to get compensation in tune with their

title to the extent of land covered by their sale deeds and the issue decided by the Commission cannot have any adverse impact on the question raised herein, which is under the Land Acquisition Act. While referring to the letter of the Land Acquisition Officer addressed to the court it is submitted that questions on title have been referred. Learned counsel further submitted that the reference court has no power to implead parties who have not approached the Land Acquisition Officer raising their claims. Therefore, none of the agreement holders can come into the picture and the reference court failed miserably in allowing their application for impleading. By referring to the claim of possession by the plot owners it is submitted that possession should be claimed under a colour of right and as far as the areas available for common amenities are concerned, the company alone can have possession. Learned counsel referred to the provisions of Section 53 to 56 of the Transfer of Property Act in that context.

26. With regard to the claim set up by the agreement holders, it is submitted that none of the agreements were registered and therefore Section 17 of the Registration Act will be a bar for them to rely upon

the said unregistered documents. Such agreements will not create any interest in the property. By referring to Section 55 (6)(b) of the Transfer of Property Act, it is submitted that the maximum that a buyer can claim is a charge and therefore they cannot get compensation, on the basis of such claims. Learned counsel relied upon the following decisions:

Prayag Upnivesh Awas Evam Nirmal Sahkari Samithi Ltd. v. Allahabad Vikas Pradhikaran and another (2003 KHC 1056), **George P. Cherukoth v. State of Kerala and others** (2014 (1) KHC 402), **Bibi Jamila Khatoon and others v. Janardhanan Kunwar and another** (2014 KHC 2488), **Ram Prakash Agarwal and another v. Gopi Krishnan (dead through Lrs.) and others** (2013 KHC 2521), **S. Palani Velayudhan and others v. District Collector, Tirunelveli** (2009 KHC 5204), **P.M. Jacob v. Thiruvananthapuram Development Authority** (2007 (2) KHC 744), **Rajan and another v. Soman and others** (2010 (4) KHC 927).

It is also highlighted by the learned counsel that some of the claimants were not even parties to the proceedings before the Commission. Therefore, they cannot place reliance upon the said order.

27. Shri T.R.S. Kumar, learned counsel appearing for the appellants in LAA No.441/2013 raised the following arguments. It is submitted that the said appellants purchased the property in the year 2004-2005. They raised a claim before the Land Acquisition Officer and documents were produced. They had produced various documents before the reference court to prove title. They have obtained sale deed from the 17th claimant. It is submitted that their claims have been partly allowed and therefore the same yardstick should have been adopted, in respect of the remaining items of their land for which the title deeds have been produced.

28. It is submitted that Section 4 (1) notification is dated 20.9.2007 and the association was formed only thereafter. In response to notice under Section 9(3), there is no claim by the association. He relied upon the cross examination of A.W.38 and also Ext.B1 in the reference file, to elaborate his contentions.

29. It is submitted that the claims of agreement holders have not been raised before the Land Acquisition Officer and they did not participate in the enquiry under Section 9(3) of the Act. Therefore, such claims cannot be considered by the reference court. There cannot therefore be any adjudication of inter-se dispute between them and the appellants. They, therefore, cannot be held to be persons interested for the purpose of Sections 30 and 31 of the Act.

30. It is submitted that the title of the appellants have not been contested in any civil court and the agreement for sale will not create any interest or right in the property. It is submitted by relying upon the provisions of the Transfer of Property Act, that the buyer has only a charge, going by the well settled legal position. He relied upon the following decisions:

“ Tejdhari and others v. Baul and others (AIR 1981 All. 47), Govind v. Savithri Bai (AIR 1987 Bombay 32), Indumathdi Devi v. Tulsi Thakurani (AIR 1942 Cal. 53), Nalgonda Municipality v. Mohuddin (AIR 1964 AP 305),

Pramadha Nath v. State (AIR 1930 P.C. 64), **P.U.A.E.N.S.S. Ltd. v. Allahabad Vikas Pradhikaran** (AIR 2003 SC 2302), **Sunilkumar v. Kishan** (AIR 1995 SC 1891), **Crest Hotel Ltd. v. Assistant Superintendent of Stamps** (AIR 1994 Bombay 228), **CIT v. Programme for Community Organisation** {(2002) 9 SCC 664}.”

31. For the requisitioning authority, learned counsel Shri K.A. Abdul Salam raised the following arguments: Suryanelli Township had never materialised and it was remaining only as a dream. Nearly 400 persons purchased plots at the rate of Rs.3,000/- per cent from the company. The entire area is wet land which was remaining uncultivable. It is submitted that many of the land owners have not effected mutation in the village records also. Several of the land owners have not participated in the enquiry before the Land Acquisition Officer. Therefore, rightly the trial court directed return of amounts to the tune of Rs.1 Crore to the District Collector. The real owners can claim their compensation at any point of time. With regard

to the order of the Consumer Disputes Redressal Commission, it is submitted that the said Commission has no power or jurisdiction to settle the disputes regarding title and possession of landed properties. The offers made by Suryanelli Plantation through their brochure, advertisement, etc. are not disclosed in the sale deeds executed in favour of some of the allottees. The order of the Commission remains unexecuted also and it is not binding on the reference court. The land was never developed by the purchasers also. It is also submitted by the learned counsel that the appellants in LAR No.472/2013 had settled their claims in the Lok Adalath at Perumbavoor and agreed to withdraw the appeal and therefore they are not entitled to raise further arguments before this Court after entering into such settlement. They agreed to go by the land value arrived at in the reference case under Section 18 of the Land Acquisition Act, before the Lok Adalath.

32. Learned Senior Counsel Shri Abraham Vakkanal appearing for the respondents in LAA Nos.504/2013 and 506/2013 submitted that there is no right for the appellants therein for common amenities. It is submitted that the order passed by the Commission cannot act as res

judicata. The appellants have already settled their disputes before the Lok Adalath. Learned Senior Counsel also submitted that the general principles of res judicata cannot come to the rescue of the appellants. The order passed by the Commission is only with regard to the deficiency in service. The company's title to the project is clear as the project has never been implemented. The common areas cannot therefore be divided among the plot owners for allotting compensation to them. Being compensation for the land acquired, any title to the land alone is the real factor to be considered. He also supported the arguments of Shri Varghese Kuriakose and Shri T.R.S. Kumar in respect of all the aspects. Learned Senior Counsel also relied upon the averments in I.A. No.1587/2014 filed in LAA No.503/2013 wherein it is averred that in the Lok Adalath held on 13.9.2014 at Perumbavoor, a compromise was entered into in LAR No.107/2011 based on which an award has been passed. Going by the compromise the appellant has agreed to withdraw any pending cases regarding ownership of property. It is therefore submitted that all the claimants are bound to withdraw their cases in respect of any ownership involved or touching upon LAR

No.107/2011. LAA No.504/2013 is a case which is filed by one of the claimants in LAR No.107/2011 challenging the apportionment awarded in LAR No.35/2010. Shri John Joseph submitted that the terms of the compromise will not prevent the appellants from arguing on merits.

33. Shri Babu Cherukara, learned counsel appearing for the third respondent in LAA No.582/2013 supported the arguments of the learned Senior Counsel. According to Shri Babu Cherukara, the third respondent in LAA No.582/2013 is the owner of 17 ares of land purchased under Sale Deed No.2626/2001. The sale deed was never challenged by anybody and therefore in the light of Sections 31 and 34 of the Specific Relief Act and in the absence of any challenge to the sale deed, the appellants therein cannot claim any compensation for the said area. It is also submitted that the Apartment Ownership Act will not apply as there is no apartment or building constructed by any claimant.

34. We will now come to some of the documents relied upon by the claimants in LAA No.472/2013 to understand the scope of the

project. We have already referred to Ext.J6 brochure. It does not give the details of any amounts payable for common amenities and it gives only general informations and announcements of the Project and the distance of the area from Collectorate, Ernakulam and about the site of the project. A map is also given. In Ext.J7, apart from stating that each plot will be having 3 cents in extent with five teak trees around the perimeter and that a purchaser can buy any number of 3 cent plots. (amount shown is Rs.12,500/-) It is stated that the township when complete will have all modern amenities including Supermarket, Club, Boat Club, Community Hall, Children's Park, Library and Walkways among other modern conveniences. There also, the site map is given. We will now come to Ext.J12 which is heavily relied upon by Shri John Joseph, learned counsel. This is a common order passed in respect of 11 complaints, viz. Complaint No.75/1998 and connected matters on 19.12.2000. The first opposite party is M/s. Suryanelly Plantations Pvt. Ltd. The relief sought for in O.P.No.75/1998 was to direct the opposite party to remove the deficiency in service, to execute the project of the township with the amenities as promised within a

stipulated time or direct the opposite party to pay compensation to the complainant. The said complaint, O.P.No.75/1998 was treated as the main case.

35. The complaint was found maintainable. It was held that the status of the complainants as consumers, cannot be denied and it was also held that the execution of sale deeds cannot affect the right of the complainants as consumers since the execution of sale deed or the agreement to sell is only a part of the transaction for the project. It is found that the consideration for providing the amenities and facilities in the project also is the amount paid by the complainants before the execution of the sale deed and after the same. It was held in paragraph 9 that the purchase price of the land includes the price of the plot and also for the services to be rendered by the first opposite party. On point No.2, it was held that the plots which are paddy lands are not properly filled and neither have all the plots been even identified which again is a deficiency. Finally, in paragraph 13, the following directions have been issued:

“13. In the result the first opposite party is directed to fill the

land as stated in Ext.C1 by PW2, make it worthy for constructions of buildings therein, the 1st opposite party shall after identification hand over possession to the complainants other than the complainant in OP: 75/99 to whom possession has already been given, within a period of six months from the date of receipt of the copy of this order failing which apart from the complainants are free to execute the order, can take steps to fill the plots so as to construct the buildings therein, in which case the whole expense towards the same shall be paid and re-imbursed by the 1st opposite party and is recoverable from it. The 1st opposite party shall construct the bridge across the Kadamprayar at the site shown in Ext.P29 within the said period of six months. The 1st opposite party shall also execute sale deeds in favour of complainants to whom sale deeds are not executed so far after receiving the charges and other dues if any, from them. On the complainants intimating the first opposite party as to the construction of the buildings in the respective plots the 1st opposite party shall provide the facilities and amenities mentioned in Ext.P1 brochure at any rate such facilities shall be provided within six months of the intimation of the such construction of the buildings. The complainants are also entitled to interest at 15% on the amounts paid by them from

the date of the final payment till the date of compliance of the direction as to the facilities in Ext.P1. Each complaint is allowed as indicated above with costs Rs.2000/- each.”

36. By the above order, the first opposite party was directed to identify the plots and hand over possession to the complainants other than the complainant in OP No.75/1999, within a period of six months. Failing the same, the complainants were free to execute the order and can take steps to fill the plots so as to construct the buildings therein and in such an event, the whole expense towards the same will have to be paid and it will have to be reimbursed by the first opposite party. It was also directed that the first opposite party shall also execute sale deeds in favour of complainants to whom sale deeds are not executed so far after receiving the charges and other dues if any, from them. Lastly, it was directed that the complainants are entitled for interest at 15% for the amounts paid by them from the date of the final payment till the date of compliance of the direction as to the facilities in Ext.P1. We notice that out of the agreement holders who are parties herein, only 47th claimant alone had filed complaint, O.P.No.76/1999 before

the Commission.

