

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

OP(C).No. 2400 of 2015 (O)

O.S. NO.429/2015 OF II ADDITIONAL MUNSIF COURT, ERNAKULAM.

.....

PETITIONER(S):

- 1. GEORGE NILAVARETH,
NILAVARETH HOUSE, PC. ROAD,
KALOOR, KOCHI- 682 017.**
- 2. MOHAMMED ALI, S/O.ABOOBACKER HAJI,
AGED 65 YEARS, SEIKO, KOLPARAMBIL HOUSE,
CHACKALAPADOM ROAD, KALOOR -17,
ELAMKULAM VILLAGE, KANAYANNUR TALUK.**
- 3. YOUSUFF ALI, S/O.ABOOBACKER HAJI,
AGED 72 YEARS, SEIKO, KOLPARAMBIL HOUSE,
CHACKALAPADOM ROAD, KALOOR -17,
ELAMKULAM VILLAGE, KANAYANNUR TALUK.**
- 4. HUSSAINKUTTY, S/O.ABOOBACKER HAJI,
AGED 67 YEARS, SEIKO, KOLPARAMBIL HOUSE,
CHACKALAPADAM ROAD, KALOOR -17,
ELAMKULAM VILLAGE, KANAYANNUR TALUK.**
- 5. N.A. ABDUL REHAMAN, S/O.ABOOBACKER,
AGED 67 YEARS, RESIDING AT NABOODHIRIMADATHIL,
FREEDOM ROAD, KALOOR DESHABHIMANI, KOCHI- 17.**

**BY ADVS.SRI.P.SANKARANKUTTY NAIR,
SRI.K.SANDESH RAJA.**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY THE PRINCIPAL SECRETARY,
LAND REVENUE DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM- 695 001.**

OP(C).No. 2400 of 2015 (O)

- 2. DISTRICT COLLECTOR,
ERNAKULAM COLLECTORATE,
KAKKANAD, KOCHI -682 030.**
- 3. SPECIAL TAHSILDAR (LA) NO.1,
KOCHI METRO RAIL PROJECT, CIVIL STATION,
KAKKANAD, KOCHI- 682 030.**
- 4. KOCHI METRO RAIL CORPORATION LTD.,
REPRESENTED BY ITS MANAGING DIRECTOR,
REVENUE TOWER, KOCHI- 682 011.**

**R1 TO R3 BY GOVT. PLEADER SRI.TOM K.THOMAS.
R4 BY SRI.K.JAJU BABU, SENIOR ADVOCATE.
ADV. SMT.M.U.VIJAYALAKSHMI, SC.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 13-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

rs.

OP(C).No. 2400 of 2015 (O)

APPENDIX

PETITIONER'S EXHIBITS:-

- P1: TRUE COPY OF THE PLAINT IN OS.NO.429/2015 ON THE FILE OF THE 2ND ADDITIONAL MUNSIFF COURT, ERNAKULAM.
- P2: TRUE COPY OF THE JUDGMENT DATED 01.04.2015 IN OS.NO.429/2015 OF THE 2ND ADDITIONAL MUNSIFF COURT, ERNAKULAM.
- P3: TRUE COPY OF THE APPEAL DATED 09.04.2015 IN AS.NO.63/2015 ON THE FILES OF THE DISTRICT COURT, ERNAKULAM.
- P4: TRUE COPY OF THE IA.NO.1858/2015 IN AS.NO.63/2015 ON THE FILES OF THE 7TH ADDITIONAL DISTRICT COURT, ERNAKULAM (ADHOC-II).

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

K. ABRAHAM MATHEW, J.

O.P.(C). No. 2400 of 2015

Dated this the 13th day of October, 2015

J U D G M E N T

Petitioner is the appellant in AS.No.63 of 2015 on the file of District Judge, Ernakulam. The appeal is filed against the decree by which the trial court dismissed the petitioner's suit as not maintainable.

2. The apprehension of the petitioner is that his property will be acquired by the respondent/State without a notification under the Land Acquisition Act. The trial court found that the suit is not maintainable. The appeal against the decree has already been taken on file. The only request of the petitioner is to direct the learned District Judge to dispose of Ext.P4 commission application filed by him. The learned counsel for the first respondent/State submits that unless the court enters the finding that the suit is maintainable, it cannot depute a commissioner to make a local inspection. This is a matter for the appellate court to decide. It may take a decision either way.

In the result, this O.P is disposed of with a direction

to the District Judge to dispose of Ext.P4 commission application within one month from the date of receipt or production of a copy of this judgment.

sd/-

K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge