

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

OP(C).No. 1163 of 2015 (O)

AGAINST THE ORDER/JUDGMENT IN I.A.NO.687 OF 2015 IN LAR NO.117
OF 2013 OF ADDITIONAL SUB COURT, THALASSERY

PETITIONER/CLAIMANT NO.5 :

N. RAMACHANDRAN, S/O.KUNHIKANNAN VAIDYER,
AGED 64 YEARS, PENSIONER, RESIDING AT AMRITHAM,
KAKKUCHIPALAM ROAD, KARUVASSERI,
KOZHIKODE-673 010.

BY ADV. SRI.R.SURENDRAN

RESPONDENTS/CLAIMANTS NO.1 TO 4 & 6 TO 8:

1. V.K. SOUMINI, KALATHIL HOUSE, PARAPOYIL,
MATTANNUR, IRITTY TALUK, KANNUR DISTRICT,
PIN-670 702.
2. K.ROHINI, VAYALOLIKANDI HOUSE,
KOTHERI, MATTANNUR, IRITTY TALUK, KANNUR DISTRICT,
PIN-670 702.
3. K.KRISHNAN, VAYALOLIKANDI HOUSE, KOTHERI, MATTANNUR,
IRITTY TALUK, KANNUR DISTRICT, PIN-670 702.
4. K.VASU, PARIKKAL HOUSE, P.O.KOODALI,
THALASSERY TALUK, KANNUR DISTRICT, PIN-670 702.
5. GOVERNMENT OF KERALA, REPRESENTED BY
DISTRICT COLLECTOR, KANNUR, PIN-670 001.
6. THE MANAGING DIRECTOR, KINFRA,
THIRUVANANTHAPURAM, PIN-695 001.
7. THE SPECIAL TAHSILDAR,
LAND ACQUISITION (AIRPORT NO.3), MATTANNUR
THALASSERY TALUK, KANNUR DISTRICT, PIN-670 702.

R5 & R7 BY GOVERNMENT PLEADER ADV.SRI.REJI JOSEPH
R6 BY ADV.SRI.G.S.REGHUNATH, SC FOR KINFRA

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION
ON 21-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

OP(C) .No. 1163 of 2015 (O)

APPENDIX

PETITIONER'S EXHIBITS :

P1 COPY OF THE NOTICE ISSUED FROM THE ADDITIONAL SUB COURT, THALASSERY IN LAR NO.117 OF 2013 AND RECEIVED BY THE PETITIONER.

P2 COPY OF THE CLAIM STATEMENT FILED BY THE PETITIONER HEREIN AS CLAIMANT NO.5 IN LAR NO.117 OF 2013 ON THE FILE OF ADDITIONAL SUB COURT, THALASSERY.

P3 COPY OF THE AFFIDAVIT DATED 16.03.2015 FILED IN SUPPORT OF THE I.A.NO.687 OF 2015 IN LAR NO.117 OF 2013 BEFORE THE ADDITIONAL SUB COURT, THALASSERY.

P4 COPY OF THE COUNTER STATEMENT FILED BY THE RESPONDENTS NO.1 TO 4 IN I.A.NO.687 OF 2015 IN LAR NO.117 OF 2013 ON THE FILE OF THE ADDITIONAL SUB COURT, THALASSERY.

P5 COPY OF THE ORDER DATED 01.04.2015 IN I.A.NO.687 OF 2015 IN LAR NO.117 OF 2013 ON THE FILE OF THE ADDITIONAL SUB COURT, THALASSERY.

RESPONDENTS' EXHIBITS :

NIL

// True Copy //

P.A. To Judge

DSV/22/5/15

B.KEMAL PASHA, J.

.....
O.P.(C) No.1163 of 2015

.....
Dated this the 21st day of May, 2015

J U D G M E N T

In LAR No.117/2013, before the Additional Sub Court, Thalassery, an application for the issuance of a Commission, for identifying the properties of the petitioner herein, who is claimant No.5, and the property of claimant Nos.1 to 4, was filed by the petitioner. The same was objected, in fact, in a halfhearted manner only, by respondents 1 to 4 herein. The court below has taken the view that the application for issuance of such a commission was filed without any *bonafides* and solely with intent to protract the proceedings. On that ground, it seems that the said application was dismissed through Ext.P5 order.

2. According to the petitioner, his claim is confined to an extent of 26.10 Ares of property, out of the total extent of 2.3769 hectares of property acquired. According to the petitioner, the said property on which he has forwarded his claim happens to be in Sy.No.3/1 of the Pazhassi Village, on bifurcation of village.

3. On hearing both sides and on perusing the contents of the IA and the counter this Court is of the view that the court below was harsh in dismissing the IA. It is true that the court below was directed to dispose of the matter, within a period of four months earlier. At the same time, such a direction should not hamper justice. For deciding the question of apportionment, the properties have to be identified correctly, in order to have a final adjudication of the matter. It seems that the petitioner is entitled to get a commissioner appointed with the aid of the Taluk Surveyor. At the same time, considering the fact that the parties are of old age, this Court is of the view that appropriate directions

are to be given to the Taluk Surveyor as well as the court below.

In the result, this Original Petition is allowed and Ext.P5 order is set aside. I.A.No.678/2015 in LAR 117/2013 of the court below shall stands allowed. The court below shall appoint a Commissioner as prayed for, with the assistance of the Taluk Surveyor. The Taluk Surveyor is directed to consider the matter as urgent and to execute the order by assisting the Commissioner and to submit the plan to the Advocate commissioner within 45 days from such appointment. The Commissioner shall note down the matters requested to be noted down in the counter filed by claimants 1 to 4 also. The Commissioner shall file the report along with the plan within two months from the date of appointment of the Commissioner. The court below shall fix the batta and the same shall be deposited by the petitioner without fail. The court below shall, thereafter, dispose of the matter as expeditiously as possible, at any rate, within a

period of three months from the date of receipt of a copy of the Commissioner's report. It is made clear that the court below shall appoint the Commissioner within two weeks from the date of receipt of the copy of this judgment.

Sd/- B.KEMAL PASHA, JUDGE

ul/-

[True copy]

P.S. to Judge