

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR.JUSTICE A.V.RAMAKRISHNA PILLAI**

**WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937**

**WP(C).No.4130 of 2012 (M)**  
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**PETITIONER:**  
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**SMT.NALINI VIJAYARAGHAVAN,D/O.SUDHAKARAN,  
AGED 57 YEARS,'GOVINDAM',NO.35,HIGH SCHOOL LANE,  
KUMARAPURAM,THIRUVANANTHAPURAM.**

**BY ADVS.SRI.G.S.REGHUNATH  
SRI.K.RAJESH KANNAN  
SRI.A.S.SHAMMY RAJ  
SRI.P.SHANES**

**RESPONDENT'S:**  
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- 1. STATE OF KERALA,  
REPRESENTED BY ITS PRINCIPAL SECRETARY,  
SECRETARIAT,THIRUVANANTHAPURAM-695001.**
- 2. LAND REVENUE COMMISSIONER,  
PUBLIC OFFICE COMPOUND,MUSEUM JUNCTION,  
THIRUVANANTHAPURM-695001**
- 3. THE DISTRICT COLLECTOR,COLLECTORATE,  
THIRUVANANTHAPURAM-695001.**
- 4. DEPUTY COLLECTOR (LAND ACQUISITION),  
COLLECTORATE,THIRUVANANTHAPURAM-695001.**
- 5. KUMARANASAN INSTITUTE OF CULTURE (KANIC),  
REPRESENTED BY ITS SECRETARY,  
THONNAKKAL P.O.,THIRUVANANTHAPURAM-695317.**

**R1 TO R4 BY GOVT. PLEADER SRI.MANILAL.  
R5 BY ADVS.SRI.K.V.SOHAN  
SRI.M.R.RAJESH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 03.03.2015 ALONG WITH WPC.4140/2012 AND CONNECTED CASES  
THE COURT ON 20-05-2015, DELIVERED THE FOLLOWING:**

**APPENDIX**

**PETITIONER'S EXHIBITS:**

- EXT.P1:TRUE COPY OF THE NOTICE DATED 25.1.2012 ISSUED BY THE 4TH RESPONDENT.**
- EXT.P2:TRUE COPY OF THE JUDGMENT DATED 23.5.2011 PASSED BY THE DIVISION BENCH OF THIS HONOURABLE HIGH COURT IN WP(C) NO.25281/2009.**
- EXT.P3:TRUE COPY OF THE NOTIFICATION WHICH WAS PUBLISHED IN KERALA KAUMUDI NEWSPAPER DATED 5.1.2009.**
- EXT.P4:TRUE COPY OF THE COMMON JUDGMENT DATED 2.9.2008 IN W.P NO.35419/2007 AND 37333/2007.**
- EXT.P5:TRUE COPY OF THE ORIGINAL OBJECTION FILED BY PETITIONER BEFORE THE 3RD RESPONDENT DATED 25.11.2008.**
- EXT.P6:TRUE COPY OF THE ADDITIONAL OBJECTIONS SUBMITTED DATED 10.8.2011 BY THE PETITIONER.**
- EXT.P7:TRUE COPY OF THE NOTICE DATED 23.7.2011 FROM THE 4TH RESPONDENT RECEIVED BY PETITIONER.**
- EXT.P8:TRUE COPY OF THE NOTICE DATED 30.9.2011 FROM THE 2ND RESPONDENT BY PETITIONER.**
- EXT.P9:TRUE COPY OF THE NOTICE DATED 31.10.2011 RECEIVED FROM THE ASSISTANT COMMISSIONER OF LAND REVENUE.**
- EXT.P10:TRUE COPY OF THE REPRESENTATION DATED 27.1.2012 MADE BY PETITIONER TO THE 4TH RESPONDENT.**
- EXT.P11:TRUE COPY OF THE ORDER DATED 24.12.2011 PASSED BY THE 2ND RESPONDENT.**
- EXT.P12:TRUE COPY OF THE PETITION DEMANDING ENQUIRY DATED 6.1.2012 FILED BY PETITIONER BEFORE THE 3RD RESPONDENT.**
- EXT.P13:TRUE COPY OF THE NEWSPAPER REPORT IN INDIAN EXPRESS DATED 11.2.2006.**
- EXT.P13(a):TRUE COPY OF THE NEWSPAPER REPORT IN INDIAN EXPRESS DATED 25.7.2006.**
- EXT.P14:TRUE COPY OF THE GIFT DEED NO.3758/1958.**
- EXT.P15:TRUE COPY OF THE GOVERNMENT ORDER G.O(MS)204/66 DATED 30.4.66.**
- EXT.P16:TRUE COPY OF THE WRIT PETITION NO.25281/2009.**
- EXT.P17:TRUE COPY OF THE WRIT PETITION NO.25282/2009.**

