

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. 1845 of 2015 () IN WP(C).18893/2014

AGAINST THE ORDER/JUDGMENT IN WP(C) 18893/2014 of HIGH COURT OF
KERALA

APPELLANT(S) :

1. UNION TERRITORY OF LAKSHADWEEP
REPRESENTED BY ITS ADMINISTRATOR
KAVARATHI. 682 555.

2. LAND ACQUISITION COLLECTOR
UNION TERRITORY OF LAKSHADWEEP, KAVARATHI 682 555.

BY ADV. SRI.S.RADHAKRISHNAN,SC,LAKSHADWEEP ADMN

RESPONDENT(S) :

1. ATTAKOYA,
KANNARKAKKADA, ANDROTH ISLAND
UNION TERRITORY OF LAKSHADWEEP-682 551.

2. MUTHUKOYA PUTHIYADAM
S/O.KOYAMMAKOYA, PUTHIYADAM, ANDROTH ISLAND
UNION TERRITORY OF LAKSHADWEEP-682 551.

3. POOKOYA TATHANGAL KUNNANGALAM
KUNNANGALAM, ANDROTH ISLAND
UNION TERRITORY OF LAKSHADWEEP-682 551.

4. KOYA PUTHIYADAM
PUTHIYADAM, ANDROTH ISLAND
UNION TERRITORY OF LAKSHADWEEP-682 551.

BY SRI.V.P.MOHAMMED NIYAZ

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD 19.8.2015, THE
COURT ON 02-09-2015 DELIVERED THE FOLLOWING:

'C.R'

**ASHOK BHUSHAN, CJ
&
A.M.SHAFFIQUE, J**

W.A.No. 1845 of 2015

Dated this the 2nd September, 2015

JUDGMENT

Ashok Bhushan, CJ.

This Writ Appeal has been filed against the judgment dated 18.6.2015 in W.P(C).No.18893 of 2014 filed by the respondents herein, which has been disposed of by the learned Single Judge. Brief facts necessary to be noted for deciding this Writ Appeal are:

The appellants initiated proceedings under Section 4 (1) of the Land Acquisition Act, 1894 (hereinafter referred to as 'the 1894 Act) for acquisition of land for construction of C.C. Road on 22.12.2010. Urgency clause under Section 17(4) of the Act was also invoked. The Land Acquisition Collector made payment of 80% of the estimated compensation to the petitioners. The petitioners received the amount in March/February, 2012. After making

payment of 80% of the estimated compensation, possession was taken in the month of March, 2012. Declaration under Section 6 was issued on 31.1.2012. Notices under Section 9 of the Land Acquisition Act were issued. Construction of the road was completed in September, 2012 itself. However, no award under Section 11 could be declared by the Land Acquisition Officer. In the meantime, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'the 2013 Act') was enforced with effect from 1.1.2014. 20% of the balance compensation was also not paid to the petitioners. The petitioners filed the present Writ Petition praying for the following reliefs:

“i) To call for the records relating to Exhibits P1 to P6 and issue a writ of mandamus or other appropriate writ or direction, directing the 2nd respondent to pay the balance 20% amount as per exhibit P1 to the petitioners within a period of one month and pass an award

on their acquired properties as per the provisions of the New Land Acquisition Act, 2013 as expeditiously as possible, within a time frame fixed by this Hon'ble Court; or

To issue appropriate writ or direction, directing the 2nd respondent to restore the possession of the acquired properties to the petitioners;"

2. Counter affidavit was filed by the respondents in the Writ Petition, wherein it was stated that the 20% balance amount of compensation has not so far been paid to the parties due to unavoidable administrative reasons, which shall be released as early as possible. It was pleaded in the counter affidavit that 80% of the compensation has already been paid and the only entitlement is to get 20% of the balance compensation. Section 24 is silent on the emergency provision of acquisition of land under the old Act. Implementation of the completed projects under the new Act is impracticable and against the principles of law.

3. The learned Single Judge held that the award having not been passed under Section 11 of the Act, 1894, by virtue of Section 24 of the Act, 2013, the award is to be passed under the 2013 Act. The learned Single Judge however held that the amount of 20% of compensation will be disbursed and the award be passed under the new Act.

4. The Union Territory of Lakshadweep and the Land Acquisition Collector have come up in this appeal against the judgment of learned Single Judge. Sri.S.Radhakrishnan, learned counsel appearing for the appellant, in support of the appeal, contended that under Section 17(3A) of the Act, 1894, 80% of the compensation having already been paid, the only entitlement of tenure holder is to receive 20% of the balance compensation. It is contended that the intention of the Legislature under the new Act is to ensure that the persons interested are adequately compensated as early as possible when their property is acquired for a public purpose and interpreting

Section 24(1) literally shall run counter to the object of the Act, 2013. The learned Single Judge erred in directing for preparation of award under the new Act. Referring to Sections 17(3A), 17(3B) and 13 of the Act, it is contended that the above provision of the Act, 1894 clearly indicate that where the amount deposited exceeds the compensation awarded by the Collector under Section 11, the excess is to be refunded within three months from the date of the award. It is submitted that in some cases 80% of the compensation can be higher or less than the award under Section 11. A substantial part of the compensation having been paid under Section 17(3A), which situation is not contemplated under the new Act, taking into consideration the object of the Act, the view taken by the learned Single Judge cannot be supported. He submits that Section 24(1)(a) of the Act, 2013 cannot be construed literally, since it would lead to unjust and unintended results. He has placed reliance on the judgments of the Apex Court in ***Hindustan Lever Ltd. v. Ashok Vishnu***

Kate [(1995)6 SCC 326] and **Surjit Singh v. Mahanagar Telephone Nigam Ltd.** [(2009)16 SCC 722] in support of his submission.

5. Sri.V.P.Mohammed Niyas, learned counsel appearing for the respondent/writ petitioner, refuting the submission of learned counsel for the appellant supporting the judgment of the learned Single Judge, contended that the award having not been declared under Section 11, the determination of compensation has to be made under the new Act. The provisions of Section 24(1) being clear and unambiguous, there is no occasion to give any other meaning to the provision.

6. We have considered the submissions of learned counsel for the parties and perused the records.

7. The only issue to be answered in this Writ Petition is as to whether in the present case when the acquisition proceedings were undertaken under the 1894 Act and the petitioners were paid 80% of the compensation under Section 17(3A) of the 1894 Act and the award could not be

passed under the 1894 Act whether after the enactment of the 2013 Act computation of compensation has to be made under the 2013 Act or not?

8. The 2013 Act has been enacted to ensure and inform transparent process for land acquisition and to provide just and fair compensation to the affected families, whose land has been acquired. The 1894 Act was repealed by Section 14 of the 2013 Act. Section 24 of the 2013 Act is with the heading 'land acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases'. Section 24(1) and (2), which are relevant, are quoted as below:

“24. 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 sub-section (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."

9. Present is the case covered under Section 24(1)

(a), where no award under Section 11 of the Act No.1 of

1894 has been made. The consequence of not passing an award under Section 11 of the Act No.1 of 1894 has also been provided stating that “then all provisions of the Act relating to the determination of compensation shall apply.” Section 24(1)(b) provides that where an award under Section 11 has been made, then such proceedings shall continue under the provisions of the Land Acquisition Act, i.e., Act No.1 of 1894, as if the said Act has not been repealed. Section 24(1), thus, divides the land acquisition proceedings, which had not been completed under the Act 1 of 1894 in the above two categories as enumerated in sub-clause (a) and sub-clause (b). The continuing proceedings where award under Section 11 has not been made shall continue as if the Act 1 of 1894 has not been repealed, whereas when no award under Section 11 has been made, then all provisions of the Act relating to the determination of compensation shall apply. Thus, when award under the Act 1 of 1894 has not been made by statutory application determination of compensation has

to be made in accordance with the 2013 Act, which is mandate of the Statute. The above statutory consequence is being sought to be negatived by the learned counsel for the appellant contending that the new Act does not contemplate a situation where 80% of the compensation has been paid under Section 17(3A) of the 1894 Act and permitting literary interpretation of above provision shall defeat the purpose and the object of the Act since the object of the Act is only to ensure that compensation be paid to the land owner. Referring to Section 24(2), it is submitted that the Legislature has provided that where award has been made five years or more prior to the commencement of the Act, physical possession of the land has not been taken or compensation has not been paid, then the proceedings are deemed to have lapsed. It is submitted that emphasis under Section 24(2) is also on the payment of compensation.

