

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 8TH DAY OF SEPTEMBER 2015/17TH BHADRA, 1937

WA.No. 1703 of 2015 ()

WP(C) 24137/2010 of THIS HONOURABLE COURT

APPELLANTS/RESPONDENTS 1 TO 3 & 5 IN THE W.P(C) :

- 1. THE DISTRICT COLLECTOR AND THE CHAIRMAN, DLPC, KOLLAM 691 001**
- 2. EXECUTIVE ENGINEER,
KERALA STATE P.W.D ROADS DIVISION,
KERALA PUBLIC WORKS DEPARTMENT, KOLLAM 691 001**
- 3. ASSISTANT EXECUTIVE ENGINEER(PWD), BRIDGES SECTION,
OFFICE OF THE ASSISTANT ENGINEER BRIDGES SECTION,
KARUNAGAPPALLY 690 518**
- 4. THE STATE OF KERALA
REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT
DEPARTMENT OF DISASTER MANAGEMENT (TRP-CELL)
SECRETARIAT, THIRUVANANTHAPURAM 695 001**

BY GOVERNMENT PLEADER SRI. P.I. DAVIS

RESPONDENTS/PETITIONERS & 4TH RESPONDENT IN THE W.P(C) :

- 1. OMANA MAHASANAN, W/O. LATE MAHASANAN,
PUTHENVEEDU, ALUMPEEDIKA P.O.,
AYIRAMTHENGU**
- 2. ASHA,W/O. VINOD, PUTHENVEEDU, ALUMPEEDIKA P.O
AYIRAMTHENGU**
- 3. WILSON, AGED 45 YEARS,
S/O. VIJAYAN, PUTHENPURACKAL,
ALUMPEEDIKA P.O., AYIRAMTHENGU**
- 4. ALAPPAD PANCHAYATH, ALAPPAD,
KARUNAGAPPALLY REPRESENTED BY ITS SECRETARY
PIN 690 518**

**BY SMT.R.RANJINI
R4 BY SRI.P.K.VIJAYAMOHANAN**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 08-09-2015,
ALONG WITH WA. 1811/2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

ASHOK BHUSHAN, CJ

&

A.M.SHAFFIQUE, J.

W.A.No.1703 of 2015 & 1811 of 2015

Dated this the 8th day of September 2015

J U D G M E N T

Shaffique, J

These appeals have been filed by the State and the authorities challenging the common judgment dated 08/01/2015 in W.P.C.Nos.30520/2009 and 24137/2010. The writ petitions have been filed seeking for directions to the appellants as well as the Panchayath to comply with the Shop Re-settlement Plan (for short 'SRP') approved by the Government and also for a direction to pay transitional allowance at the rate of Rs.4,500/- per month as fixed in the Government Order dated 30/07/2007 until allotment of shop rooms in the shopping complex to be constructed by the 4th respondent Panchayath.

2. The short facts involved in the writ petition would disclose that on account of Tsunami rehabilitation scheme being done at the instance of the State and the authorities, proposal was made to construct a bridge near Kayamkulam known as Aazhika-I Ayiramthengu Palam. Petitioners were persons who

were engaged in small scale business activities in the area where land was being acquired by the Government. In order to provide rehabilitation package for such persons who would be displaced from the business, Government brought into force SRP as per Government order dated 30/07/2007. It is inter alia provided in the said package that, in addition to the land value, affected persons will be able to get certain other benefits. One of such benefits was transitional allowance of Rs.4500/- per month for six months to make up loss of income from livelihood. As far as persons who had lost their residence were concerned, they were also provided transitional allowance at the same rate for three months.

3. Another Government order dated 26/10/2007 also came to be passed wherein it was observed that in case of those persons whose shops fall within the acquired land, they should be considered for alternate house in the housing complex proposed to be constructed, instead of compensation under the rehabilitation package. Further, it was mentioned that those persons who lost their shops due to acquisition shall be provided with equivalent area of the floor space on the commercial

complex to be developed by the Panchayath.

4. Having regard to the said claims, the Government issued the following order in paragraph 6.4 of the order dated 26/10/2007 wherein it is stated as under:

“Those who lose their shops due to the acquisition shall be provided with equivalent area of the floor space in the commercial complex to be developed by the Panchayath on the following conditions.

i) Panchayat shall enter into an agreement with the allottees.

ii) No deposit of any sorts shall be collected from the allottees for allotting the space.

iii) Panchayat shall allot the space for a period of 10 years on a nominal rent. The District Collector will decide the rate of rent after consultation with the Panchayat.”

5. The proposal was that, on construction of the bridge by the PWD authorities, Panchayath will construct commercial space underneath the bridge and the said space will be allotted in favour of the persons who had lost their business place in the locality. Petitioners are persons who had lost their sheds and complained that despite such undertaking being given by the

Government, no action has been taken to construct the shop and to allocate the shop rooms to the petitioners. On these allegations, writ petitions have been filed.

6. The learned Single Judge, after taking into consideration the various aspects involved in the matter, found that there had been delay on the part of the Government in constructing the bridge and also there was delay on the part of the Panchayath in constructing the commercial space. Therefore, the petitioners, who are victims of Tsunami and whose properties have been acquired on the undertaking that space will be allotted to them in the commercial complex, are liable to be compensated and therefore transitional allowance of Rs.4500/- has to be paid to them from October 2008 till shop rooms in the shopping complex are allotted by the 4th respondent to the petitioners. There was also a direction to the 4th respondent to complete the construction to meet the commitment in the orders aforesaid which shall be done within a period of three months from the date of receipt of a copy of the judgment. It is, impugning the aforesaid judgment, that these appeals have been filed.

7. It is argued by Sri.P.I.Davis, the learned senior Government Pleader that the transitional allowance was permitted in terms of the Government Order dated 30/07/2007 only for a period of six months and thereafter there is no promise on the part of the Government to provide such benefits. Another Government Order was passed on 26/10/2007 taking into consideration the representation of the petitioners and directions issued by this Court in W.P.C.No.15129/2007. The said Government Order was issued with an intention to construct a commercial complex under the bridge which is proposed to be constructed and thereafter to allot space to the petitioners. This, apparently, could be done only after the construction of the bridge and the commercial complex. When the said situation had not arisen, it was not open for the petitioners to demand transitional allowance which was permissible only in terms of Government Order dated 30/07/2007, that too which was limited to a period of six months from the date of taking possession of the premises. It is submitted that the learned Single Judge, therefore, has committed serious error of law in directing payment of transitional allowance from October 2008. It is stated

that the construction of the bridge was completed by October 2009 and on account of various other factual circumstances, the Panchayath was unable to complete the commercial complex. There cannot be a situation that the Government should be mulcted with the liability to pay compensation in the form of transitional allowance.

8. Learned counsel for the petitioners would contend that there was gross delay on the part of the appellants as well as the Panchayath in completing the construction of the commercial building which ought to have been allotted to the petitioners, as early as in October 2008. The whole concept by which the bridge was permitted to be constructed after displacing the petitioners who were ekking out their livelihood in the said area was to complete the construction of the bridge by October 2008. However, bridge was constructed only by 2009. Even taking a rough estimate, Panchayath ought to have constructed shop rooms by October 2010 and therefore even assuming that there is some justification on the part of the Government in stating that delay was not intentional, still petitioners were entitled for transitional allowance at the rate of Rs.4,500/- per month agreed

upon by the Government from October 2010 onwards. It is stated that petitioners are persons who were ekking out their livelihood by undertaking small business activities and therefore delay had caused substantial injustice and hardship to the petitioners who could be compensated only by payment of the transitional allowance as directed in the Government Order dated 30/07/2007 until shop rooms are allotted in favour of the petitioners.

