

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 2ND DAY OF SEPTEMBER 2015/11TH BHADRA, 1937

WA.NO. 112 OF 2010 () IN WP(C).4739/2009

AGAINST THE ORDER/JUDGMENT IN WP(C) 4739/2009
OF HIGH COURT OF KERALA DATED 13-11-2009

APPELLANT(S)/PETITIONER IN WPC NO.4739/09:

T.P.DEVARAJ, S/O. PRABHAKARAN,
THUNDIPARAMBIL HOUSE, MANJUMMEL, ELOOR.

BY ADVS.SRI.SIBY MATHEW
SRI.PHILIP J.VETTICKATTU
SRI.B.PREMNATH (E)

RESPONDENT(S)/RESPONDENTS IN WPC 4739/09:

1. THE SPECIAL TAHSILDAR(LAND ACQUISITION),
VALLARPADOM INTERNATIONAL CONTAINER TRANSSHIPMENT
TERMINAL PROJECT, ELOOR.

2. THE DISTRICT COLLECTOR,
ERNAKULAM.

3. NATIONAL HIGHWAY AUTHORITY OF INDIA
(NHAI), REPRESENTED BY ITS PROJECT DIRECTOR, 29/1298
VYTTILA P.O., ERNAKULAM.

R3 BY ADV. SRI.THOMAS ANTONY

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON
18.08.2015, THE COURT ON 02-09-2015 DELIVERED THE FOLLOWING:

ASHOK BHUSHAN, C.J.

and

A.M. SHAFFIQUE, J.

=====

W.A. No.112 of 2010

=====

Dated this the 2nd day of September, 2015

J U D G M E N T

Ashok Bhushan, C.J.

This Writ Appeal has been filed against the judgment dated 13.11.2009 in W.P(C)No.4739 of 2009 by which the Writ Petition filed by the petitioner seeking direction to extend the benefit of Ext.P3 rehabilitation package to the petitioner in full has been dismissed.

2. Brief facts of the case are: Petitioner owned 0.81 Ares of land in Sy.No.97/4A - A1 to A6 in which his residential building also existed. Petitioner owned another extent of 07.08 Ares of land in Sy.No.97/5-2. Both the plots were situated in Eloor Village being on both sides of a Panchayat road. Both the plots were notified for acquisition for the Vallarpadom International

Container Transshipment Terminal Project Apart from Eloor Village, lands from other Villages were also acquired. Challenging the acquisition W.P(C) No.37570 of 2007 **(V.D.Martin v. State of Kerala)** and other Writ Petitions were filed which were decided by a learned Single Judge of this Court vide judgment dated 20.06.2008. Rehabilitation Package which was issued by the Government was also approved by this Court. State Government issued Government Order dated 18.03.2008 by which orders were issued for rehabilitation of families who would be evicted from the Kadamakudi Village. By subsequent Government Order dated 22.06.2008 benefit extended to Kadamakudi Village was also extended to other Villages including Eloor Village. Another Government Order dated 06.12.2008 (Ext.P3) was issued where rehabilitation package was announced equal to half cent of land and land value as per the extent of the land from which land

owners were evicted was directed. After the Government Order, the petitioner gave his consent to accept the DLPC rates. Value was computed and petitioner executed a sale deed in favour of the National Highway Authority in respect of 0.81 Ares of land in Sy.No.97/4A-1 to A6. Petitioner, aggrieved by the rehabilitation benefit extended to him filed the Writ Petition praying for the following reliefs:

“i) Issue a writ of Mandamus or any other appropriate writ, order or direction commanding respondents 1 and 2 to extend the benefit of Ext.P3 package to the petitioner in full.

ii) Issue a Declaration that the petitioner is entitled to 4 cents of land, Rs.60,000/- by way of shifting charges and value of 2 cents of land ($\frac{1}{2} + \frac{1}{2}$) in terms of Ext.P3 package; and

iii) To grant such other reliefs as this Honourable Court may deem just and fit in the circumstances of the case.”

3. A statement was filed by the respondents in

the Writ Petition where it was stated that petitioner was found eligible for land value of half cent + land value of half cent (DLPC rate) + Rs.50,000/- as rent for 10 months + Rs.10,000/- towards shifting charges and the amount he was eligible was already paid. It was pleaded that petitioner's land of 0.81 Ares in Sy.No.99A/4/A1 to A6 consisted residential house and the petitioner was paid land value treating his acquired land as less than five cents.

4. Learned Single Judge by the impugned judgment dismissed the Writ Petition accepting the plea of the respondent that land lost by the petitioner was less than five cents and hence he was not entitled for the benefit admissible to those persons who lost land more than five cents and the benefits as contemplated having already been given there is no merit in the Writ Petition.

5. Learned counsel for the appellant challenging

the judgment of the learned Single Judge contended that petitioner's land, 0.81 Ares in Sy.No.99A/4/A1 to A6 and 07.08 Ares in Sy. No.97/5/2 was acquired for the purpose. Although his residential house is situated in Sy.No.97/5-2, for the purpose of computing the rehabilitation benefit his land acquired in both the plots ought to have been treated as more than five cents whereas he has been extended the benefit of rehabilitation package treating his land lost only as two cents, i.e., less than five cents.

6. Learned Government Pleader refuting the submissions of the learned counsel for the appellant contended that rehabilitation package was issued only for those who faced eviction on account of the acquisition and benefit of rehabilitation package was given to those persons taking into consideration the area of land from which they were evicted which contained their residence also. It is submitted that

petitioner's land in which residential house existed being only two cents he was extended the benefit of rehabilitation package available to land losers of less than five cents. Petitioner's claim that he lost land more than five cents including another area of plot which is 07.08 Ares and he should have been extended the benefit equivalent to those who lost land than five cents cannot be accepted. It is submitted that with regard to the another plot, i.e., 07.08 Ares which situated in Sy.No.97/5-2 and divided by a Panchayat road, petitioner has already received compensation admissible for the acquisition of the aforesaid land.