10. The Legislature are well aware of the provisions of the 1894 Act, and the 2013 Act has been enacted with a

new statutory regime regarding the land acquisition proceedings. All aspects of the land acquisition including rehabilitation and reassessment has been elaborately included in the 2013 Act. Section 24 clearly provides about the consequence when no award under Section 11 of the 1894 Act has been made. There is neither any vagueness or any doubt regarding the consequence as provided under the Act.

11. The Apex Court in ***Pune Municipal Corporation v. Harakchand Misirimal Solanki*** [(2014)3 SCC 183] had occasion to consider the provisions of the 2013 Act, especially Section 24 of the 2013 Act. Paragraph 18 of the judgment is relevant, which is quoted as below:

“18. The 1894 Act being an expropriatory legislation has to be strictly followed. The procedure, mode and manner for payment of compensation are prescribed in Part v (Sections 31-34) of the 1894 Act. The Collector, with regard to the payment of compensation, can only act in the manner so provided. It is settled proposition of law (classic statement of Lord roche in Nazir Ahmad)

that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden."

12. Referring to Section 24(1), the Apex Court in the above case has laid down in paragraph 10 of the judgment as follows:

"10. Insofar as sub-section (1) of Section 24 is concerned, it begins with non obstante clause. By this, Parliament has given overriding effect to this provision over all other provisions of the 2013 Act. It is provided in clause (a) that where the land acquisition proceedings have been initiated under the 1894 Act but no award under Section 11 is made, then the provisions of the 2013 Act shall apply relating to the determination of compensation. Clause (b) of Section 24(1) makes provision that where land acquisition proceedings have been initiated under the 1894 Act and award has been made under Section 11, then such proceedings shall continue under the provisions of the 1894 Act as if that Act has not been repealed."

The Apex Court in the above case has also noted the consequence that when no award under Section 11 is

passed, the 2013 Act shall apply relating to the determination of compensation.

13. Learned counsel for the appellant has placed reliance on various judgments on a statutory interpretation, which shall be useful to refer to. In **A.L.Arora v. State of U.P** (AIR 1964 SC 1230) the Apex Court has laid down the following in paragraph 9 of the judgment:

“9.... Further, a literal interpretation is not always the only interpretation of a provision in a statute and the Court has looked in the setting in which the words are used and the circumstances in which the law came to be passed to decide whether there is something implicit behind the word actually used which would control the literal meaning of the words used in a provision of a Statute. It is permissible to control the wide language used in a Statute if that is possible by the setting in which the words are used and the intention of the law making body which may be apparent from the circumstances in which the particular provision came to be made.”

14. Similarly, in ***Hindustan Lever Ltd.'s case*** (supra) the following was laid down by the Apex Court in paragraph 42:

"42. Francis Bennion in its Statutory Interpretation Second Edition, has dealt with the Functional Construction Rule in Para XV of his book. The nature of purposive construction is dealt with in Part XX at page 659 thus:

"A purposive construction of an enactment is one which gives effect to the legislative purpose by-

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive and literal construction), or

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive and strained construction)"

At page 661 of the same book, the author has considered the topic of Purposive Construction in contrast with literal construction. The learned author has observed as under:

"Contrast with literal construction. Although the term purposive construction is not new, its entry into fashion betokens a swing by the appellate Courts away from literal construction. Lord Diplock

said in 1975. If one looks back to the actual decisions of the (House of Lords) on questions of statutory construction over the last 30 years one cannot fail to be struck by the evidence of a trend away from the purely literal towards the purposive construction of statutory provisions. The matter was summed up by Lord Diplock in this way -

..... I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to result which would clearly defeat the purposes of the Act. But in doing so the task on which a Court of Justice is engaged remains one of construction even where this involves reading into the Act words which are not expressly included in it".