37. Since the main argument is regarding the claim for compensation for the area required for providing amenities, we will consider the same first. The Kerala Apartment Ownership Act, 1983 and its provisions have been relied upon by the learned counsel Shri John Joseph. It is an Act to provide for the ownership of individual apartment in a building and to make such apartment heritable and transferable property. Section 2 of the Act provides as follows:

“2. Application of the Act.- This Act applies only to property, the sole owner or all of the owners of which submit the same to the provisions of this Act by, duly executing and registering a declaration as hereinafter provided.

Provided that no property shall be submitted to the provisions of this Act, unless it is mainly used, or proposed to be used for residential purposes.”

The definition of “Apartment” is in Section 3(a) and we re-produce hereinbelow Sections 3(a) and 3(b):

“(a) “Apartment” means a part of the property intended for any type of independent use, including one or more rooms or enclosed spaces located on one or more floors (or part or

parts thereof) in a building, intended to be used for residential purposes and with a direct exit to a public street, road, or highway or to a common area leading to such street, road or highway; and

(b) “Apartment owner” means the person or persons owning an apartment and an undivided interest in the common areas and facilities in the percentage specified and established in the declaration.”

Going by Section 3(b), such owner will have an undivided interest in the common areas and facilities in the percentage specified and established in the declaration. The “Association of Apartment Owners” defined under Section 3(d) is also reproduced below:

“(d) “Association of Apartment Owners” means all of the apartment owners acting as a group in accordance with the bye laws and the declaration.”

There is a definition for “common areas and facilities” in Section 3(g) which includes the land on which the building is located, installations of central services, like power, light, gas, hot and cold water, heating, refrigeration, air conditioning and incinerating, etc. and such community and commercial facilities as may be provided for in the

declaration and all other parts of the property necessary or convenient to its existence, maintenance and safety or normally in common use. Since a declaration is mentioned in various places, we will reproduce the definition of “declaration” under Section 3(k) hereinbelow:

“(k) “Declaration” means the instrument by which a property is submitted to the provisions of this Act as hereinafter provided and such declaration as lawfully amended from time to time.”

Section 3(p) gives the definition of “limited common areas and facilities” which we re-produce below:

“(p) “limited common areas and facilities” means those common areas and facilities designed in the declaration as reserved for use of certain apartment or apartments to the exclusion of the other apartments.”

Section 4 will give the status of apartments. An apartment constitutes a heritable and transferable property. It also shows that an apartment owner may transfer his apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartments by way of sale, mortgage, lease, gift, exchange, etc. Section

5 is important which also is re-produced below:

“5. Ownership of apartments.-

(1) Each apartment owner shall be entitled to the exclusive ownership and possession of his apartment.

(2) Each apartment owner shall execute a declaration that he submits his apartment to the provisions of this Act and a deed of apartment in relation to his apartment in the manner prescribed for the purpose.”

Section 5(2) obliges every apartment owner to *execute a declaration* that he submits his apartment to the provisions of the Act. He will have to execute a deed of apartment also in relation to his apartment. Going by Section 6(1), each apartment owner shall be entitled to an undivided interest in the common areas and facilities in the *percentage expressed in the declaration*. Sub-section (2) of Section 6 is also important which provides a method for valuing the same. It shall be computed by taking as basis the value of the apartment in relation to the value of the property and such percentage shall reflect the limited common areas and facilities. We also think it proper to reproduce sub-sections (3) and (4) of Section 6 which have some bearing on the

question raised herein:

“(3) The percentage of the undivided interest of each apartment owner in the common areas and facilities as expressed in the declaration shall have a permanent character, and shall not be altered without the consent of all of the apartment owners expressed in an amended declaration duly executed and registered as provided in this Act;

(4) The percentage of the undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains, and shall be deemed to be conveyed or encumbered with the apartment even though such interest is not expressly mentioned in the conveyance or other instrument.”

Section 11 is the next important provision which provides for the contents of declaration. The particulars have been provided under sub-sections 1(a) to 1(k). Clause (f) relates to percentage of undivided interest in the common areas and facilities. Sub-section (2) directs that a true copy each of the declaration and the bye-laws and all amendments thereto shall be filed in the office of the competent authority. Section 12 deals with the contents of deeds of apartments

and Section 13 deals with the requirement of registration of declaration, deeds of apartments and copies of floor plans. Going by sub-section (1) of Section 13, the declaration and all amendments thereto, the deed of apartment in respect of each apartment and the floor plans of the buildings referred to in sub-section (2) shall all be registered under the Registration Act, 1908. Sub-section (2) of Section 13 provides for the requirement of filing of the floor plans along with it. Sub-section (4) directs that in all registration offices, a book called “Register of Declarations and Deeds of Apartments under the Kerala Apartment Ownership Act, 1983” and index relating thereto shall be kept. Under Section 14, the apartment owners may exclude a property from the provisions of the act by an instrument to the effect duly executed.

38. In the light of the above provisions of the Kerala Apartment Ownership Act, the question herein will be whether the appellants in LAA No.472/2013 can canvass for the applicability of the provisions of the Act to the situation herein or at any rate, the principles will have any application. The land herein remained undeveloped. Apartments

have not been constructed. The applicability of the Act requires execution and registration of declaration, going by Section 3 and 13. The common areas and facilities could be enjoyed by an apartment owner alone and not even by a person having only a site. The declaration, therefore, is quite important to understand the right of an apartment owner. In view of Section 6, the entitlement of an undivided interest is in tune with the percentage expressed in the declaration, which in turn will have to be computed by taking as basis the value of the apartment in relation to the value of the property.

39. There is no case for the appellants in the above appeal, viz. the property owners that there is a declaration by which they have submitted to the provisions of the Act which is the requirement of the Act itself. Thus, the mandatory procedures under Sections 6, 11 and 13 are yet to be complied with. Apartments have not come up in the plots.

40. In that view of the matter, we fail to understand as to how the provisions of the Act could come into the picture at all, to establish the right of the allottees of land for common areas and common amenities. The argument projected by the learned counsel Shri John Joseph is that

the principles under the said Act will apply. But when the statute provides for certain procedures to be complied with for the very applicability of the provisions of the Act and the existence of built up apartments itself as a pre-condition for it, then we will not be justified in applying the principles of the Act to allottees of land. Herein, even after the order passed by the Consumer Disputes Redressal Commission, apartments have not been constructed and consequential declarations have also not been made or have come into effect. It has thus become impossible and unworkable to compute the percentage of undivided interest in common areas and facilities. Therefore, we are of the view that the provisions of the Act cannot come into the picture at all and hence we reject the said argument.

41. In this context, we will have to advert to the evidence of 10th claimant who was examined as AW.32. In the proof affidavit various aspects have been pointed out. The documents Exts.J1 to J21 have been marked through him. It is emphasised by Shri John Joseph that the purchase of plot by the said claimant and similarly placed other claimants are based on the representation given by the company that

after purchase the said area will be developed as a township by providing roads in between the house plots and built up common amenities will be provided. Accordingly, it is contended that the purchase price paid by them to the company includes the proportionate share over the common area and amenities.

42. The court below on a reading of Ext.J1 sale deed was of the view that going by the document, there is nothing to infer that the purchaser had been given a proportionate right over the common area and amenities. The same is a sale deed transferring small extent of land to the purchaser. Therefore, the view taken by the court below that the sale deeds are simple transfers of small extent of lands and nothing more was transferred as per the said documents, is perfectly justified. The reference court will not be able to earmark compensation in favour of the claimants under Section 30 of the Land Acquisition Act unless it is established beyond doubt that the claimants have acquired proportionate share in the common area and amenities.

43. Great reliance is placed on Ext.J12, viz. the order of the Commission in this context, by the learned counsel. We will have to

analyse the said order, to find out whether the same will help the claimants to get compensation for land other than to which they have title under the sale deed. Learned counsel Shri Varghese Kuriakose and Shri T.R.S. Kumar submitted that the scope of the said order is only with regard to the allegation of deficiency in service and the findings therein will not help the claimants. Point No.2 considered therein is whether the allegation of deficiency of service and unfair trade practice is true and Point No.3 is whether the complainants are entitled to compensation? And if so, what is the quantum.

44. The Commission, in paragraph 8 of the order, found that going by the project, the area will have to be filled up, reclaimed and individual item will have to be made a house plot and therefore their status as “consumer” cannot be denied. It was also held that the execution of the sale deed or the agreement to sell is only a part of the transaction for the project. The consideration for providing the amenities and facilities in the project also is the amount paid by the complainants before the sale deed and after the same. Under point No.2 also, various aspects have been considered including the report

of the Commissioner. The discussion therein will show that the company had to fill up the land and thereafter the parties who are the property owners will have to make construction therein of apartments. According to the Commission, “the first step in implementing the scheme is reclamation by filling the plots and making them worthy house plots succeeded by construction of houses by the claimants along with implementation of the township with the facilities by the first opposite party”. It is also observed that the plots are not properly filled up and neither have all the plots been even identified and therefore there is deficiency. Ultimately, it was held under that point that there is deficiency in service which, under law, even constitute unfair trade practice.

45. Under point Nos.3 and 4 it is observed that the report of the Commissioner does not furnish the measurements of roads and also the structural details of structures which are to be provided for the purpose of providing the facilities in the township. The question whether compensation can be granted to the claimants, was considered and it was further held that “compensation to the complainants can be fixed

only by way of fixing interest on the amount paid by them from the date of the final payment made by the respective complainants” and the interest rate was also thereafter fixed at 15%, being a commercial transaction.

46. The other direction issued by the Commission shows that the company had to identify the plots of the persons to whom delivery has not been made, fill up the same and make it worthy for construction within six months from the date of receipt of the copy of the order of the Commission, if there is failure on the part of the company, then the complainants will have to fill up the respective plots and recover the expenses towards the same from the company. Thereafter, the complainants will have to construct the buildings and give intimation to the company whereupon the company has to provide the township with all the facilities and amenities mentioned in Ext.P1. For facilitating the construction of the buildings by the complainants, the company had to provide a bridge across Kadamprayar river within the said period, so as to make provision for access to the plots from there.

47. Learned counsel Shri Varghese Kuriakose and Shri

T.R.S.Kumar submitted that the above order was never executed by the complainant before the Commission by recourse to the provisions under the Consumer Protection Act. Learned counsel for the appellants in LAA No.472/2013 submitted that the association of plot owners made arrangements to survey to separate the house plots and to give possession. In this context, it is further pointed out that the assistance of a surveyor was obtained who has prepared Ext.J13 series worksheet and Ext.J14 detailed plan. The reference court did not accept the alleged steps taken by the surveyor by pointing out that the same was without any authority.

48. The surveyor was examined as A.W.42. It is the case of Shri Varghese Kuriakose and Shri T.R.S. Kumar that even the surveyor's evidence will show that no proper and effective survey was conducted, since the land was remaining as water-logged and only partially reclaimed at some parts. A.W.42 is a retired District Survey Superintendent. He was engaged by Suryanelly Sundale Township Investors' Society to survey the Township project land. Paragraph 1 of the proof affidavit shows that he was given the copy of order,

Ext.J12 and was asked to conduct the survey. It is also stated by him that he engaged 2 surveyors and two assistants to help him in the survey work. In the cross examination, he has stated that going by the provisions of Survey and Boundaries Act, the registered owners were to be informed and he has conducted the survey unofficially and therefore the procedures under the Survey and Boundaries Act have not been adhered to. He also submitted that there is no seal or signature of any licenced Surveyors in Ext.J13. It is also stated by him that in the proof affidavit he has not specified whether survey stones have been planted. It is also clear from his evidence that the representative of the company was not there at the time of survey. It is not evident that the survey was conducted with notice to the company and pursuant to Ext.J12 any steps for execution have been taken. He had no authorisation for conducting survey from Government or the Court, by any order issued. Therefore, no reliance can be placed on the said survey and other steps taken by him. Ext.J11 is the sketch which also cannot therefore advance the case of the appellants of taking possession.

