

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

OP(C).No. 478 of 2015 (O)

IN LAR 87/2003 of SUB COURT,TRIVANDRUM DATED 17-07-2014

PETITIONER(S)/PETITIONER IN CA:

**GOPAKUMAR AGED 48 YEARS
S/O.SUBRAMONIAN CHETTIYAR, ERUMALA PURAYIDAM
KOCHUVELI, KADAKOMPALLY VILLAGE
THIRUVANANTHAPURAM DISTRICT.**

BY ADV. SRI.M.RAJENDRAN NAIR

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESENTED BY THE DISTRICT COLLECTOR
THIRUVANANTHAPURAM-695038.**
- 2. THE DIRECTOR
DEPARTMENT OF TOURISM, THIRUVANANTHAPURAM-695038.**

BY GOVERNMENT PLEADER SMT. LILLY LESLIE

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 09-04-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ds

OP(C).No. 478 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1: THE TRUE COPY OF THE JUDGMENT OF THE FIRST ADDITIONAL SUB-COURT, DT.27.10.2006.

EXHIBIT-P2: THE TRUE COPY OF THE DEATH CERTIFICATE DT.30/05/2012.

EXHIBIT-P3: THE TRUE COPY OF THE WILL DT.23.01.1998 EXECUTED BY SUBRAMANYAM CHETTIYAR.

EXHIBIT-P4: THE TRUE COPY OF THE ORDER OF THE FIRST ADDITIONAL SUB-JUDGE DT.17/07/2014 IN C.A.NO.101/14-15.

RESPONDENT(S)' EXHIBITS: NIL

//True copy//

P.A. to Judge

ds

P.BHAVADASAN, J.

O.P.(C) No. 478 of 2015

Dated this the 09th day of April, 2015

J U D G M E N T

In this original petition, the following reliefs are sought
for:

“(i) Call for the records in LAR 87 of 2003
and the cheque application no. 101/14 -15
examine the validity, propriety, and legality of the
order passed dt. 17/07/2014.

(ii) To direct the first additional sub-court,
Thiruvananthapuram to disburse the amount in
deposit in LAR 87 of 2003 in a time bound
manner.”

2. By order dated 17.07.2014, the court below
dismissed the cheque application holding that the petitioner
is to produce succession certificate in view of the earlier
order of the same nature.

3. The learned counsel appearing for the petitioner
before this Court relying on the decision reported in
Resilikutty Chacko v. State of Kerala [1998(2) KLT 912]

and an unreported decision of this Court in O.P.(C) No.3475/2013, contended that the succession certificate, in the facts and circumstances of the case, is not necessary.

4. It is not in dispute that the amount lying in deposit is as a result of land acquisition proceedings and an award was passed therein under the Land Acquisition Act. The petitioner claims on the basis of a Will.

5. The award was passed as reference under Section 18 of the Land Acquisition Act. The claimant, Subramonian Chettiyar died on 29.02.2012. He executed a Will dated 23.01.1998 in which the petitioner was the 5th legatee and the property, which is the subject matter of the proceedings, is comprised in Survey No. 44 which allotted to the petitioner as E schedule in the document. It is on the basis of Ext.P3 Will that the amount was claimed by the petitioner.

6. Obviously, in view of the two decisions relied on by the petitioner, the insistence of production of succession certificate does not appear to be correct. It is trite that land

acquisition amount is not a debt as contemplated in the Indian Succession Act. However, the right of the petitioner needs to be established before disbursing the amount to the petitioner.

This petition is disposed of setting aside the impugned order and directing the court below to conduct an enquiry regarding the entitlement of the amount and pass orders accordingly.

Sd/-
P.BHAVADASAN
JUDGE

ds

//True copy//

P.A. to Judge