15. Another case relied on by learned counsel for the appellants is ***Surjit Singh's case (supra)***. The Apex Court in the above case had occasion to interpret the provisions of the Telegraph Act. In paragraph 22 of the judgment the following was laid down:

"22. Though, no doubt, ordinarily the literal rule should be applied while interpreting a statute or statutory rule, but the literal rule is not always the only rule of interpretation of a provision in a statute, and in exceptional cases the literal rule can

be departed from. As observed in the Constitution Bench decision of this Court in R.L.Arora v. State of U.P. (AIR pp.1236-37, para 9).

*“9. ... Further, a literal interpretation is not always the only interpretation of a provision in a statute and the court has to look at the setting in which the words are used and the circumstances in which the law came to be passed to decide whether there is something implicit behind the words actually used which would control the literal meaning of the words used in a provision of the statute. It is permissible to control the wide language used in a statute if that is possible by the setting in which the words are used **and the intention of the law-making body** which may be apparent from the circumstances in which the particular provision came to be made.” (emphasis supplied)*

Hence it follows that to interpret a statute one has to sometimes consider the context in which it has been made and the purpose and object which it seeks to achieve. A too literal interpretation may sometimes frustrate the very object of the statute, and such an approach should be eschewed by the court.”

16. The Apex Court in the said case adopted the purposive construction of the rules, in paragraph 40 of the judgment relying on Maxwell the following was noted:

“40. In this connection it may be mentioned that Maxwell also permits doing violence to the statute in exceptional situations. He says

“Where the language of a statute, in its ordinary meaning and grammatical construction leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, by altering their collocation, by rejecting them altogether, or by interpolating other words, under the influence, no doubt, of an irresistible conviction that the legislature could not possibly have intended what the words signify, and that the modifications thus made are mere corrections of careless language and really give the true intention.”

Thus in Surjit Singh Kalra v. Union of India this Court observed that sometimes courts can supply words which have been accidentally omitted. (See also the rulings mentioned in G.P.Singh's book Principles of Statutory Interpretation, 9th Edn., 2004 pp. 70 to 77).”

17. There cannot be any dispute to the proposition as laid down by the Apex Court in the above mentioned cases. However, the ordinary meaning and grammatical

construction can be disregarded only when it leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended.

18. The Apex Court in ***Harbhajan Singh v. Press Council of India and others*** [(2002)3 SCC 722] has laid down that the golden rule is that the words of a statute must prima facie be given their ordinary meaning and a departure is permissible only if it can be shown that the legal context in which the words are used or the object of the statute in which they occur requires a different meaning. The following was laid down by the Apex Court in paragraph 9 of the judgment:

"9. Cross in Statutory Interpretation (Third Edition, 1995) states :

"The governing idea here is that if a statutory provision is intelligible in the context of ordinary language, it ought, without more, to be interpreted in accordance with the meaning an ordinary speaker of the language would ascribe to it as its obvious meaning, unless there is

sufficient reason for a different interpretation. Thus, an 'ordinary meaning' or 'grammatical meaning' does not imply that the Judge attributes a meaning to the words of a statute independently of their context or of the purpose of the statute, but rather that he adopts a meaning which is appropriate in relation to the immediately obvious and unresearched context and purpose in and for which they are used. By enabling citizens (and their advisers) to rely on ordinary meanings unless notice is given to the contrary, the legislature contributes to legal certainty and predictability for citizens and to greater transparency in its own decisions, both of which are important values in a democratic society" (p. 32 *ibid*). The learned author cites three quotations from speeches of Lord Reid in House of Lords cases, the gist whereof is : (i) in determining the meaning of any word or phrase in a statute ask for the natural or ordinary meaning of that word or phrase in its context in the statute and follow the same unless that meaning leads to some result which cannot reasonably be supposed to have been the legislative intent; (ii) rules of construction are our servants and not masters; and (iii) a