49. We will now address the arguments raised by Shri John Joseph, learned counsel for the appellants in LAA No.472/2013, that the finding of the Commission is binding on the reference court as res judicata. He relied upon the following judgments also in this context:

Sulochana Amma v. Narayanan Nair (AIR 1994 SC 152)

The workmen of Cochin Port Trust v. The Board of Trustees of Cochin Port Trust and another (AIR 1978 SC 1283) and **R. Unnikrishnan and another v. V.K.**

Mahanudevan and others {(2014) 4 SCC 434}.

50. In this context, learned counsel Shri John Joseph relied upon the various provisions of the Consumer Protection Act to contend that the orders of Consumer Forums are at par with the judgments of civil court. He invited our attention to Section 13(4) whereby it is specified that the District Forum shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 while trying a suit in respect of matters mentioned as items (i) to (iv) which are as follows:

“(i) the summoning and enforcing the attendance of any

- defendant or witness and examining the witness on oath;
- (ii) the discovery and production of any document or other material object producible as evidence;
- (iii) the reception of evidence on affidavits;
- (iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;
- (v) issuing of any commission for the examination of any witness; and
- (vi) any other matter which may be prescribed.”

Particular emphasis was made to sub-section (5) also which reads as follows:

“(5) Every proceeding before the District Forum shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code (45 of 1860), and the District Forum shall be deemed to be a Civil Court for the purposes of Section 195, and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).”

By sub-sections (6) and (7), the provisions of Rule 8 of Order I of the First Schedule to the C.P.C. have been made applicable in proceedings before the District Forum. It is not seen from Ext.J12 that there was

any representative action by resort to Order 1 Rule 8 of the C.P.C.

51. Shri Varghese Kuriakose and Shri T.R.S. Kumar, learned counsel for the respondents (appellants in LAA Nos.333/2013 and 441/2013) submitted that the principles of res judicata will not be applicable as far as the issues that were considered by the reference court is concerned. It is submitted that the order Ext.J12 of the State Commission is not an order of a civil court. All the parties before the reference court were not parties in the complaints filed before the State Commission. It is further pointed out that the State Commission is not a court. In this context, Shri Varghese Kuriakose referred to the definition of the “Civil Court” under the Civil Courts Act. Learned counsel submitted that none of the points decided by the State Commission were on identical issues before the reference court in the land acquisition proceedings. It is submitted that three points decided by the Commission, are: viz. the maintainability of the complaint, deficiency in service and other reliefs including claim for compensation. There is no adjudication as to the title to the entire extent of property on which reference is made under Section 30, going

by the order of the State Commission. Learned counsel referred to the findings in paragraph 7 of the order. Therefore, it is submitted that the said order cannot have any effect of a binding decision to attract Section 11 of the C.P.C. By referring to Section 14 of the Consumer Protection Act, viz. regarding the powers of the District Forum and Section 17 regarding the jurisdiction of the State Commission, it is submitted that neither the District Forum nor the State Commission can render a finding regarding title to the property. In proceedings under Section 30 of the Land Acquisition Act, what is involved is the determination of compensation based on title and interest of any owner. In this context, learned counsel submitted that Section 19 of the Land Acquisition Act, 1894 and the Notes to award assumes importance. Under Section 19, the Collector will have to forward a statement to the court and going by sub-section 1(b), he will have to name the persons whom he has reason to think interested in such land. The names of many of the persons who are claiming now, were not there in the Notes to award. It is also submitted that the Notes to award will show that the property is a paddy field without any direct access. It is also

submitted that going by the provisions of Sections 9 and 10 of the Consumer Protection Act, the members of the Commission need not be persons who are legally trained and it cannot be a subordinate civil court, going by Article 233 of the Constitution also. He also contended that the orders of the Commission cannot get the aid of Sections 41 and 42 of the Evidence Act also, as the situations are different.

52. The decision of the Apex Court in **Lucknow Development Authority v. M.K. Gupta** (AIR 1994 SC 787) deals with the provisions under the Consumer Protection Act, the jurisdiction of the Commission and other aspects. It is clear from paragraph 1 of the judgment that the question of law addressed before the Bench was whether the statutory authorities like Lucknow Development Authority, Delhi Development Authority or Bangalore Development Authority constituted under the State Acts to carry on planned development of the cities in the State are amenable to Consumer Protection Act, 1986 for any act or omission relating to housing activity such as delay in delivery of possession of the houses to the allottees, non-completion of the flat within the stipulated time, or defective and faulty construction,

etc. Various provisions of the Act were considered and the Apex Court considered the definition of “service” in Section 2(o) of the Act also.

53. In **R. Unnikrishnan's case** {(2014) 4 SCC 434}, in paragraphs 19, 20 and 23 the principles of res judicata have been explained and it has been held thus:

“The rule of law favours finality to binding judicial decisions pronounced by courts that are competent to deal with the subject-matter. Public interest is against individuals being vexed twice over with the same kind of litigation. Even erroneous decisions can operate as res judicata. That is true even in regard to mixed questions of law and fact determined in the earlier proceedings between the same parties which cannot be revised or reopened in a subsequent proceeding between the same parties.”

The question herein will be whether the order Ext.J12 will therefore have a binding effect as far as the proceedings before the Land Acquisition court is concerned. What we find from the order Ext.J12, as we have already discussed, is that the points decided are on the deficiency of service and the rights of the complainants. The directions given were also noted by us. Of course, if the project is fulfilled, the

allottees may get interest in the common amenities and common facilities. As far as the claimants under the Land Acquisition Act are concerned, the questions considered by the reference court are regarding the entitlement for apportionment of compensation. It is clear from Section 9(2) of the Act that when notice is issued to the persons interested, they will have to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests as well as their objections, if any, with regard to measurement. Section 11 will also show that the award enquiry will include matters concerning the respective interests of the persons claiming compensation and the Collector will have to make an award of the true area of the land for which compensation to be allowed and the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him. Section 30 of the Act deals with disputes as to apportionment. What is referred to the court as a dispute is regarding the apportionment of the amount of compensation settled

under Section 11, or any part thereof, or as to the persons to whom the same or any part thereof is payable.

54. Such being the position, the decision taken by the Commission as per Ext.J12 will not operate as res judicata as far as the proceedings before the reference court under the Land Acquisition Act are concerned, since the issues are not common in nature and the points which arose for consideration are also quite different.

55. Apart from the same, the project herein did not proceed further after the order Ext.J12 was passed. Going by the agreement between the allottees and the company, after the land is raised and filled up which was a paddy land and the allottees are handed over the same, they will have to construct flats. Thereafter, the common amenities like parks, etc. will have to be provided by the company. When the notification under Section 4(1) of the Land Acquisition Act was issued, the entire contract is frustrated by such a supervening event, as evident from Section 56 of the Contract Act also. Therefore, what remains there, is the claims pertaining to the land for payment of adequate compensation, , as to the measurement and other factors

which were never the issues before the Commission. When the acquisition is complete, the requisitioning authority will get title from the title holders of the land in question by paying adequate compensation. In that view of the matter, we cannot accept the argument that the principles of res judicata will be attracted to the facts of this case.

56. The learned counsel for the appellants in LAA No.472/2013 submitted that under the principle of waiver and estoppel also, the promoter company has lost all its rights. It is submitted that since they have failed to fulfil the obligations, they cannot claim any amount for the common areas of the project. We cannot agree. As far as Ext.J12 is concerned, we have already found that the Commission's view was that there is deficiency in service and therefore the company will have to take various steps at different stages.

57. As far as the question of providing common amenities and facilities are concerned, going by the provisions of Kerala Apartment Ownership Act also, which we have already discussed, the common areas and facilities are meant for the community of flat owners. It may

include roads, parks, swimming pool and other like facilities. Herein, the claimants are claiming amounts under the Land Acquisition Act for the land which could have been utilised for providing common facilities, viz. as value of the land itself by way of compensation. It is explained by the learned counsel for the appellant Shri John Joseph that certain percentage of land will be required for providing amenities, e.g. in LAR No.1/2011 which is the subject matter of LAR No.472/2013, it is submitted that the total extent of the land is 1.69 hectares and 20% is left for roads and other amenities and the said area will be 21.01 ares. It is therefore submitted that the land value can be claimed in that manner by the claimants, for such areas.

58. In this case, one aspect is relevant that after the site is filled up, constructions will have to be made. After the flats are constructed various developmental activities will have to be made by the company. The amount collected by the company, if any, from the claimants and to be collected from them will have to be utilised for providing amenities and other charges. Therefore, the company will have to spend large amounts for providing amenities also. When a large undeveloped area

is acquired, for fixing true market value under Section 23 of the Land Acquisition Act, it is well settled by the decisions of the Apex Court, that development charges may vary from 30% to 50% which may have to be deducted. Therefore, it is not a case where the claimants like the appellants can claim that they will be entitled for the entire market value of the land for the areas covered by the common amenities and facilities. There is no evidence in this case with regard to these aspects. Therefore, we cannot accept the argument that the principle of waiver and estoppel will apply as far as these cases are concerned. We reject the said argument also.

59 The next aspect which has to be considered is regarding the findings in paragraphs 63 and 64 by the reference court that the sale deed in favour of the 17th claimant is a fraudulent one. We have already referred to the arguments raised by Shri Varghese Kuriakose and Shri T.R.S. Kumar. The sum and substance of the contention is that Ext.J12 is not having the force of a decree and if at all the claimants including additional claimants 41 to 51 have got a claim, they have to seek remedies under the Specific Relief Act and Transfer of Property

Act. In this context, our attention was invited to Chapter V of Specific Relief Act, especially Section 31 which reads as follows:

“31. When cancellation may be ordered.-- (1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.”

It provides for cancellation of a written instrument by filing a suit, to have it adjudged as void or voidable. The other relevant provision noticeable under the said Act is Section 34 in Chapter VI concerning declaration of status or right. The same is also extracted below:

“34. Discretion of court as to declaration of status or right.-- Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying,

or interested to deny, his title to such character or right, and the court may in its discretion, make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.”

As far as the provisions of Transfer of Property Act are concerned, the three relevant provisions are Sections 53, 54 and 55(6)(b). Section 53 is concerned with fraudulent transfer which is extracted below:

“53. Fraudulent transfer.-- (1) Every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.

Nothing in this sub-section shall impair the rights of a transferee in good faith, and for consideration.

Nothing in this sub-section shall affect any law for the time being in force relating to insolvency.

A suit instituted by a creditor (which term includes a decree-holder whether he has or has not applied for execution of his decree) to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the

transferor shall be instituted on behalf of, or for the benefit of, all the creditors.

(2) Every transfer of immovable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee.

For the purposes of this sub-section, no transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made.”

Section 54 defines “sale” and going by the same, it will have to be made by a registered document. As far as contract for sale is concerned, it does not, of itself, create any interest in or charge on such property. The rights and liabilities of buyer and seller are provided in Section 55 and great reliance is placed on sub-section (6) (b). Going by the same, the buyer is entitled:

“(b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him, to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to

accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.” (emphasis supplied)

The extent of the buyer's charge is evident from the said provision.

60. The reference court, by relying upon Ext.J12, held that the transfer in favour of the 17th claimant (appellant in LAA No.333/2013) is not a bonafide one in the light of violation of the directions issued in Ext.J12 order. We have already referred to the effect of the said order. As far as the enforcement of orders of District Forum and State Commission is concerned, the provision made is under Section 25. The next important Section is Section 27 under the heading “Penalties”. Under Section 25(3), when any amount is due from any person under an order made by a District Forum, State Commission or the National Commission, the person entitled to the amount may make an application to the Forum/Commission. The appropriate forum can issue a certificate for the said amount to the Collector who shall proceed to recover the amount in the same manner as arrears of land

revenue. As far as the provisions under Section 27 are concerned, it is clear that under sub-section (1), the person who fails to comply with the order shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees or with both. Sub-section (2) confers on the District Forum or the State Commission or the National Commission, as the case may be, the power of a Judicial Magistrate of First Class for the trial of offences under the Act. Apart from the same, there are no other provisions under which, the order of the State Commission can be enforced. Therefore, if the agreement holders had a case that the documents of sale in favour of the appellants in LAA Nos.333/2013 and 441/2013 have been executed in a manner to defeat their rights, they had to resort to the remedy under the Specific Relief Act. This legal position is clear from the provisions of Chapter II and Sections 31 and 34 of the Specific Relief Act. Admittedly, such suits have not been filed and decrees have not been obtained. No suits for specific performance of agreements have been filed by any of the

agreement holders. Before the Commission, all of them were not complainants. Out of the several complaints, two of them, viz. O.P.Nos.76/1999 and 116/1999 alone were by two agreement holders.

61. In this context, we will refer to the decision of a learned Single Judge of this Court in **Rajan and another v. Soman and others** (2010 (4) KHC 927). In respect of a transaction to attract Section 53(2) of the Transfer of Property Act, it was held that the transaction is only voidable but not void and it has to be made voidable by instituting a suit. It was also held that all ingredients of Section 53(2) must be pleaded and proved. The relevant principles are discussed in paragraph 9 of the judgment which we extract below:

“9.....To attract Section 53(2) of the Act, the transfer of immovable property must be without consideration and with intent to defraud subsequent transferee. The transaction is only voidable but not void. A voidable transaction has to be got avoided by instituting a suit. The plaintiffs have not filed a suit invoking Section 53(2) of the Transfer of Property Act. There is no case that the transaction, as evidenced by Ext.B1, was without consideration. The pleadings would disclose that the contention of the plaintiffs was that Ext.B1 was got executed

by exercising fraud, undue influence, coercion and misrepresentation. The absence of consideration was not pleaded. Ext.B1 shows that a sum of Rs.1,000/- was fixed as consideration, out of which Rs.900/- was paid to the second defendant and Rs.100/- was in respect of life interest of Gowri. In these circumstances, evidently, Section 53(2) of the Transfer of Property Act does not apply.”

Herein, no such suits have been filed to assail the transfers in favour of claimants 17, 19 and 20, viz. The appellants in LAA Nos.333/2013 and 441/2013. The transaction being voidable, the remedy of filing of a suit ought to have been availed. Therefore, the view taken by the court below that the transfers are fraudulent, cannot be sustained. The vague plea made in the claim statement that fraudulent transfers cannot be acted upon, alone is not sufficient. For easy reading, we extract paragraph 16 of the claim statement filed by claimant No.41 hereinbelow:

"16. It is submitted that the company has made several fraudulent transfers of property after the order of the Hon'ble State Commission and after the project was taken over by the plot owners. Those fraudulent transfers were made to defeat

the claims of the plot owners. Not only that the transfers are fraudulent and fictitious, the transferees in those cases are not bonafide purchasers. Therefore, the Hon'ble Court may be pleased to ignore those fraudulent transfers and the claims raised by such transferees."

The same averments are there in the claim stament of the other agreement holders.

62. It is also to be considered whether in the absence of a suit for specific performance and obtaining a decree accordingly, claimants 41 to 51 can claim market value for respective areas claimed by them in proceedings before the Land Acquisition Court. Incidental question is whether Ext.J12 will come to their aid. Only the 47th claimant was a complainant before the Commission, going by the judgment of the reference court and he has not been granted relief, as he had received money already from the company by way of settlement.

63. A suit for specific performance of an agreement is a remedy specifically provided under the Specific Relief Act, under Chapter II. We have already discussed the statutory charge a buyer is having under Section 55(6)(b). There, there is a charge on the property, as against

the seller and all persons claiming under him, to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount.

64. The Apex Court in **Sunil Kumar Jain v. Kishan and others** (AIR 1995 SC 1891), considered a case where based on an agreement for sale of land, compensation was sought in a reference under Section 18 of the Act. It was held as follows:

“.....In a reference, the dispute is to the title to receive the compensation. It is settled law that the agreement of sale does not confer title and, therefore, the agreement holder, even assuming that the agreement is valid, does not acquire any title to the property. It is seen that the agreement is subsequent to the notification under S.4(1). The Government is not bound by such an agreement. The inter-se dispute is only with respect to the title as on the date of notification under S.4(1). The respondent is the undoubted owner of the property as per S.4 notification and that, therefore, the compensation was directed to be paid to the respondent since he is one of the members. We cannot find any illegality in the order passed by the Courts. However, if the petitioner has got

any claim under S.30 of the Land Acquisition Act, it is open to him to take such action as open to him under law.”

The last sentence therein has been relied on by the reference court as one enabling the court to consider the interest of such an agreement holder to get an adjudication of the claim under Section 30 of the Land Acquisition Act. It was mainly observed that it was open to him to take such action as open to him under law.

65. Learned counsel for the appellants in LAA Nos.333/2013 and 441/2013 relied upon the decision of a Division Bench of this Court in **Kumaran v. Kumaran and others** (2011 (1) KHC 88) in this context. After considering Sections 54 and 56 of the Transfer of Property Act, the Division Bench held that even in a case of a decree for specific performance of an agreement for sale, it by itself will not be effective as a transfer of title and so long as the sale deed is not executed in favour of the successful vendee, either by the vendor himself or by the Court, the title continues where it was before the passing of the decree. The Division Bench relied upon various decisions of the Apex Court and this Court in that context. We extract

paragraph 6 of the judgment herein below:

“6. In terms of S.54 of the Transfer of Property Act, Sale is a transfer of ownership. Such transfer, in the case of tangible immovable property of the value of Rs.100/- and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument. A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property. In its true sense, a suit for specific performance of a contract for sale of land is a suit for enforcement of terms of that contract. The title to the land as such is not the subject matter of such a suit. - See *Adcon Electronics Pvt. Ltd. v. Daulat & Anr.* ((2001) 7 SCC 698). The Apex Court emphasised in *Radhakisan Lakshmi Narayan Toshniwan v. Shridhar Ramachandra Alshi* ((1961) 1 SCR 248) that under S.54 of the Transfer of Property Act, a contract for sale does not by itself create any interest in or charge on immovable property and consequentially a contract for sale creates no interest in favour of the vendee and the proprietary title does not validly pass from the vendor to the vendee. In *Hakim Enayat Ullah v. Khalil Ullah Khan & Anr.* (AIR 1938 All. 432) it was laid down that decree for specific performance of

a contract for sale of property merely declares the rights of the decree holder to have a transfer of the property executed in his favour and that such a decree, by itself is not effective to transfer title. Following that, in *Shewantibai & Ors. v. Vishwasrao* ((1952) (XXXV) NLJ 406), it was stated that so long as the sale deed is not executed in favour of the successful party, either by the defendant himself or by the Court, the title to the property continues where it was before the passing of such a decree. The Apex Court in *Satyabrata Ghose v. Mugneeram Bangur & Co.* (AIR 1954 SC 44) laid down that according to the Indian Law, which is embodied in S.54 of the Transfer of Property Act, a contract for sale of land does not of itself create any interest in the property which is the subject matter of the contract and the obligations of the parties to a contract for sale of land are, therefore, the same as in other ordinary contracts. In *T.V.Kochuvareed & Anr. v. P.Mariapa Gounder & Ors.* (AIR 1954 TC 100), it was noted that in contrast to the English law, under the Indian law, a party who has a contract for the sale of immovable property in his favour gets only a right to compel the other party to execute a sale deed in respect of the property and unless and until such a sale deed is actually brought into existence by act of parties or under a decree of court, the party who has

contracted for the purchase cannot be said to have acquired the ownership over the property. Following that, a Division Bench of this Court held in *Sankaran Vishnu Nambudhiri v. Neelakanta Iyer Venkitachalam Iyer* (1955 KLT 134) that the last clause of S.54 of the Transfer of Property Act which defines a 'contract for sale' clarifies that such a contract does not by itself create any interest in or charge of such property. Unless and until the agreement for sale in favour of the vendee fructifies into a sale deed, he cannot claim to have acquired any title to the property. This position is unaffected by the mere fact of the vendee having instituted the suit for specific performance of the contract for sale and of having obtained a decree in his favour. Such a decree is only a creature of the agreement between the parties to the contract for sale and as such, it has no greater force or significance than the earlier contract between them. The decree embodies in it, the contract between the parties with the command of the court super added to it, enabling the plaintiff to have the agreement enforced through court. All the same, title to the property continues to remain in the vendor himself and such title passes on to the vendee only when the sale deed is executed by the vendor under the command of the court or on his behalf by the court. The title that the vendee so obtains

would not relate back to the date of the contract for sale. The contrary view taken in *Jahar Lal v. Bhupendranath* (AIR 1922 Cal.412) and in *Dina v. Gujaba* (AIR 1926 Nag. 95) was dissented from following the dissent of the Nagpur High Court in *Shewantibai* (supra). *Kochuvared* (supra) was also followed. The law, with no doubt, is that a decree for specific performance of an agreement for sale would not, by itself, be effective as a transfer of title and so long as the sale deed is not executed in favour of the successful vendee, either by the vendor himself or by the court, the title continues where it was before the passing of the decree. To the same effect is the decision of the Division Bench of this Court in *Chrisentia Chacko v. Choyikutty* (1987 (1) KLT SN 60 (C. No.83). A Full Bench of the Allahabad High Court in *Mahendra Nath and another v. Smt.Baikunthi Devi & Ors.* (AIR 1976 All. 150) stated that a person who has got only a contract for sale or has got a decree for the specific performance of the contract, has got no interest in the land. He can only enforce the contract compelling the other side to execute the sale deed failing which the Court might execute a sale deed for the defendant, but the rights and liabilities under the contract do not attach to the land. In *Hiralal Agarwala v. Bhagirathi Gore & Ors.*(AIR 1975 Cal.445), it was stated that a decree for specific

performance passed on the basis of a contract for sale of immovable property does not create any interest in the property in favour of the decree holder. It only super-adds the sanction of the court to enforce it through the medium of court. As such the decree holder can enforce the said contract and get it enforced through court, subject to whatever interest the judgment debtor had at the time of execution. Therefore, there can be no doubt about the proposition that the mere existence of a contract for sale or a decree for specific performance on that basis does not, in any manner, affect the title of the vendee who has entered into the contract for sale. With the Specific Relief Act, 1963, as it now stands, the concept of passing a decree as understood in the earlier decisions gets modified to be directions in terms of the provisions of that Act and the decisions referred to above would have only to be read in the light of such modulation of the statute law. But, the law as regards the effect of the direction of the court for specific performance continuous to be the same. Such direction has no efficacy or potency of a transfer of property.”

