

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 16TH DAY OF JANUARY 2015/26TH POUSHA, 1936

OP(C).No. 2424 of 2014 (O)

IA. NO.732/2014 IN LAR. NO.57/2013 OF SUB COURT, KOTTARAKKARA.

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PETITIONER/CLAIMANT:

SUNDARESAN, AGED 54 YEARS,
S/O.VASUDEVAN, THATTEKKATU VEEDU,
K.V. NAGAR, A-88, KURISUMAM, PEYADU,
THIRUVANANTHAPURAM, FROM THATEEKKATTU VEEDU,
PADINJATTINKARA MURI, EDAMULAKKAL, KOLLAM.

BY ADV. SRI.ARUN BABU.

RESPONDENTS/RESPONDENT:

STATE OF KERALA,
REPRESENTED BY DISTRICT COLLECTOR,
KOLLAM-13.

BY GOVT. PLEADER SRI.JUSTIN JACOB.

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 16-01-2015,
ALONG WITH OP(C). NO. 2426 OF 2014 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

OP(C).No. 2424 of 2014 (O)

APPENDIX

PETITIONER'S EXHIBITS:-

- P1: COPY OF THE OBJECTION DATED 11/04/2012 SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT.
- P2: COPY OF THE I.A.732/2014 IN LAR. 57/2013.
- P3: COPY OF THE ORDER DATED 10/07/2014 IN I.A.732/14 IN LAR. 57/2013.
- P4: COPY OF THE ORDER DATED 25/09/2014 IN I.A.1280/2014 AND I.A.1281/2014.
- P5: COPY OF THE ORDER IN I.A.283/2014 IN LAR. NO.8/2013 OF THE SUB COURT, KOTTARAKKARA.

RESPONDENT'S EXHIBITS:-

NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

P. BHAVADASAN, J.

O.P.(C). Nos. 2424, 2426, 2437,
2444 & 2705 of 2014 &
O.P.(C). No. 88 of 2015

Dated this the 16th day of January, 2015.

JUDGMENT

These petitions are directed against the orders in the respective petitions whereby the court below allowed the Commission as prayed for by the petitioners in these cases and disallowed the prayer for assistance of the Surveyor for measurement of the property.

2. All these cases arise out of an acquisition proceedings and the dispute involved seems to be regarding the extent of property acquired also. To be more precise, the petitioners have a case that a private pathway was acquired and compensation was not given for that portion of the land acquired. They say that the said pathway was formed by taking lands from the property owners residing on either side of the said pathway and on acquisition of that

pathway, they are entitled to compensation. It is pointed out that the petitioners in all these petitions, on receipt of notice, had objected to this aspect specifically and the learned counsel appearing for the petitioners before this Court has read out to this court the objection taken regarding the measurement of the property at the time of receiving notice of acquisition. There is a specific statement in the objections raised that they are entitled to compensation for that portion of the land also and each of the owners of the property residing on either side of the pathway were entitled to compensation with respect to the area that belonged to them and was taken in by the pathway.

3. When the reference was made, the petitioners wanted those portions to be specifically ascertained so as to stake their claim for enhanced compensation. The court

below unfortunately allowed only the commission application and declined to grant aid of the Surveyor on the ground that there is no objection regarding the measurement taken initially.

4. The above finding of the lower court does not appear to be quite correct in view of Ext.P1. In O.P.(C) 2424 of 2014 Ext.P1 is the objection filed. Paragraph 2 of Ext.P1 at page 1 makes mention of this fact in detail. It is submitted by the learned counsel for the petitioners that the petitioners in all these petitions have filed similar objections. If that be so, the finding of the court below that there is no objection regarding the measurement prima facie appears to be incorrect. At any rate, this is a matter to be gone into in detail at the time of evidence and hearing and there is no harm caused to the State by making available the services of a Surveyor in measuring the extent of property so as to

find out the area so acquired and the compensation due to the petitioners in these petitions on that account, if any.

In the result, these petitions are allowed and the impugned orders declining to allow the services of a Surveyor are set aside and it is directed that the assistance of a Surveyor shall be made available to the Commissioner at the expense of the petitioners as determined by the lower court.

sb.

P. BHAVADASAN,
JUDGE