

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 23RD DAY OF MARCH 2015/2ND CHAITHRA, 1937

OP(C).No. 777 of 2015 (O)

**ORDER DTD.18.3.2015 IN IA.NO.2481/2015 IN OS.NO.373/2015 ON THE FILES OF 2ND
ADDITIONAL MUNSIFF'S COURT, ERNAKULAM.**

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PETITIONER(S):

1. DR. SATHISH CHANDRA PAI, AGED 34 YEARS,
S/O.SANTHARAM PAI, RESIDING AT NARAYAN NIVAS, T.D. ROAD,
KOVILVATTOM DESOM, ERNAKULAM VILLAGE, PIN 682 035,
(REPRESENTED BY MY MOTHER AND POWER OF
ATTORNEY HOLDER MRS. PUSHPALATHA S.PAI,
W/O.R.SANTHARAM PAI, RESIDING AT NARAYANA NIVAS,
T.D.ROAD, KOCHI 35. (3RD PETITIONER).
2. DR.AYSHWARYA C.BHAT, AGED 32 YEARS,
W/O.CHETHAN BHAT, RESIDING AT NARAYAN NIVAS, T.D. ROAD,
KOVILVATTOM DESOM, ERNAKULAM VILLAGE, PIN 682 035,
(REPRESENTED BY MY MOTHER AND POWER OF
ATTORNEY HOLDER MRS. PUSHPALATHA S.PAI,
W/O.R.SANTHARAM PAI, RESIDING AT NARAYANA NIVAS,
T.D.ROAD, KOCHI 35. (3RD PETITIONER).
3. PUSHPALATHA S. PAI, AGED 66 YEARS,
W/O.R.SANTHARAM PAI, RESIDING AT NARAYANA NIVAS,
T.D ROAD, KOVILVATTOM DESOM, ERNAKULAM VILLAGE,
PIN - 682 035.

**BY ADVS.SRI.N.D.PREMACHANDRAN
SRI.M.S.UNNIKRISHNAN**

RESPONDENT(S):

1. STATE OF KERALA,
REPRESENTED BY DISTRICT COLLECTOR,
ERNAKULAM, PIN - 682 030.
2. LAND ACQUISITION OFFICER,
SPECIAL THAHSILDAR LA, KOCHI CORPORATION, VYTTLA,
ERNAKULAM DISTRICT, PIN - 682 019.

BY GOVERNMENT PLEADER SRI.REJI JOSEPH

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 23-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

OP(C).No. 777 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT. P1:TRUE COPY OF THE PLAINT IN OS.NO.373 OF 2015 ON THE FILES OF THE
2ND ADDITIONAL MUNSIFF'S COURT, ERNAKULAM.

EXT. P2:TRUE COPY OF THE ORDER DATED 16.01.2015 ISSUED BY THE FIRST
RESPONDENT.

EXT. P3:TRUE COPY OF THE NOTICE IN LAC NO.2/15.

EXT. P4:TRUE COPY OF THE NOTICE IN LAC NO.3/15.

EXT. P5:TRUE COPY OF THE OBJECTION DATED 07.03.2015 IN EXT. P3 AND P4.

EXT. P6:TRUE COPY OF THE IA.NO.2481 OF 2015 OF 2ND ADDITIONAL MUNSIFF'S
COURT, ERNAKULAM.

EXT. P7:TRUE COPY OF THE SKETCH PREPARED BY THE 2ND RESPONDENT AS
PART OF THE ACQUISITION PROCEEDINGS.

EXT. P8:TRUE COPY OF THE TAX PAID RECEIPTS (2 IN NUMBERS) IN RESPECT OF
THE PROPERTIES ACQUIRED BY THE PETITIONERS.

EXT. P9:TRUE COPY OF THE THANDAPER ASSESSMENT OF THE PREVIOUS OWNER
OF THE PETITIONERS.

EXT. P10:TYPE WRITTEN COPY OF THE ORDER AS TAKEN DOWN BY THE COUNSEL
FOR PETITIONERS ON READING THE ORDER.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

P. BHAVADASAN, J.

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O.P.(C) No.777 OF 2015

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Dated this the 23rd day of March, 2015

JUDGMENT

Under challenge is Ext.P10 order, whereby the court below dismissed the application for appointment of an Advocate Commissioner.

2. Bereft of unnecessary details, the necessary facts are as follows:

3. The apprehension of the petitioners is that in Ext.P7 sketch, the dark shaded portion shown in the sketch, according to the petitioners, belongs to the petitioners. That has not been taken note of in the acquisition proceedings. They apprehend that the portion of the property may not be treated as their property. They, therefore, want an Advocate Commissioner to be issued by the civil court for determination of the boundaries of their property as well as the extent of their property that is sought to be acquired in land acquisition proceedings. The suit O.S. No.373 of 2015 before the Additional Munsiff's Court,

Ernakulam is the subject of land acquisition proceedings.

4. It is significant to notice that the petitioners had similar complaint and approached the District Collector. Ext.P2 order has been passed by the District Collector on 16.01.2015, after hearing the petitioners, which reads as follows:

"1. The compensation for the land to be acquired will be fixed in accordance with the land acquisition proceedings and through negotiation process by DLPC and SLEC.

2. The request of the petitioner for retaining of 10 cents of land to establish a clinic will not be allowed as it would defeat the very purpose of land acquisition.

3. Re-measurement of land under acquisition will be conducted after proper issuance of the notice to the concerned parties.

4. On measurement, if 0.53 Ares of land available in the possession of petitioners, this land also will be taken for the project."

5. There is nothing to show that the authorities will not comply with the order of the District Collector.

6. As rightly noticed by the court below, apart from Ext.P2, if the petitioners are aggrieved, there are provisions in the Land Acquisition Act to agitate their claim. A suit for the said purpose

is clearly barred.

7. The title, extent etc. have to be considered while dealing with the objection, if any, filed by the petitioners before the authorities concerned. The courts cannot bypass the procedure made available under the Land Acquisition Act.

8. If the petitioners have got a case that in fact a lesser extent of property is about to be acquired, for establishing the actual extent of property sought to be acquired which is in their possession, they have right to approach appropriate authorities. It is not for the civil court to decide these matters. The court below is therefore perfectly justified in dismissing the application. There is no merit in the original petition and it is dismissed.

None of the observations made in this judgment will not stand in the way of the petitioners in approaching the Land Acquisition Authorities for appropriate reliefs.

Sd/-
P. BHAVADASAN,
JUDGE.

//true copy//

P.S. to Judge

St/-