It has been held that the agreement itself does not create any interest or charge on such property and the proprietary title does not validly pass

to the vendee. Therefore, only if the sale deed is executed, either by the vendor or by the court, the title passes.

66. Bibi Jameela Khatoon and others v. Janardhanan Kunwar and another (2014 KHC 2488) is a judgment of a learned Single Judge of Patna High Court. The requirement to file a suit for specific performance of a contract in a similar context was specified. Therein, the suit for declaration of title and possession was filed by the plaintiff. It was also held that the title does not pass by mere admission, estoppel or mere acquiescence. We extract below the following portion from the said judgment:

“14. In the case of Farid Ahmad and Others v. Bibi Mataban and Others, reported in 2000 (4) PLJR 498, this Court again reiterated that title cannot pass by mere admission, estoppel or mere acquiescence. Title will be created only when it conforms to the requirement of the statutes. In the present case, at our hand, even if it is held that there was agreement between the parties and the defendants have received the consideration amount of Rs.9,000.00 and that the defendant No.1 admitted that the plaintiff was put in possession on the basis of agreement, title will not pass on the plaintiff unless a

registered document is created in view of the settled propositions of law discussed above. By mere admission, title will never be created in favour of the plaintiff and likewise mere inaction of the defendant to execute the sale deed, title will not be vested on the plaintiff.....”

67. Therefore, the legal position is clear that there should be a decree for specific performance of an agreement and for title to pass the sale deed will have to be executed. As far as the charge under Section 55(6)(b) of the Transfer of Property Act is also concerned, the decision relied upon is that of the Apex Court in **Delhi Development Authority v. Skipper Construction Co. (P) Ltd. and others** {(2000 (10) SCC 130). In paragraph 30 it was held as follows:

“30. When the property upon which the charge is created gets converted into another form, the buyer will be entitled to proceed against the substituted security. This is a general principle of law and Section 73 of the Transfer of Property Act is only an example of the said principle. The above principle has been applied to enforce mortgage on substituted securities (see *Barhamdeo Prasad v. Tara Chand* (1913) 41 IA 45) and *Surapudi Muniappa v. Nookala Seshayya Gari Subbaiah* (AIR 1917 Mad. 880). The same principle which is applicable to mortgages

applies to cases of statutory charge under Section 55(6)(b). If immovable property is charged and is converted into another property or money, then the charge will fasten on the property or money into which the subject-matter of the agreement is converted.”

Therefore, even if the property gets converted, the buyer can proceed against the substituted security. Herein, admittedly the agreement holders 41 to 51 except 47 (who has already obtained money through other proceedings), have not obtained any decree for specific performance of the contract and have not obtained title by registered documents also. The title in respect of such property remained with the company and the transferees from the company have obtained valid title also. Therefore, the appellants in LAA Nos.333/2013 and 441/2013 have obtained title by registered documents of the portions transferred to them and no suit has been filed for cancellation of such documents also. Merely because Ext.J12 proceedings was obtained by one of the agreement holders, it cannot pass title to the property to the agreement holders 41 to 51. Therefore, they will not be entitled for compensation for specific item of property mentioned in the

agreements produced by them and only the persons having valid title will get compensation.

68. The next question is whether the agreement holders will be "persons interested". Shri Varghese Kuriakose and Shri T.R.S. Kumar also submitted that the agreement holders have not raised their claim before the Land Acquisition Officer and therefore they will not come within the definition of "person interested" for enabling them to get an adjudication by the reference court. The answer to the same by the learned counsel for the appellants in LAA No.472/2013 is that on behalf of the appellants therein Ext.J17 has been forwarded to the Land Acquisition Officer through their lawyer commonly. It is seen that the same has not been sent by registered post. Since a dispute arose during argument whether the same has been actually received as the same is not placed before the reference court in Ext.B1 file, the files were brought to the court by the learned Government Pleader. It is confirmed that Ext.J17 has not been received in file.

69. Learned counsel Shri John Joseph thus submitted that there is no bar in raising a claim by getting impleadment in proceedings under

Section 30 of the Land Acquisition Act since the endeavour of the court is to find out who is the real claimant. He relied upon a judgment of the Apex Court in **Sardar Amarjit Singh Kalra (dead) by Lrs. v. Pramod Gupta (Smt) (dead) by Lrs.** {(2003) 3 SCC 272}. Therein, by examining the principles under Sections 11, 18, 30 and 31 of the Land Acquisition Act, it has been held that the function of the land Acquisition Collector is to apportion the compensation among all the persons interested, whether they appeared before him or not (Paragraph 12) In paragraph 25 it has been further held that "the consideration therefore cannot be confined to the claimants before the court but the court is obliged to find out who really would be entitled to the same, whether a party before it or not."

70. Shri T.R.S. Kumar relied upon the decision of a Division Bench of this Court in **Padmanabha Menon v. Bhaskara Menon** (1963 KLT 595) which is under the Land Acquisition Act, 1089 (Travancore) wherein it has been held that the court can implead any person interested in the controversy pending before the court, provided

the nature of dispute is not altered or enlarged. Therein, in paragraph 6 it was held that “so far as the court hearing a reference under Section 30 is concerned, by the express language of the Act itself, the provisions of C.P.C. are made applicable and therefore, we think that under the provision of Order I Rule 10 it is open to the court to implead any person interested in the controversy pending before the court provided the nature of the dispute referred is not enlarged or altered.”

71. **Tejdhari and others v. Baul and others** (AIR 1981 All. 47) is another judgment relied upon by Shri T.R.S. Kumar wherein it was held that the jurisdiction of the reference court is confined to the matter referred. That was also in the context of impleadment of a party. It was held as follows:

“The power conferred on the Court under Section 30 is only in respect of a matter referred to by the Collector. It is not a court of original jurisdiction entitled to entertain the dispute between the parties on its own. Its jurisdiction is confined to the matter referred. A person applying for impleadment can claim his right only through the party, the right of which had been

referred to by the Collector for decision to the court. The case of a third person claiming right independently of the party whose dispute has been referred to by the Collector, stands on a footing different from one who seeks to be impleaded in place of or in substitution of the right of the party before the Collector.”

72. **Govind Narayan Lotlikar v. Smt. Savitribai Roghuvira Lotlikar** (AIR 1987 Bom. 32) is by a learned Single Judge of Bombay High Court wherein it was held that the District Court in a reference under Section 30 of the Land Acquisition Act, cannot implead persons who claim to be entitled for compensation awarded in a land acquisition proceedings or to a part thereof, or who claim to be interested in the acquired property, when the same persons were not parties before the Collector. It was held that if he is allowed to be impleaded, the nature of dispute will be enlarged (paragraph 7 and 8).

73. **Prayag Upnivesh Awas Evam Nirman Sahkari Samithi Ltd. v. Allahabad Vikas Pradhikaran and another** (AIR 2003 S.C.2302) is by a two Judge Bench of the Apex Court. The facts of the case show that in a reference under Section 18 of the Act, the appellant

Samithi was impleaded by the Addl. District Judge. The compensation was awarded also. This was interfered with by the High Court stating that there was no proper reference under Section 18 of the Act. It is seen that the Addl. District Judge has sought for a clarification by forwarding a letter to the Land Acquisition Officer and the Apex Court held that such a letter is not sufficient to make it a reference under Section 18 of the Act. In the course of discussion it is held in paragraph 7 that “it is well settled that the reference court gets jurisdiction only if the matter is referred to it under Section 18 or Section 30 of the Act by the Land Acquisition Officer and that the civil court has got the jurisdiction and authority only to decide the objections referred to it. The reference court cannot widen the scope of its jurisdiction or decide matters which are not referred to it.” Various decisions were relied upon in that context. Finally, it was held that in the absence of a proper reference, the Additional District Judge had no jurisdiction to decide the question of enhancement of compensation. It was a case where the reference was under Section 18 of the Land Acquisition Act.

74. **S. Palani Velayudhan and others v. District Collector, Thirunelveli** (2009 KHC 5204) is a decision of the Apex Court wherein the terms “person known or believed to be interested” and “person interested” have been examined. It was held that a person interested no doubt will include all persons claiming interest in compensation on account of acquisition, including the vested remaindermen.

75. In **Ram Prakash Agarwal v. Gopi Krishnan** (2013 KHC 2521) the Apex Court has elaborately considered the question. After referring to various decisions, it has been held in paragraph 19 as follows:

“A person who has not made an application before the Land Acquisition Collector, for making a reference under Section 18 or Section 30 of the Land Acquisition Act, 1894 cannot get himself impleaded directly before the Reference Court.”

76. **George P. Cherukoth v. State of Kerala and others** (2014 (1) KHC 402) is by a learned Single Judge of this Court wherein the legality of the dismissal of an application for impleading of a party by

the reference court was under challenge. This Court examined the question in the light of the various decisions of the Apex Court including **Prayag Upnivesh Awas Evam Nirman Sahkari Samiti Ltd. v. Allahabad Vikas Pmdhikaran and another** {(2003) 5 SCC 561} wherein it has been held as follows:

“7. It is well established that the Reference Court gets jurisdiction only if the matter is referred to it under section 18 or section 30 of the Act by the Land Acquisition Officer and if the Civil Court has got the jurisdiction and authority only to decide the objections referred to it. The Reference Court cannot widen the scope of its jurisdiction or decide matters which are not referred to it.”

Shyamali Das v. Illa Chowdhry and others {(2006) 12 SCC 300) was also relied upon, wherein it was held that “the reference court does not have jurisdiction to entertain any application of pro interesse suo, or in the nature thereof” and finally the judgment in **Ram Prakash Agarwal and another v. Gopi Krishnan** (2013 KHC 2521) has also been relied upon. The above decision was rendered in the context of a

reference under Section 18 of the Land Acquisition Act.

77. There is some difference between the approach to be made in a reference under Section 18 as well as under Section 30 of the Land Acquisition Act. This is evident from the decision of a Constitution Bench of the Apex Court in **Sardar Amarjit Singh Kalra (Dead) By Lrs. and others v. Pramod Gupta (Smt) (dead) By Lrs. and others** {(2003) 3 SCC 272} relied upon by Shri John Joseph. In paragraph 13 of the judgment their Lordships declared the legal principles in the following manner:

“13. Therefore, it becomes necessary for the Reference Court dealing with a reference made to it under Section 30 and 31(2) and the appellate court dealing with appeals arising out of such decision rendered by the Reference Court, to decide as to who among the claimants, or whether anyone of them at all is entitled to receive the compensation or any portion of it and if so, in what proportion or that any other than those already before the court is entitled to the same. So far as the cases on hand are concerned, having regard to the ramification of the Land Reforms Act on the legality, propriety and the tenability of the various claims, it becomes obligatory to consider each of

such claims distinctly. The rejection of any one cannot by itself be a justification for sustaining the claim of the other and if none of the private claimants is found to be legally entitled to the same, the Government or for that matter the local authority concerned may even be the residual beneficiary, entitled to it. **The consideration, therefore, cannot be confined to the claimants before the court but the court is obliged to find out who really would be entitled to the same, whether a party before it or not.** The reference court does not seem to have been alive to its onerous responsibilities in these cases and the High Court having rejected the appeals as having abated had no occasion to advert to the question as to whether the adjudication by the Reference Court was in keeping with the requirements of its obligations and the ultimate decision was in conformity with law. This aspect is noticed only to highlight the serious nature of the various issues involved but omitted to be properly and effectively decided and not to express any opinion on any such claims or questions.” (emphasis supplied)

The dictum laid down by the Constitution Bench was not brought to the notice before the Bench in **Ram Prakash Agarwal's case** (2013 KHC 2521), which is a decision by a two Judge Bench. That was also a

case mainly under Section 18 of the Land Acquisition Act and the discussion made therein was in the context of an application filed under Order IX Rule 13 C.P.C., by a third party. Since the decision in **Sardar Amarjit Singh Kalra' case** (supra) is by a Constitution Bench, the same is binding. In that view of the matter, we are of the view that the legal right of the agreement holders for due share in the compensation can be considered by the reference court.

