

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 5TH DAY OF JUNE 2015/15TH JYASHTA, 1937

SA.No. 568 of 1996 (A)

**AGAINST THE JUDGMENT IN A.S.NO.95/1991 OF THE DISTRICT COURT,
KOZHIKODE DATED 21-06-1995**

**AGAINST THE JUDGMENT IN O.S.NO.840 OF 1986 OF THE II ADDITIONAL
MUNSIFF COURT, KOZHIKODE, DATED 31-01-1991**

APPELLANT(S)/1ST APPELLANT/1ST PLAINTIFF :

**MANATT RADHAKRISHNAN, AGED 56 YEARS,
S/O.APPU**

BY ADV. SRI.MKS.MENON

RESPONDENT(S)/RESPONDENTS 1 TO 3 & APPELLANTS 2 TO 11 :

- 1. STATE OF KERALA,
REPRESENTED BY THE DISTRICT COLLECTOR,
KOZHIKODE.**
- 2. THE SPECIAL TAHSILDAR LAND ACQUISITION,
KOZHIKODE.**
- 3. THE REGIONAL DEPUTY DIRECTOR OF EDUCATION,
KOZHIKODE.**
- 4. MANATT SUNANDA, AGED 47 YEARS,
W/O.BALAKRISHNAN.**
- 5. MANATT CHITHRA, AGED 33 YEARS,
D/O.BALAKRISHNAN.**
- 6. MANATT LATHIKA, AGED 51 YEARS,
W/O.CHANDRAN.**
- 7. MANATT MURALEEDHARAN, AGED 34 YEARS,
S/O.CHANDRAN.**

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8. MANATT MAHIDAR, AGED 37 YEARS,
-DO-
9. -DO- SHEEBA, AGED 30 YEARS,
D/O.CHANDRAN.
10. -DO- SHEEJA, AGED 33 YEARS,
-DO-
11. -DO- SASIDHARAN, AGED 31 YEARS,
S/O.CHANDRAN.
12. -DO- SHEELA, AGED 29 YEARS,
D/O.CHANDRAN.
13. -DO- RADHIKA, AGED 21 YEARS (MINOR),
REP. BY HER MOTHER 4TH APPELLANT.

*** ADDITIONAL R14 IMPEADED**

14. THE PARENT TEACHERS' ASSOCIATION,
MEENCHANDA GOVERNMENT HIGH SCHOOL,
REG.NO.25/74, REP. BY ITS PRESIDENT DIVAKARAN.

*** ADDITIONAL R14 IS IMPEADED AS PER ORDER DATED 13.03.1997 IN
C.M.P.NO.365 OF 1997.**

**R1 TO R3 BY GOVERNMENT PLEADER SMT.LILLY LESLIE
R4 TO R13 BY ADV. SRI.V.SANTHARAM
R14 BY ADV. SRI.N.P.SAMUEL**

**THIS SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 05-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

P.BHAVADASAN, J.

S.A. No. 568 of 1996

Dated this the 05th day of June, 2015

J U D G M E N T

Plaintiff is the appellant. The grievance of the plaintiff is that while acquiring his property for the purpose of setting up a U.P. School, the only pathway, which gave access to him to his well and other portion of the property, was also acquired and he was not paid compensation.

2. The grievance actually was that while constructing the compound wall of the school, the way was blocked. In the plaint, it is seen stated that there is no other way for ingress and egress to the plaint A schedule property. It was contended that the pathway fell within the exempted category and it could not have been acquired. The plaintiff claimed prescriptive right of easement over the pathway. Claiming so, a suit for declaration and injunction was laid.

3. The defendants resisted the suit. They disputed the right claimed by the plaintiff and pointed out that

acquisition was done in accordance with law. There was an O.P. against acquisition proceedings and that stalled the acquisition proceedings for considerable time. After O.P. was disposed of, acquisition proceedings were completed. Compensation awarded for the land and improvements has been deposited in the Sub Court, Kozhikode on 26.10.1986. It is pointed out that the plaintiff is not entitled to any relief and they prayed for dismissal of the suit.

4. On the basis of the above pleadings, issues were raised by the trial court. The evidence consists of the testimony of PW1 examined and Exts. A1 to A13 marked from the side of the plaintiff. The defendants examined DW1.

5. The trial court, after going through the records, found that as far as the way in question is concerned, though they objected to the acquisition, they in alternative proposed that if the way is to be acquired, they should be given compensation for the same and also for injurious

affection to the rest of the property. A reading of the judgment of the trial court shows that at the time of argument, the learned counsel appearing for the plaintiffs did not press the prayer for declaration in the suit and confined his argument only to prohibitory injunction. The trial court formed the opinion that the acquisition proceedings could not be challenged in court and there were other efficacious remedies available to the plaintiffs and thus, dismissed the suit.

6. The aggrieved plaintiffs carried the matter in appeal as A.S.No. 95/1991 before the District Court, Kozhikode. The District Court also found that the issue is covered by a decision reported in **State of Kerala & Another v. Gopinathan Nair & Another** [1975 KLT 497] and applying the principles thereon and also pointing out that the plaintiffs had sought for compensation which shows that the way was not indispensable and they could not get any relief of injunction from the lower appellate court.

Accordingly, the appeal was also dismissed.

7. Notice was issued on the following substantial questions of law:

“i) Whether the courts below were right in holding against that the appellant is not entitled for a right of pathway by easement by necessity through plaint A schedule property.

ii) Whether the Court below were right in holding against Section 13(c) of the Indian Easement Act stating that the appellant is estopped from raising the claim for easement by necessity since he has already accepted compensation amount for the adjacent property which were acquired under the Land Acquisition proceedings.

iii) Whether the court below correctly appreciated the law provided under Sec.13(c) of the Indian Easement Act.

iv) Whether the Court below were right in holding that the appellant lost his right for pathway by easement by necessity which arose at the moment when the land through which they were having a right of pathway was acquired under the Land Acquisition and another portion was specifically excluded.

v) Whether the right to use the

pathway by necessity arise after the transfer of the property through which an earlier pathway existed or is it continuing right which continued even after the acquisition proceedings.

vi) Whether the courts below were right in holding that the appellant lost his right of pathway by easement of necessity especially in view of the fact that the house of the appellant was exempted from acquisition specifically and when such an exemption is made it includes all easementary right which are necessary for the enjoyment of the house which were exempted from the acquisition."

8. After having heard the learned counsel for the appellant, this Court finds no ground to interfere with the findings of the courts below. If the challenge is against the acquisition proceedings, the remedy is elsewhere. If the case is that no compensation had been awarded on acquisition of the way, then also the remedy is elsewhere. As rightly noticed by both the courts below, the plaintiffs have no case that the way cannot be acquired or that they should be provided with an alternate way. All that they

clamour is for compensation. On their own showing, the injury, if any, caused could be remedied by awarding compensation. Moreover, it is extremely doubtful whether this Court can interfere with the acquisition proceedings also.

For the above reasons, this appeal is without merits and it is accordingly dismissed.

Sd/-
P.BHAVADASAN
JUDGE

ds

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P.A. to Judge