

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 4TH DAY OF FEBRUARY 2015/15TH MAGHA, 1936

WA.No. 179 of 2015 IN WP(C).27302/2014

**AGAINST THE JUDGMENT IN WP(C) 27302/2014 of HIGH COURT OF KERALA
DATED 10-11-2014**

APPELLANT/PETITIONER:

**DEEPU M.R., AGED 50 YEARS, S/O. RAMDAS,
N.M. HARDWARES, DOOR NO.1129/20, KIZHAKKEKOTTA,
TRIPUNITHURA RESIDING AT MATTIANPARAMBIL MARKET ROAD,
TRIPUNITHURA.**

**BY ADVS.SRI.T.A.SHAJI (SR.)
SRI.M.A.ASIF**

RESPONDENTS/ RESPONDENTS:

- 1. SECRETARY TO GOVERNMENT,
LAND REVENUE DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM 695 001.**
- 2. DISTRICT COLLECTOR, COLLECTORATE,
KAKKANAD, ERNAKULAM - 682 030.**
- 3. SPECIAL TAHASILDAR LAND ACQUISITION (GENERAL),
COLLECTORATE, KAKKANAD, ERNAKULAM 682 030.**
- 4. LAND REVENUE COMMISSIONER,
LAND REVENUE, THIRUVANANTHAPURAM 695 001.**
- 5. UNION OF INDIA, MINISTRY OF FINANCE,
REPRESENTED BY SECRETARY TO GOVERNMENT,
DEPARTMENT OF REVENUE, NEHRU PLACE,
NEW DELHI, DL 110019.**

**R1 TO R4 BY SENIOR GOVERNMENT PLEADER SRI. P.I.DAVIS
R5 BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 04-02-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

JJJ

**ASHOK BHUSHAN, Ag. C.J.
&
A.M. SHAFFIQUE, J**

W.A. No. 179 of 2015

Dated this the 4th day of February, 2015

J U D G M E N T

Ashok Bhushan, Ag. C.J.

Heard the learned senior counsel appearing for the appellant, Sri. T.A. Shaji.

2. This Writ Appeal has been filed against the Judgment dated 10th November, 2014, in Writ Petition (C) No.27302 of 2014, by which Judgment the Writ Petition filed by the appellant has been dismissed. The proceeding for acquisition of land of the petitioner, under the Land Acquisition Act, 1894, (hereinafter referred as 'the Act') was initiated by issuing notification under Section 4 of the Act. The notification was published in the Gazette on 9th April, 2013 and was published in the newspaper on 12th April, 2013 and 22nd April, 2013. Public notice was also issued in

the locality, last of which was published in the locality on 10th May, 2013. Section 6 notification was issued on 24th April, 2014. The appellant filed the Writ Petition challenging Ext.P5 declaration under Section 6 of the Act, and all further proceedings pursuant to the same.

3. The learned Single Judge dismissed the Writ Petition relying on Section 4(1) of the Act and public notice having been issued on 10th May, 2013, as per endorsement made in Ext.R3(b). The learned counsel for the appellant, challenging the Judgment, has submitted that the endorsement was made only by an Office Attendant for publication of notice in the locality, which ought not to have been relied. He submits that the publication in the newspaper having been issued on 22nd April, 2013, the declaration of Section 6 was clearly beyond the period of one year. He further submits that in the newspaper publication dated 22nd April, 2013, one month's time was allowed to file objection under Section 5A of the Act and

taking the date of publication as 10th May, 2013, the one month period shall not be available for filing an objection. The learned counsel for the appellant further sought to contend that provisions of the new Act - The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, being Act 30 of 2013, could not apply for determination of compensation alone, rather, under the said provision this acquisition ought to have lapsed.

4. We have considered the submissions of the learned senior counsel appearing for the appellant and perused the records.

5. Section 4(1) of the Land Acquisition Act, 1894, provides as follows:

“Publication of Preliminary notification and powers of officers thereupon.”-(1) Whenever it appears to the appropriate Government or to the Board of Revenue or to the collector that land in any locality in the State of Kerala or

within the jurisdiction of the collector is needed or is likely to be needed for any public purpose or for a company, a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality **the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification."**

(Emphasis supplied)

6. Section 4(1) specifically defines as to what shall be the date of publication of the notification. The said provision has been specifically inserted by the Land Acquisition (Amendment) Act, 1984, to clarify the date of publication of the notification. As per Section 4(1) of the Act, the notification has to be published in the official Gazette and in two daily newspaper circulating in that

locality, of which at least one shall be in the regional language and the Collector is also to cause public notice of the substance of such notification at convenient places and the last of such dates of publication shall be the date of publication of the notification. In the present case, the last of such dates is 10th May, 2013, on which date public notice was published, which is evidenced by endorsement made by the Office Attendant in Ext.R3(b).

7. Before the learned Single Judge it was said that public notice was challenged, but the learned Single Judge held that there is no material to disbelieve the said publication of notice. The declaration of Section 6 having been issued within one year from the last date of such publications, we do not find any infirmity in the said notification. Thus, the submission of the learned senior counsel for the appellant that declaration of Section 6 was invalid, has rightly been rejected by the learned Single Judge.

8. Now, we come to the last submission of the learned senior counsel for the appellant that Sections 4 and 6 of the Act having been issued prior to 1.1.2014, the acquisition ought to have been lapsed.

9. Section 24 of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is a provision contemplating limited category of cases where acquisition is held to be lapsed. Section 24 of the Act is as follows:

“Land acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases.-

(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894),-

- (a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply;
or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in subsection (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

10. The present case does not fall in the category of cases which are contemplated to be lapsed as per Section 24(2). It is submitted by the learned counsel for the petitioner that in the present case Award has not yet been declared. The Award having not been declared, the determination of compensation shall be in accordance with Act 30 of 2013. However, as per Section 24, the acquisition does not lapse in the facts of the present case.

In the above view of the matter, we do not find any error in the Judgment of the learned Single Judge warranting interference. Hence the appeal is dismissed.

Sd/-
ASHOK BHUSHAN,
ACTING CHIEF JUSTICE.

Sd/-
A.M. SHAFFIQUE,
JUDGE.

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