78. But the question is whether they will be entitled to compensation on the principles under the Land Acquisition Act or will be only entitled for the benefit out of the said compensation amount in tune with Section 55(6)(b) of the Transfer of Property Act. We will therefore refer to one decision of a Division Bench of Bombay High Court in **Mohammad Akhil Khan v. Premraj Jawanmal Surana and another** (AIR 1972 Bom. 217), placed before us. A situation like the one herein arose therein also. Before the sale deed could be executed between the seller and the buyer who entered into an agreement for purchase of certain property, the land was acquired. The

Division Bench considered the issue in the context of termination of all the private rights and the vesting of property in the State for a public purpose in view of the acquisition. It was held that the contract for sale has been frustrated and it became impossible of performance (paragraph 15). Therein, after relying upon Section 55(6)(b) of the Transfer of Property Act, it was held that the said charge is against the seller and all persons claiming under him to the extent of the interests of the seller in the property and also for the amount of purchase money property paid. Once the acquisition has been made by the State, it was held that “the property is in a sense transformed into the sum certain and that rights of respective parties would continue to be the same. In other words the buyer would be entitled to claim from the compensation amount which represents the converted form of property, his purchase money and earnest together with interest. It is in this sense that the buyer whose contract is now frustrated appears to have a claim or share in the compensation which becomes payable to the owner of the property by reason of the acquisition thereof.” While considering the definition of “person interested” in Section 3(b) of the

Land Acquisition Act, it was held that “a plain reading of the wording of Section 3(b) does not require that a person for being interested, but have an interest in the land which is acquired as such. It is enough that he has an interest in the compensation which has become payable on account of the acquisition of the land.” Ultimately, it was held that “there need not be a transfer of immovable property in favour of a person before he could be described as a person entitled to claim for an interest in the land. The language of Section 9(1) of the Land Acquisition Act appears to us to be broad enough to include interest and claim for charge on land which would amount to an interest in the land for the purpose of Section 9(1). This being so claimant No.2 had undoubtedly right to apply under the Land Acquisition Act to the Collector for apportionment of the compensation amount.” The court upheld the claim for apportionment of compensation in the said background.

79. Herein also, the situation is identical. Even though sale deeds have not been executed, they have adduced evidence before the court by producing the agreements as well as original receipts for payment of

money.

80. We have already referred to the decision of the Apex Court in **Delhi Development Authority's case (supra)** which also will show that on the property gets conveyed into another form, the buyer will be entitled to proceed against the security. Herein, all the private rights in respect of the property have been terminated due to the notification under the Land Acquisition Act and therefore as already found by us, Section 56 of the Contract Act will come into play. In that view of the matter, we find no reason to accept the argument of the learned counsel for the appellants Shri Varghese Kuriakose and Shri T.R.S. Kumar that the reference court went wrong in allowing the application for impleading.

81. The evidence adduced by the agreement holders are discussed from paragraph 50 onwards under point No.2. The 41st claimant was represented by his power of attorney holder who was examined as A.W.44 and Exts.AO1 to AO5 documents have been marked. The agreement for sale executed by the company in favour of the said claimant was marked as Ext.AO2. Exts.AO3 and AO4 series

and Ext.AO5 are the receipts showing payment of amounts as per Ext.AO2 agreement. The agreement provided a consideration of Rs.2,53,600/- and the receipts produced are to the tune of Rs.2,04,026/-.

82. Claimant No.42 was examined as AW35. Exts.AP1 to AP3 series were marked on the side of the said claimant. Ext.AP1 agreement is for a consideration of Rs.96,000/- and Ext.AP2 is the acknowledgment showing receipt of an advance amount of Rs.30,000/- and Ext.AP3 series are cash receipts showing payment of the balance sale consideration along with some extra payment and the total payments will come to Rs.1,02,000/-.

83. Similarly, in respect of claimant Nos.43 to 51, documents have been marked as shown in the right hand side of the table provided in paragraph 37 of the judgment.

84. Therefore, documents were available before the reference court as to the payments made by them supported by the oral evidence. In the light of the principles we have discussed as above, as is clear from the decision of the Bombay High Court in **Mohammad Akhil**

Khan v. Premraj Jawanmal Surana and another (AIR 1972 Bom. 217) and the decision of the Apex Court in **Delhi Development Authority's case** (supra), they will be entitled for repayment of the money paid towards consideration along with interest from the respective dates of payment, etc.

85. Learned counsel Shir John Joseph further submitted that the documents in favour of the appellants in LAA Nos.333/2013 and 441/2013 amounts to fraud under the Registration Act as well. According to him, since the areas earmarked for roads and amenities have been included in the documents, those documents may not be considered at all.

86. What we find is that the documents in favour of the appellants in LAA Nos.333/2013 and 441/2013 have not been directly under challenge before the civil court so as to get a decree for cancellation and in that event without sufficient pleadings such questions cannot be gone into. We have already referred to the pleadings in the claim statement of agreement holders. As the project did not fructify and as the same stood frustrated, in the light of Section

56 of the Contract Act, the allottees have only the right to get compensation for the area earmarked in their own sale deed and nothing further. Even though it is contended that equitable title of the areas which may be set apart for common facilities will be with the allottees of land for construction of apartments, we fail to see how they will get compensation under the Land Acquisition Act on such a premise, in the light of the fact that the sale deeds do not take in such portions. The title to the remaining land remained with the company except the portions which were transferred as per the sale deeds executed in favour of the transferees. They have got the right to transfer them also. In that view of the matter, we cannot agree with the argument of learned counsel. Our decision as above, is for the purpose of deciding the claim for compensation under the Land Acquisition Act. It will be without prejudice to the right, if any, of the allottees of the erstwhile project and the agreement holders to enforce any other claims against the company in appropriate legal proceedings.

87. The right of the company to transfer the property is also assailed on the plea that the company is dormant. Ext.J5 letter is relied

upon in this context. As rightly pointed out by the learned counsel for the appellant in LAA No.333, Shri Varghese Kuriakose, the company is a legal entity and unless it is wound up by proceedings under the Companies Act, the sale deeds executed will not be affected. Learned counsel placed reliance upon various provisions of the said Act. It is submitted that there is no prohibition for transaction.

88. We find that Ext.J5 alone will not enable us to find that the company was declared dormant and any transactions by the company were prohibited. Learned counsel for the appellants in LAA No.472/2013, Shri John Joseph contended that the office itself remained closed and the parties had no access. But there is nothing to indicate that any proceedings for winding up was there. In that view of the matter, it cannot be said that the company is dormant, so as to result in any prohibition for entering into any transaction, especially since the company is a legal entity.

89. The documents in favour of the appellant in LAA No.333/2013 and the appellants in LAA No.441/2013 have been marked in evidence. The documents contain the description of the

items and other essential details. It is seen from the discussion in paragraph 61 that the certified copy of the sale deed has been produced as Ext.Q1 and Ext.Q2 is the photo copy of encumbrance certificate. Ext.Q3 is the photo copy of the tax receipt. The total extent of 120 ares of land were transferred by M/s. Suryanelly Plantations in her favour as per sale deed No.4183/2004. By separate documents different items of properties were transferred to the appellants in LAA No.441/2013. The total extent covered by the sale deed is 45.04 ares. Appellant No.1 therein (claimant No.19) was examined as AW 38. The documents produced by the said claimants were marked as Exts.S1 to S8. Ext.S1 is sale deed No.3240/2005 executed by the 17th claimant, the appellant in LAA No.333/2013 in favour of claimant No. 20 and Ext.S2 is sale deed No.3241/2005 executed by her in favour of the 19th claimant. Exts.S3 and S4 are tax receipts and Ext.S5 is the certificate issued by the Village Officer. Exts.S6 and S7 are two encumbrance certificates. The second appellant in LAA No.441/2013 purchased another extent of 19.71 ares of property in Sy. No.379/18 as per Ext.S8 sale deed No.3239/2005.

90. In the light of our findings above, the view taken by the trial court that they are not entitled for compensation, cannot be sustained. The reference court has partly allowed the claims of the appellants in LAA No.441/2013 which is clear from paragraph 109 of the judgment. It is held therein that even though the sale deeds cover an extent of 45.04 ares, compensation can be claimed by them only for the balance extent available after giving compensation for the other eligible claimants including the agreement holders. The reference court concluded that out of the total extent of property, viz. 169.60 ares, compensation can be awarded in favour of other claimants including agreement holders for an extent of 148.59 ares and for the balance extent of 21.01 ares claimants 19 and 20 (appellants in LAA No.441/2013) are entitled for compensation.

91. In the light of the view taken by us as regards the claim of agreement holders 41 to 51, they will not be entitled to receive compensation for the plots covered by their agreements, on the market value fixed by the Land Acquisition Officer. In paragraph 108 of the judgment, the reference court has granted compensation to them in the

following manner:

Claimant NO.41 is entitled to receive compensation for an extent of 4.84 Ares;

Claimant NO.42 is entitled to receive compensation for an extent of 2.42 Ares;

Claimant NO.43 is entitled to receive compensation for an extent of 3.63Ares;

Claimant NO.44 is entitled to receive compensation for an extent of 4.84 Ares;

Claimant NO.45 is entitled to receive compensation for an extent of 2.42 Ares;

Claimant NO.46 is entitled to receive compensation for an extent of 2.42 Ares;

Claimant NO.47 is not entitled to receive any compensation;

Claimant NO.48 is entitled to receive compensation for an extent of 3.63 Ares;

Claimant NO.49 is entitled to receive compensation for an extent of 2.42 Ares;

Claimant NO.50 is entitled to receive compensation for an extent of 4.84 Ares; and

Claimant NO.51 is entitled to receive compensation for an extent of 2.42 Ares.

The total extent covered by the above direction will be 33.88 ares.

Added with 21.01 ares found in favour of the appellants in LAA No.441/2013, the total extent will be 54.89 ares. But as far as the sale deeds in favour of appellants in LAA No.441/2013 are concerned, it will be only 45.04 ares.

92. In LAA.No.441/2013 the contention raised is that they had purchased property having an extent of 77.91 ares comprised in Sy. Nos.381/4 and 379/8 as per sale deed Nos.3239/2005, 3240/2005 and 3241/2005. It is also their case that at the time of purchase an extent of 13.15 ares was excess during the survey of adjoining their land and that they have paid the full consideration for the excess land to the appellant in L.A.A.No.333/2013. They had already received compensation for 19.71 ares comprised in Sy. No.379/8, from the Land Acquisition Officer. As regards the extra extent of 13.15 ares, the reference court found that there is no legal evidence also. This is clear from the findings in paragraph 88 of the judgment. Going by the said paragraph, they have claimed compensation for 58.60 ares. It is found that there is absolutely no evidence to substantiate the claim for the excess area of 13.50 ares. We find no reason to interfere with the said

finding. But they will be entitled for compensation for the extent covered by Exts.S1 and S2 which will be 45.04 ares, at the same rate as granted in favour of the other claimants along with the statutory benefits as granted to other claimants by the reference court. The land value fixed by the Land Acquisition Officer is at the rate of Rs.1,29,726/- per are.