7. We have considered the submission of the learned counsel for the parties and perused records.

8. The only issue to be answered in this appeal is whether the petitioner was entitled to the rehabilitation benefit as contemplated by different Government Orders taking into the area in acquisition which consisted his

residential house or for computing the rehabilitation benefit the area of another plot which is situated in Sy.No.97/5/2 across the Panchayat road has also to be taken into consideration.

9. In the statement filed by the respondent before the learned Single Judge the following was stated in paragraphs 3 and 4:

“3. It is submitted that an extent of 0.81 ares of land comprised in Sy. No.97/4A-A1-A6Pt of Eloor Village along with a residential building situated therein and an extent of 7.08 ares of land comprised in Sy.No.97/5-2 of Eloor Village was acquired for the purpose of 4 line connectivity to ICTT Vallarpadom. The petitioner filed consent letter to accept the DLPC package announced by the Government. Accordingly, the land mentioned aforesaid was handed over to the National Highway Authority of India. As the petitioner filed his consent under DLPC package and the land was handed over to NHAI, the payment under the package was given to the petitioner. Further an amount of rs.1,30,700/- was paid to the petitioner towards rehabilitation package. The extent of land in which the residential building of the petitioner is situated is 0.81 ares. Hence the petitioner was found eligible for the land value of

half cent + land value of half cent (DLPC rate) + Rs.50,000/- as rent for 10 months as shifting charges + Rs.10,000/- towards shifting charges.

4. As far as the land in Survey No.97/5-2 is concerned, it is entirely a different plot and a Panchayat road is passing in between the said land and land coming under Sy.No.97/4A-A1-A6Pt. The extent of land coming under Sy.No.97/5-2 (07.08 ares) cannot be considered for the rehabilitation package announced for the evictees as the same is only a paramba and the petitioner has been granted alterante land for the loss of homestead situated in Sy.No.97/A4-A1-A6Pt.”

From the facts of the present case and the submissions made by the learned counsel for the appellant it is clear that in event for rehabilitation package petitioner's residential house is taken into consideration, i.e., two cents, he was entitled for the value of one cent and if both the plots were taken into consideration he was entitled for the value of two cents. Thus the only issue is as to whether the petitioner is entitled for the benefit of one cent or two cents.

10. Government Orders dated 18.03.2008 and

26.05.2008 clearly mention that benefits were extended to families who were evicted in connection with the acquisition for the four lane road. It is useful to extract the following portion of Government Order dated 18.03.2008.

“The steps for acquiring land for the purpose of constructing 4 line road and railway line as part of the Central Government Project viz., Vallarpadom International Container Transshipment Terminal Project are at its last stage. The Sub Committee consisting of Minister for Revenue, Minister of Law and Parliamentary Affairs and Minister for Fisheries and Registration had discussions with legislative representatives, representatives of political parties and also local residents and all other concerned pertaining to the rehabilitation of those who would be evicted as part of the land acquisition.”

By Government Order dated 26.05.2008 also it was noted that benefits were ordered to the families of Kadamakudy Village who were evicted in connection with acquisition for the four lane road. The statement

produced on behalf of the respondent states that the criteria fixed for rehabilitation was to the extent of land in which residential plot is situate and rehabilitation is given taking into consideration the area of the plot from which a family is evicted. Admittedly, petitioner's residential building was situated in Sy.No.97/4A-A1 to A6 having an area of 0.81 Ares equivalent to two cents. Thus rehabilitation package was prepared taking into consideration the two cents of land from which the petitioner was evicted. Petitioner's submission that rehabilitation package ought to have been prepared adding 07.08 Ares of land in another survey number, i.e., 97/5-2 cannot be accepted. Admittedly the land in Sy.No.97/5-2 is only paramba and no residential building was situated therein. There is no issue regarding non-payment of compensation for the acquisition of the aforesaid plot in Sy.No.97/5-2. Pleading of the petitioner in paragraph 5 of the Writ

Petition has clearly stated the nature and extent of the rehabilitation package offered by the State. It is useful to quote paragraph 5 of the Writ Petition:

“...Accordingly the government issued an order dated 6.12.2008 offering the package of 4 cents of land and value of one cent of land to all the evictees of all villages with a shifting charge or Rs.60,000/- in case they lost less than 5 cents and value of 2 cents of lands in case they lost more than 5 cents of land. A true copy of the said government order is produced herewith and marked as Exhibit P3. Accordingly, steps are now being taken to issue pattas in respect of 4 cents of land and value of one cent of land to all the evictees from all the villages in connection with the project.”

Thus in view of the aforesaid discussion we do not find any error in the action of the respondents in extending the benefit under the rehabilitation package to the petitioner treating his land as two cents in which his residential building was existed and from which he was evicted. Rehabilitation was given only to rehabilitate

the evicted families due to loss of their residence. Area of land on which their residence existed was taken as the basis for computation of the benefit, i.e., for area less than five cents one cent value and for area more than 5 cents two cents value. We do not find any error in giving the value of one cent to the petitioner since his area of land lost is less than five cents. There is no merit in the Writ Appeal.

The Writ Appeal is dismissed.

**ASHOK BHUSHAN,
CHIEF JUSTICE.**

**A.M. SHAFFIQUE,
JUDGE.**