

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRA

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

WP(C).No. 414 of 2010 (B)  
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PETITIONER:  
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V.K.KUNHAMINA, D/O.UMMERKUTTY,  
NEAR GOVERNMENT HIGH SCHOOL, ETTIKULAM POST  
RAMANTHALI VILLAGE, PAYYANNUR, THALIPARAMBA  
TALUK, KANNUR DISTRICT.

BY ADV. SRI.O.RAMACHANDRAN NAMBIAR

RESPONDENT(S):  
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1. STATE OF KERALA,  
REPRESENTED BY THE DISTRICT COLLECTOR, COLLECTORATE  
KANNUR DISTRICT.
2. SPECIAL TAHSILDAR (LA),  
OFFICE OF THE SPECIAL TAHSILDAR  
EZHIMALA NAVAL ACADEMY, PAYYANNUR, KANNUR DISTRICT.

BY GOVERNMENT PLEADER SRI P.V.ELIAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29-06-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**APPENDIX IN WPC.414/2010**

**PETITIONER'S EXTS:**

- EXT.P1: COPY OF APPLICATION DT.24.4.98 BEFORE THE 1ST RESPONDENT.
- EXT.P2: COPY OF ORDER DT.31.1.09 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.
- EXT.P3: COPY OF PETITION DT.2.3.09 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
- EXT.P4: COPY OF PETITION UNDER SECTION 28A(3) DT.3.3.09.
- EXT.P5: COPY OF ORDER DT.20.3.09 ISSUED BY THE 2ND RESPONDENT REJECTING EXT.P3.
- EXT.P6: COPY OF ORDER DT.13.3.09 ISSUED BY THE 2ND RESPONDENT.

RESPONDENTS' EXTS: NIL

TRUE COPY

P.S.TO JUDGE

dsn

**ANIL K.NARENDRA, J**

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**W.P.(C)No.414 Of 2010**  
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**DATED THIS THE 29<sup>th</sup> DAY OF JUNE, 2015**

**JUDGMENT**

The petitioner has filed this Writ Petition seeking a writ of certiorari to quash Ext.P5 notice and seeking a writ of mandamus commanding the 2<sup>nd</sup> respondent to refer Ext.P4 petition filed under Section 28A(3) of the Land Acquisition Act, 1894 to the reference court having jurisdiction to determine the issue regarding compensation.

2. Going by the averments in the Writ Petition, 1 Acre 64 Cents of land owned by the petitioner in Ramanthali Village was acquired for the purpose of Ezhimala Naval Academy. The petitioner received the compensation fixed by the Land Acquisition Officer. Thereafter, in L.A.R.No.120/1987 the Sub Court, Payyannur redetermined the compensation of the adjacent properties, which are similarly situated with that owned by the petitioner. The petitioner, after obtaining a certified copy of the judgment in L.A.R.No.120/1987 filed a petition under Section 28A of the Act before the 1<sup>st</sup> respondent requesting that, the compensation may be

redetermined under the aforesaid Section.

3. In Ext.P1 application, the survey number of the property was shown by mistake as R.S.No.77/4. Therefore, the 2<sup>nd</sup> respondent by Ext.P2 order dated 31.1.2009 rejected Ext.P1 application stating that no property is acquired from the petitioner in Sy.No.77/4 of Ramanthali Village. Later, on verification, the petitioner found that re-survey number 77/4 was wrongly shown in Ext.P1 because a portion of the property in that re-survey number was acquired from her brother Ibrahim and the petitioner was under the impression that her property was also situated in the very same re-survey number. The correct survey number of the property acquired from the petitioner is R.S.No.83/1 (in respect of 0.0050 hectares) and R.S.No.83/2 (in respect of 0.6475 hectares). In such circumstances, the petitioner filed Ext.P3 application dated 2.3.2009 before the 2<sup>nd</sup> respondent, which was followed by Ext.P4 petition under Section 28A(3) of the Act, for referring the matter to the competent court for adjudication. But Ext.P3 was rejected by Ext.P5 order dated 20.3.2009 of the 2<sup>nd</sup> respondent stating that the earlier decision

cannot be reviewed. Similarly, the 2<sup>nd</sup> respondent has also rejected Ext.P4 by Ext.P6 order dated 13.3.2009 stating that since no property is acquired from the petitioner, the petition cannot be referred to the competent court having jurisdiction. It is aggrieved by Exts.P5 and P6, the petitioner is before this Court in this Writ Petition.

4. Heard arguments of the learned counsel for the petitioner and also the learned Government Pleader appearing for the respondents.

5. Relying on the judgment of a Division Bench of this Court in W.A.No.524/2010, the petitioner would contend that the 2<sup>nd</sup> respondent ought to have permitted her to furnish the correct survey number in the application submitted under Section 25A of the Act. Relying on a judgment of this Court in **District Collector, Kannur v. Athickal Muhammed Kunhi (2013 (1) KHC 13)**, the learned counsel would contend further that redetermination of compensation could be sought on the basis of any one of the awards of the reference court as long as it pertains to other lands covered under the same notification

where the claimant had not sought for reference earlier. The period of limitation would start running from the last award, provided that the award is subsequent to the coming into force of Section 28A of the Act if application is filed within three months from the date of making award on the basis of which redetermination of compensation is sought for. Hence there is no restriction so far as the earliest award.

6. In the case on hand, admittedly the petitioner has committed certain mistakes while submitting Ext.P1 application. Therefore, the said application was rejected by Ext.P2 order for the reason that the property in respect of which acquisition was made is owned by another person. Then the petitioner submitted Ext.P3 representation along with Ext.P4 application under Section 28A(3) of the Act, which ended in dismissal by Exts.P5 and P6 orders stating that there is no provision to review an earlier order and that the application was rightly rejected on the ground that no land was acquired from the petitioner.

7. The learned counsel for the petitioner would submit that the Office of the Special Tahsildar, Ezhimala Naval Academy,

Payyannur has already been abolished and the files have already been transferred to the Office of another Tahsildar.

8. The issue raised in this Writ Petition is covered in favour of the petitioner by the judgment of a Division Bench of this Court dated 22.3.2010 in W.A.No.524/2010 and also the judgment of this Court in **District Collector, Kannur v. Athickal Muhammed Kunhi** (2013 (1) KHC 13), which I have already referred to in the foregoing paragraph of this judgment.

9. In such circumstances, this Writ Petition is disposed of with the following directions:

(i) Within two weeks from the date of receipt of a certified copy of this judgment, the petitioner shall furnish the correct survey number of her property, which is the subject matter in Ext.P1 application, before the competent authority exercising the powers of the 2<sup>nd</sup> respondent, on abolition of that Office.

(ii) On receipt of the survey number, the competent authority exercising the powers of the 2<sup>nd</sup> respondent shall consider Ext.P1 application on merits and pass appropriate orders thereon, with notice to the petitioner and after affording her an opportunity of being heard. To the limited extent of enabling the petitioner to furnish correct survey No.

of the property mentioned in Ext.P1 application and the Tahsildar concerned to comply with this direction, Exts.P5 and P6 are quashed.

It is made clear that I have not expressed anything on the merits of the application made by the petitioner under Section 28A of the Act and it is for the competent authority to take an appropriate decision on Ext.P1, strictly in accordance with the provisions under the Land Acquisition Act and the rules made thereunder.

Sd/-

**ANIL K.NARENDRA, JUDGE**

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