93. As far as the appellant in LAA No.333/2013 is concerned, she is claiming for an extent of 4.96 ares along with the statutory benefits as granted to other claimants by the reference court.

Now we will come to the specific issues raised in the connected appeals.

94. The appellants are claimants in various Land Acquisition Reference cases, except in LAA Nos.772/2014 and 839/2014 who have been apportioned compensation by the reference court. They have also filed the appeals challenging the compensation for the land which would have been earmarked for common areas and common facilities. In some of the appeals challenge is made to the apportionment of compensation for transferees from the company, etc. In certain cases

after apportioning the amount in favour of various claimants, there are balance amount left in respect of certain areas. These have been directed to be returned to the District Collector by the reference court, which is also under challenge on the ground that the appellants are entitled for them. It is also the contention of Shri John Joseph, learned counsel that the trial court failed to consolidate and try all the reference cases together. But as far as this issue is concerned, we find that separate evidence has been led in all the cases and the LAR cases are different and there is no infirmity in the same. Now we proceed to consider the contentions in each cases.

95. In L.A.A. NO.356/2013 the challenge is mainly on the apportionment of amounts to respondent 3 and 4 based on the sale deed relied upon by them, viz. sale deed No.229/2005 in respect of 4.52 ares. Oral and documentary evidence have been led by all the parties and documents have been marked. The appellants have raised the claim for compensation for the common area. Respondents 3 and 4 have produced the sale deed which has been marked as Ext.K1. They have produced Ext.K2 encumbrance certificate and Ext.K3 tax receipt

relating to the said property. The reference court found that from the documents it can be seen that they are title holders of the property comprised in Sy. No.369/5. In paragraph 31, amounts have been earmarked in respect of the claimants. The appellants are also challenging the direction to return back the amount of compensation representing 1.06 ares to the District Collector. Obviously, the said amount is the balance amount after earmarking compensation for all the claimants in tune with the area covered by their title deeds. In the light of the view we have already taken that the appellants have no claim for compensation based on offer of development of common areas and amenities of the project, we find no reason to interfere with the above direction to return back the amount to the District Collector. As regards the documents in favour of respondents 3 and 4 also, the argument is that the documents have been fraudulently executed. In the light of the view we have already taken in LAA No.472/2013 on the same point, the said argument also will have to fail. Therefore, no interference is called for on the judgment of the reference court.

96. LAA No.470/2013 is from LAR No.40/2010 which is in

respect of 23.60 ares of land. The total area allotted to the buyers is 21.4 ares and compensation for the balance extent of 2.2 ares remaining, was directed to be disbursed to the third respondent company which promoted the project. The same is under challenge in this appeal. Same arguments are raised by the appellants in this appeal also with regard to their claim for compensation for the land forming the common area and reliance is placed on Ext.J12 order of the Commission. We have already rejected the same arguments of the appellants in LAA No.472/2013 and therefore no interference is called for.

97. LAA No.474/2013 is in respect of LAR No.22/2010. Out of 18.20 ares involved in the said case, 14.56 ares was sold as house plots and 3.64 ares remains in R.S. No.372/7. According to the appellants, the same is earmarked for roads between house plots and the direction by the reference court to award compensation for the said area to the third respondent company, according to them, is unjustified. The appellants are also raising the same arguments that for common area they are entitled to compensation. The reference court found that they

are entitled to compensation for the area covered by their sale deeds only. We find no reason to interfere with the same, as we have already rejected same plea in LAA No.472/2013.

98. In LAA No.477/2013 the appellants challenge the earmarking of compensation for respondents 3 and 4 who claim under sale deed No.229/2005. Out of 22 ares of land involved in the said case, 19.93 ares was sold as house plots. The remaining area is 2.07 ares. The reference court has considered the documents of title of all the claimants and has gone by the same in awarding compensation to the appellants as well as to the contesting respondents. The amount deposited before the Land Acquisition Officer has been apportioned accordingly. In view of the rejection of the very same contentions, i.e. compensation for common areas already by us, we find no reason to interfere with the same.

99. LAA No.499/2013 is one challenging the apportionment of amount to the third respondent company, the promoter of the project. The total extent involved in the said case is 75 ares, out of which 49.76 ares was sold as house plots to buyers. From the remaining land,

compensation for 18.70 ares was paid to the company which is under challenge. The very same arguments relying upon the proceedings of the Commission, Ext.J12 and the right of the appellants for compensation for the area which may be earmarked as common area and common amenities, are reiterated herein also. As we have already found that the said argument cannot be accepted, no interference is called for in this appeal also.

100. LAA No.504/2013 is from LAR No.35/2010. The total extent involved is 15.40 ares in RS No.379/5 out of which 3.63 ares was sold as house plots. The appellant is projecting his claim for compensation for the remaining area on the contention that the said area has been earmarked for common amenities and that the sale deed executed in favour of the third respondent is fraudulent. The reference court has accepted the claim of the appellant for the area covered by the sale deed alone and accepted the case of the third respondent with regard to his claim in respect of 5.7 ares. The balance extent is 6.07 ares and the amount representing the said area has been directed to be returned back to the District Collector. The contentions are the same

by relying upon the proceedings of the State Commission, that the sale deed in favour of the third respondent is fraudulent and that the amount directed to be returned to the District Collector should have been paid to the appellant. The appellant is entitled only for the land value and other benefits for the extent of land covered by the sale deed in his favour. The sale deed in favour of the third respondent stands accepted by the reference court and there is no reason to interfere with the said finding also, in the light of the view we have already taken above. As regards the return of the balance amount to the District Collector also, we find no reason to interfere.

101. In LAA No.505/2013 the appellants are challenging the award of amounts in favour of respondents 3 and 4 who claimed amounts based on sale deed No.229/2005. The total extent of the area is 6.65 ares, out of which 5.73 ares have been sold as house plots. As regards respondents 3 and 4, they have limited their claim to 0.92 ares by filing an affidavit and amounts have been apportioned to them for the said area. Before the reference court oral and documentary evidence have been led by all the parties and the respective documents have been

marked. Respondents 3 and 4 have produced Ext.E1 copy of the sale deed, Ext.E2, copy of encumbrance certificate and Ext.E3 copy of tax receipt. Therefore, all the parties have been granted compensation in respect of the area covered by their title deeds. Same arguments have been raised herein also and we find no reason to interfere with the finding of the reference court.

102. In LAA No.506/2013 the appellants are challenging the award of amounts in favour of respondents 3 and 4. The third respondent is the promoter company and the fourth respondent is the purchaser of the said company. Oral and documentary evidence have been led by all the parties and documents have been marked. The total extent of land involved is 18.30 ares out of which 8.47 ares was sold as house plots to buyers. The company had sold 7 ares of property as per sale deed NO.2958/2005 which was again transferred to the fourth respondent as per sale deed No.8520/2008 who was impleaded in the proceedings. The company has been impleaded as additional 8th respondent and the fourth respondent herein was impleaded as additional 9th respondent by separate orders. The attack is on the sale

deeds executed by the company and the competency of the company for the same. We have rejected similar arguments already. The claimants have been granted compensation in tune with the extent covered by their sale deeds which have been marked in evidence. As regards the company, it was found that the company is entitled for compensation for 2.83 ares. As regards the fourth respondent, it was found that the claimants' title is in respect of 7 ares comprised in Sy. No.379/2 and the document of title has been marked in evidence also, apart from encumbrance certificate and copy of tax receipt. (Exts.I(1) to I(3)). We find no reason to interfere with the same in the light of the similar findings already rendered by us.

103. In LAA No.513/2013 the appellants are challenging the award of compensation to the third respondent who is a purchaser from the company. The appellants claimed compensation for the total extent of 42 ares of land. Out of this, 36.77 ares was sold as house plots in 1990. It is pointed out that five ares was sold as per sale deed No.2958/2005 to the wife of one of the directors from whom the fourth respondent purchased the land as per sale deed No.8520/2008. He was

impleaded in the proceedings later as additional claimant NO.11 in LAR No.27/2010. He was awarded compensation for five ares. The reference court directed return of amount representing 0.23 ares to the District Collector. As far as the appellants are concerned, they have been granted compensation in tune with their title deeds. The arguments are mainly relating to the compensation for common areas and amenities and they point out that the sale deed executed is a fraudulent one. Those arguments cannot survive, in the light of the view we have already taken and no interference is called for therein also.

104. In LAA No.536/2013 the reference court directed return of amount of compensation representing an extent of 8.23 ares to the District Collector. This is under challenge. The total extent is 26.60 ares out of which 18.37 ares was sold as house plots to buyers, viz. the claimants. They contended that the balance extent is earmarked for common amenities. The reference court passed awards in favour of the appellants in tune with the extent covered by their title deeds. It was found that for the extent of 8.23 ares none of the parties have

raised their claim and therefore the said amount is directed to be returned back to the District Collector. The argument raised by the appellants is by relying upon the proceedings of the State Commission as per Ext.J12. They also relied upon the provisions of the Kerala Apartment Ownership Act. Both these arguments we have rejected already. As far as 8.23 ares is concerned, there is no claimant and therefore we find no interference with the award of the reference court.

105. In LAA No.538/2013 the appellants are disputing the apportionment of amounts to respondents 3 and 4 and the fifth respondent company. The total extent of land is 21.15 ares, out of which 12.47 ares was sold as house plots to buyers. In favour of respondents 3 and 4 sale deed No.229/2005 was executed by the company for an extent of 2.03 ares. It is stated that the same is a fraudulent transaction. They have been impleaded before the reference court apart from the company. The appellants also raised claims in respect of the said area. Oral and documentary evidence have been led by all the parties and documents have been marked. The reference court awarded compensation for 2.03 ares to respondents 3 and 4 and

awarded compensation for an extent of 5.67 ares to the company. The appellants have been granted amounts in tune with the extent covered by their title deeds which have been marked in evidence. The arguments raised are similar and the claim of the appellants for common areas and common amenities cannot survive in the light of the view we have already taken and there is no reason to interfere with the apportionment of amounts in favour of the party respondents herein also.

106. In LAA No.555/2013 the appellants are challenging the award of compensation in favour of respondents 3 and 4 and are claiming compensation for the area which according to them, is common area earmarked for them. The total extent is 25.20 ares in RS No.369/1. Out of this, 20.67 ares was sold as house plots to buyers in 1990. Respondents 3 and 4 are claiming under sale deed No.229/2005 of an extent of 2.79 ares. The same is challenged as fraudulent as they are relatives of one of the directors of the promoter company. The reference court allowed the claim of the appellants for the area covered by their title deeds and for respondents 3 and 4, of an

extent of 0.81 ares and compensation for the balance area of 8.87 ares, is directed to be returned back to the District Collector. Both these are under challenge in this appeal. Arguments are similar with regard to the compensation for common areas and amenities as well as the competency of the company to execute the sale deeds which according to the appellants, are fraudulent. We have rejected similar arguments and there is no case for interference herein also.