9. Learned counsel appearing on behalf of the Panchayath/4th respondent would, however, submit that, as matters stand now, the entire work has been completed and electrification is also over. What remains is only fixation of nominal rent by the District Collector in terms of the Government Order dated 26/10/2007. Once District Collector fixes the rent for the premises, it shall always be open for the petitioners to occupy the shop rooms.

10. The learned counsel for the petitioners also brought to the notice of this Court, an interim order passed by this Court on 03/02/2010, by which directions have been issued by this Court to permit the petitioners to construct the shopping complex and to claim reimbursement. However, the said construction could not

be effected on account of various reasons.

11. Having heard the learned counsel on either side, the short question to be considered is whether there is justification on the part of the learned Single Judge to have directed payment of transitional allowance at the rate of Rs.4,500/- per month to the petitioners from October 2008. Going through the documents produced in the case, it is clear that as per the Government Order dated 30/07/2007, obligation of the Government to pay transitional allowance for the persons who have lost their livelihood was Rs.4,500/- per month for six months. This was to enable the petitioners to immediately tide over their difficulties because they are displaced from their business places and to find out some other alternate arrangement. There is no mandate in the Government Order dated 30/07/2007 enabling the Government to pay transitional allowance beyond six months or to provide alternate accommodation to the petitioners in any form. But, it seems that, in the light of the directions issued by this Court in W.P.C.No.15129/2007 and the representation submitted by the petitioners, Government Order dated 26/10/2007 was issued wherein a promise was extended to

provide equivalent area of floor space in the commercial complex to be constructed by the Panchayath underneath the bridge to be constructed by the Government. It is apparent that, in the aforesaid Government Order, no specific time limit has been specified. However, taking into account the fact that there was delay on the part of the Government in proceeding with the construction activities, petitioners had approached this Court by filing the aforesaid writ petitions.

12. During the pendency of the writ petition also, at the instance of the petitioners, this Court had directed the petitioners to construct the commercial complex and to get reimbursement of the amount from the Panchayath/Government. The same also did not materialise. As matters stand now, the question is whether the petitioners are entitled to claim the benefit of the Government Order dated 30/07/2007. It is apparent from the said Government Order that the transitional allowance was payable only for a period of six months. In the subsequent Government Order dated 26/10/2007, no such eventuality has been mentioned. The only promise given was to provide space in the commercial complex at a nominal rent for a period of ten years on

certain conditions.

13. It is not in dispute that the construction got delayed. The reason for delay has not been examined by the learned Single Judge. Further, even if there was delay, the question is whether the petitioners are entitled for any compensation. Presently, the direction to pay transitional allowance is based on the fact that the petitioners were out of employment for quite a long time. Whether such a factual situation has arisen in the matter, is the question to be examined. Apparently such questions cannot be decided by a writ court. Merely for the reason that there is delay on the part of the Government/Panchayath in performing the promise in terms of the Government Order dated 26/10/20007, that by itself will not give a right to the petitioners to claim any form of damages. Even otherwise, when a claim for compensation is disputed, the same has to be adjudicated in terms with the procedure prescribed, i.e. by approaching the civil court. We do not think that a claim for compensation can be decided by invoking the public law remedy, when the controversy involved requires evidence to be adduced on either side. Since various factual

circumstances are necessary for considering whether such a claim can be justified or not, in the absence of any scheme for such payment or undertaking on the part of the appellant authorities, we do not think that the learned Single Judge was justified in directing payment of compensation to the petitioners. However, we are of the view that the learned Single Judge was justified in directing allotment of the space within a specified time, that alone can be granted, as matters stand now.

14. In the result, we set aside the judgment of the learned Single Judge and dispose of these appeals in the following manner:

That the District Collector/1st appellant shall fix the rent of the premises in question and necessary allotment shall be made after executing an agreement with the allottees within a period of two months from the date of receipt of a copy of this judgment.

(sd/-)
(ASHOK BHUSHAN, CHIEF JUSTICE)

(sd/-)
(A.M.SHAFFIQUE, JUDGE)

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