statutory provision cannot be assigned a meaning which it cannot reasonably bear; if more than one meaning are capable you can choose one but beyond that you must not go (p. 40, *ibid*). Justice G. P. Singh in his celebrated work - *Principles of Statutory Interpretation* (Eighth Edition, 2001) states (at page 54) - "The intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence a construction which requires for its support addition or substitution of words or which results in rejection of words as meaningless has to be avoided." The learned author states at another place (at page 74, *ibid*) that the rule of literal construction whereby the words have to be assigned their natural and grammatical meaning can be departed from but subject to caution. The golden rule is that the words of statute must *prima facie* be given their ordinary meaning. A departure is permissible if it can be shown that the legal context in which the words are used or the object of the statute in which they occur requires a different meaning. To quote, "such a meaning cannot be departed from by the Judges 'in the light of their

own views as to policy' although they can 'adopt a purposive interpretation if they can find in the statute read as a whole or in material to which they are permitted by law to refer as aids to interpretation an expression of Parliament's purpose or policy.' A modern statement of the rule is to be found in the speech of Lord Simon of Glaisdale in *Suthendran v. Immigration Appeal Tribunal* (1976) 3 All ER 611, 616 to the effect - 'Parliament is prima facie to be credited with meaning what is said in an Act of Parliament. The drafting of statutes, so important to a people who hope to live under the rule of law, will never be satisfactory unless Courts seek whenever possible to apply 'the golden rule' of construction, that is to read the statutory language, grammatically and terminologically, in the ordinary and primary sense which it bears in its context, without omission or addition. Of course, Parliament is to be credited with good sense; so that when such an approach produces injustice, absurdity, contradiction or stultification or statutory objective the language may be modified sufficiently to avoid such disadvantage, though no further."

19. In the present case it cannot be said that plain literal meaning of Section 24(1) leads to any absurdity or runs counter to the purpose and object of the Act. The 2013 Act has been enacted to bring a new regime of land acquisition with liberal rules of compensation to benefit the land owner. The legislation has been brought to give protection against the land acquisition and provide for a stringent regime for compensation, rehabilitation and resettlement. The object and purpose of Section 24 was to clearly apply the provisions of the 2013 Act relating to liberal rules of compensation when award under Section 11 of the 1894 Act has not been passed. The consequence, which is provided under Section 24(1)(a) is the consequence of not passing an award. When the authorities do not pass an award under Section 24(1), consequences are clear and unambiguous. The Legislature being clearly aware of the provisions of Section 17(3A) and payment of 80% of the compensation before taking possession when an urgency clause has been invoked and

no exception in cases of invocation of urgency clause have been made, the plain and ordinary meaning of Section 24(1) has to be accepted. The submission of learned counsel for the appellant that emphasis to Section 24 is only compensation cannot be accepted. Section 24 (1) categorised two situations on passing award under Section 11 and not passing award under Section 11. Section 24(2) is a specific provision where acquisition is treated to be lapsed. The said situation is contemplated in a case where the award was passed five years before coming into force of the 2013 Act and either possession has not been taken or compensation has not been paid. Section 24(2) has been brought in with an object and purpose. The object and purpose of Section 24(2) is that when the conditions as mentioned in Section 24(2) is satisfied, the Legislature assumes that the land sought to be acquired is not needed, hence the proceedings shall be deemed to have lapsed. It cannot be said that the basis of Section 24(1) is payment of compensation or non

payment of compensation. Admittedly, 20% of the compensation has not been paid as well to the land owners. Thus, the consequence as provided under section 24(1) cannot be avoided and the respondents have to determine the compensation in accordance with new Act, i.e., 2013 Act.

In view of the foregoing discussion, we do not find that there is any error in the judgment of the learned Single Judge.

The Writ Appeal is dismissed.

Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE

Sd/-
A.M.SHAFFIQUE
JUDGE

vgs

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