107. In LAA No.582/2013 the appellants are challenging the apportionment of compensation in favour of respondents 3 and 4. The total extent of the land is 53.10 ares, out of which 33 ares was sold as house plots in 1990. Respondents 3 and 4 claimed compensation for 17 ares as per sale deed No.2626/2010 and the fourth respondent claimed compensation for 22 ares based on sale deed No.2321/2005.

108. The transfer in favour of them was objected to by the appellants before the reference court. According to them, the remaining areas, after allotment of plots to them, are left for roads and for common amenities. Oral and documentary evidence have been led by all the parties and documents have been marked. The appellants

have been earmarked compensation for areas covered by their sale deeds. It was found that in their sale deeds proportionate areas have not been earmarked for common areas and amenities and therefore their claim to that extent was rejected. Since we have already rejected similar arguments, viz. for compensation for common areas and amenities, we find no reason to interfere with the judgment of the reference court. As regards respondents 3 and 4, the reference court awarded compensation for 17 ares in favour of respondent No.3 and for 5.34 ares in favour of the fourth respondent. The reference court relied upon the title deeds in favour of the parties and earmarked compensation accordingly. As far as the transfers in favour of respondents 3 and 4 are concerned, we find no reason to agree with the appellants in the light of the view we have already taken. The sale deeds are not hit by the order of the Commission. It is also stated in paragraph 10 of the appeal memorandum that the reference court has not earmarked compensation for the second claimant who remained ex-parte. We find from the judgment that the document of title in favour of the second claimant was not available in evidence. Therefore, we do

not find fault with the non earmarking of amounts in favour of the said ex-parte claimant. On all other common points, we reiterate the same view and no interference is called for.

109. In LAA No.610/2013 the appellants are aggrieved by the ear-marking of amounts in favour of respondents 3 and 4 who are purchasers of the company. Oral and documentary evidence have been led by all the parties and documents have been marked. The total extent covered by LAR No.56/2010 is 123.10 ares in RS No.368/1. Out of this, 90.94 ares was sold as house plots in 1990. By sale deed NO. 780/2002 an extent of 10.12 ares was sold to the third respondent and by sale deed No.779/2002 an extent of 30.35 ares was sold in favour of the fourth respondent. They are being attacked as fraudulent as the purchasers are close relatives of the directors of the company. They also claimed compensation before the reference court. The appellants have also claimed compensation based on their title deeds and they claimed share of compensation pertaining to the land left for roads and common amenities. Respondents 3 and 4 have been granted compensation for the extent covered by their title deeds and in respect

of 4.84 ares remaining, the direction is to return the amount to the District Collector. As regards common areas and amenities, the arguments are the same which we have considered already. In the light of the view we have already taken, the same cannot survive. We find that the various claimants have adduced documentary evidence which have been marked in evidence and the amounts have been earmarked in favour of the appellants as well as respondents by the award. We find no reason to interfere with the award.

110. In LAA No.639/2013 the appellants are challenging the earmarking of amounts in favour of respondents 3 and 4 and they claimed compensation for the entire extent of 29.60 ares in RS No.372/2. Out of the total amount 24.21 ares was sold to buyers in 1990 as house plots. Respondents 3 and 4 have purchased properties by sale deed No.231/2005 of an extent of 20.23 ares. They limited their claim for compensation to an extent of 4.94 ares. It is alleged that the transaction is a fraudulent one. The reference court has granted compensation in favour of the appellants as well as the party respondents in tune with their title deeds. The claim for compensation

for common areas and amenities has been rejected and respondents 3 and 4 have also been granted compensation. For the reasons we have already stated, no interference is called for.

111. In LAA No.645/2013 the reference court granted compensation in favour of the appellants for the areas covered by their title deeds. It is pointed out in the appeal that the total extent of land is 16.80 ares, out of which an extent of 5.33 ares was sold as house plots. According to the appellants, the balance area was left for common amenities. The reference court granted compensation pertaining to 5.33 ares to the appellants/claimants. For the amount representing balance area the appellants have raised a claim in the appeal. It is stated that the compensation for the land meant for common areas and amenities should go to the appellants. We find that the appellants have been granted compensation in tune with their title deeds. Their sale deeds do not cover the remaining areas. Therefore, no interference is called for.

112. In LAA No.646/2013 the appellants are challenging the non grant of compensation to them as well as the award of compensation in

favour of the third respondent. The total extent is 23 ares out of which 14.52 ares was sold as house plots in 1990. The third respondent purchased the property as per sale deed No.232/2005 of an extent of 9.34 ares. The third respondent limited her claim to 8.48 ares by filing an affidavit. The reference court allowed compensation in favour of the appellants in tune with the title deeds produced by them and to the third respondent. Very same arguments raised have been repeated herein also that the appellants are entitled for compensation in its entirety since the properties have been earmarked for common areas and common amenities and the transaction entered into between the third respondent and the company is not a bonafide one. The reference court has granted compensation in tune with the title deeds. We find no reason to interfere with the award. Our reasoning already made on common points, will apply herein also and no interference is called for.

113. In LAA No.647/2013 the appellant challenges the direction by the reference court to return compensation for 3.62 ares back to the District Collector. The total extent is 12.25 ares in RS NO.369/2. Out of this, 8.63 ares was sold as house plots in 1990. The contention is

that the balance extent is left for roads and other common amenities. The claim raised is similar, viz. the common points we have already decided earlier. We do not find any reason to interfere with the direction, as similar arguments have been rejected already. The appeal cannot therefore survive.

114. In LAA No.680/2013, the appellants are challenging the apportionment of compensation apart from the appellants, to the third respondent also. The total extent is 42.30 ares in RS No.369/4. Out of which 24.54 ares was sold as house plots and the remaining area of 17.76 ares are left for common amenities and for roads between house plots. The compensation has been granted in favour of the third respondent in respect of 10.36 ares and compensation for 7.4 areas has been directed to be returned to the District Collector.

115. We find from the judgment that compensation has been awarded to the appellants as well as the contesting respondents based on the documents produced and marked in evidence. Oral and documentary evidence have been led by all the parties and documents have been marked. The arguments raised are similar herein also. The

reference court found that the parties are entitled for compensation based on the area covered by the title deeds. In the title deeds of the appellants nothing is mentioned about the proportionate right for common area. Therefore, the same was rightly rejected by the reference court. The appellants have no claim for the remaining area and there is no reason to interfere with the award of compensation in favour of the third respondent also. We have already answered the common points as against the various parties and therefore there is no reason to interfere with the award herein also.

116. In LAA No.772/2014 the appellant is challenging the earmarking of amounts in favour of respondents 3 and 4. The total extent is 14.80 ares. Respondents 3 and 4 were claimants C and D before the reference court. The appellant was not a claimant and the claimants have adduced evidence and amounts have been awarded in tune with their title deeds. The reference court found that the sale deeds produced by the respective claimants does not show earmarking of proportionate right in common area. Therefore, the said contention by the claimants was rejected. Since the appellant being not a claimant,

no relief can be granted in this appeal.

117. In LAA No.839/2014 the appellant challenges the return of amount representing 0.34 ares of land to the District Collector. The total extent is 25.20 ares, out of which 24.86 ares was sold as house plots. The reference court, in the judgment awarded amounts in favour of various claimants. The appellant was not a claimant in LAR No.20/2010. As he had not raised a claim for any of the extent of land, his claim in the appeal cannot survive. None of the claimants have any grievance also with regard to the earmarking of amounts in their favour. In paragraph 34 of the judgment, the reference court found that though the total extent is 25.20 ares in respect of which the claimants have proved their title, 24.86 ares was sold as house plots and regarding the area of 0.34 ares there is no successful claimant and therefore the compensation for the said land will have to be disbursed to the District Collector. We find that the appellant had not claimed any amount and therefore his claim in this appeal cannot be sustained. Apart from the same, the argument raised based on the proceedings of the Commission cannot survive. The next argument is by relying upon

the provisions of Apartment Ownership Act, viz. compensation for common areas which also cannot survive. Therefore, no interference is called for in this appeal also.

118. For all these reasons, we dismiss LAA Nos.356, 470, 474, 477, 499, 504, 505, 506, 513, 536, 538, 555, 582, 610, 639, 645, 646, 647 and 680/2013 and 772 and 839 of 2014 and allow LAA Nos.333/2013 and 441/2013. The appellants in LAA Nos.333/2013 and 441/2013 will be entitled for compensation for the areas, viz. 4.96 ares and 45.04 ares at the same rate as fixed by the reference court in respect of the other claimants. The appellants will be entitled for land value as well as solatium and other benefits as per the rate fixed by the reference court in favour of other claimants. In L.A.A. No.472/2013, we reject the claim of appellants 1 to 9 for additional amounts and the appeal is dismissed in respect of those appellants.

119. As far as agreement holders who are appellants 10 to 18 in LAA NO.472/2013 are concerned, we remand the matter for fresh consideration by the reference court in LAR No.1/2011, viz. the amount to be paid to them. The said amount will be earmarked from

the compensation deposited before the reference court and ordered in favour of the Company. Since the company is not made a party before the reference court, we direct the reference court to implead the said company, viz. M/s. Suryanelli Plantations Pvt. Ltd. as an additional respondent and the amount payable to each of the appellants will be determined based on the advance amount and other incidental charges including registration charges paid by them and the interest payable, the rate of which will be fixed after hearing the parties. It will be ordered to be paid to them from the amount earmarked in favour of the company and the balance amount will be disbursed to the company. There will be a direction to the reference court to take appropriate decision within five months after receipt of records. In LAA No.472/2013, the court fee paid on the memorandum of appeal by appellants 10 to 18 will be refunded. The amount of compensation ear-marked to the company in L.A.R.No.57/2010 (L.A.A.No.499/2013), L.A.R.No.23/2010 (L.A.A.No.506/2013), L.A.R.No.22/2010 (L.A.A.No.474/2013), L.A.R.No.40/2010 (L.A.A.No.470/2013),L.A.R.No.41/2010 (L.A.A.No.538/2013) will

be disbursed to them only after determination of the above issues. Ultimately for paying compensation to agreement holders, the said amount can also be ear marked and the balance alone will be payable to the company.

The parties will suffer their respective costs in the appeals.

The Registry will forthwith transmit the records in L.A.R. No.1/2011 to the reference court, namely, the Sub Court, Perumbavoor.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

kav/

L.A.A. Nos.333/2013 and 441/2013 were re-posted today as requested by learned counsel Shri Thomas Geevarghese P., appearing for claimant NO.51 before the reference court, pointing out an omission.

Heard.

It is brought to our notice that from among the agreement

holders, whose case has been directed to be considered by the reference court afresh, one name has been omitted in paragraph 119. She is claimant No.51 before the reference court, who is respondent No.50 (L. Yesodha) in LAA No.333/2013. She is also a respondent in LAA NO.441/2013. Therefore, the first sentence in paragraph 119 is modified and corrected as follows:

“As far as agreement holders who are appellants 10 to 18 in LAA No.472/2013 and respondent No.50 in LAA No.333/2013 (L.Yeshodha) are concerned, we remand the matter for fresh consideration by the reference court in L.A.R. No.1/2011, viz. the amount to be paid to them.”

27/2/2015

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

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**L.A.A.Nos.472, 333, 441,
356, 470, 474, 477, 499, 504,
505, 506, 513, 536, 538, 555,
582, 610, 639, 645, 646,
647 and 680 of 2013 and
772 and 839 of 2014**

Dated 26th February, 2015.