**RESPONDENT'S EXHIBITS:**

- EXT.R5A** COPY OF THE DEED EXECUTED BY LATE PRABHAKARAN IN FAVOUR OF THE GOVERNOR OF KERALA, DATED 05/11/1958.
- EXT.R5B** COPY OF THE GOVERNMENT ORDER NO.G.O.MS.204/66/EDN. DATED 30/04/1966.
- EXT.R5C** COPY OF THE ORDER ISSUED BY THE GOVERNMENT OF KERALA G.O.MS. NO.303/72/RD, DATED 10/03/1972.
- EXT.R5D** COPY OF THE PAMPHLET PUBLISHED BY THE RELATIONS DEPARTMENT, GOVERNMENT OF KERALA DATED OCTOBER 1998.
- EXT.R5E** COPY OF THE G.O.(MS) NO.13/99/CAD, DATED 10/03/1999.
- EXT.R5F** COPY OF THE PLAN SHOWING THE NATURE AND LIE OF THE PROPERTY OF KANIC AND THE PROPERTY ACQUIRED AND SOUGHT TO BE ACQUIRED.
- EXT.R5G** COPY OF THE SANCTION ORDER ISSUED BY THE GOVERNMENT GO(RT) NO.300/03/CAD DATED 05/08/2003 GRANTING PERMISSION FOR ACQUISITION OF THE PLOTS CEF GH IN EXT.R5(F) PLAN.
- EXT.R5H** COPY OF THE PROJECT REPORT PREPARED AT THE INSTANCE OF THE DEPARTMENT OF CULTURAL AFFAIRS, GOVERNMENT OF KERALA IN JUNE 2006.
- EXT.R5I** COPY OF THE TENTH FIVE YEAR PLAN 2002-2007 OUTLAY FOR THE FIRTH YEAR IN FAVOUR OF KANIC.
- EXT.R5J** COPY OF THE ELEVENTH FIVE YEAR PLAN 2007-2012 PROGRAMME FOR THE FIRST YEAR 2007-2012.
- EXT.R5K** COPY OF THE ORDER ISSUED BY THE GOVERNMENT OF KERALA G.O.(MS) NO.90/03/CAD, DATED 25/02/2003.
- EXT.R5L** COPY OF THE ORDER ISSUED BY THE KERALA STATE ELECTRICITY BOARD, B.O.(FB) NO.2122/2007 (AE IV/DPC (MISC)-5/2007, DATED 17/09/2007.
- EXT.R5M** COPY OF THE ORDER OF THE GOVERNMENT, GO(R1) NO.498/2007CAD DATED 19/09/2007.
- EXT.R5N** COPY OF THE ORDER G.O.(RT) NO.447/2009/CAD DATED 13/10/2009.
- EXT.R5O** COPY OF THE ORDER G.O(RT) NO.557/2007/CAD DATED 29/10/2007.
- EXT.R5P** COPY OF THE ORDER ISSUED BY THE COMMISSIONER OF LAND REVENUE, NO.LR(C1)-52495/07, DATED 14/11/2007.
- EXT.R5Q** COPY OF THE SECTION 4(1) NOTIFICATION ISSUED BY THE DEPUTY COLLECTOR, LA, DATED 15/11/2007.

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- EXT.R5R** COPY OF THE COMMON JUDGMENT OF THE LEARNED SINGLE JUDGE IN WP(C).NO.35419/2007 AND WP(C).NO.37333/2007 DATED 2/09/2008.
- EXT.R5S** COPY OF THE REPORT DATED 28/11/2008 SUBMITTED BY THE LAND ACQUISITION COLLECTOR.
- EXT.R5T** COPY OF THE LETTER SENT BY THE LAND ACQUISITION COLLECTOR,DATED 06/12/2008 ALONG WITH EXT.R5(S) REPORT.
- EXT.R5U** COPY OF THE ORDER OF THE COMMISSIONER OF LAND REVENUE, NO.LRC-22917/08 DATED 09/12/2008.
- EXT.R5V** COPY OF THE SECTION 6 OF THE L.A. ACT DECLARATION ISSUED BY THE COMMISSIONER OF LAND REVENUE DATED 16/12/2008 PUBLISHED IN THE GAZETTE DATED 20/12/2008.
- EXT.R5W** COPY OF THE JUDGMENT IN WP(C).NO.748/2009 DATED 20/02/2009.
- EXT.R5X** COPY OF THE ORDER SUBMITTED BY THE COMMISSIONER OF LAND REVENUE, DATED 08/05/2009.
- EXT.R5Y** COPY OF THE COMMON JUDGMENT IN W.A. NO. 1723/2009, WP(C).NO. 25281/2009 AND WP(C).NO.25282/2009 DATED 23/05/2011.
- EXT.R5Z** COPY OF THE CLARIFICATION ORDER PASSED BY THE DIVISION BENCH OF THIS HONOURABLE COURT IN I.A. NO.356/2011 IN W.A. NO. 1723/2009 DATED 10/06/2011.
- EXT.R5Z-A** COPY OF THE ASSIGNMENT DEED EXECUTED BY NIRMALA IN FAVOAU OF S.S. BUILDERS, DOCUMENT NO.1661/11 DATED 24/08/2011.
- EXT.R5Z-B** COPY OF THE ASSIGNMENT DEED EXECUTED BY NIRAMALA IN FAVOUR OF M.K. FAROOQ, DOCUMENT NO.1762/11, DATED 06/09/2011.
- EXT.R5Z-C** COPY OF THE ORDER OF THE GOVERNMENT OF KERALA, FINANCE DEPARTMENT, GO(RT) NO.6498/09/FIN. DATED 25/09/2009.
- EXT.R5Z-D** COPY OF THE ORDER ISSUED BY THE UNIVERSITY OF KERALA, NO.AC.E1.A2.22939/05, DATED 12/01/2006.
- EXT.R5Z-E** COPY OF THE COMMUNICATION ISSUED BY THE DISTRICT COLLECTOR, NO.K4-43813/07 DATED 09/02/2012.
- EXT.R5Z-F** COPY OF THE INVITATION CARD PUBLISHED IN CONNECTION WITH THE INTERNATIONAL POET MEET CONDUCTED ON 19TH OF JANUARY 2012.
- EXT.R5Z-G** COPY OF THE PHOTOGRAPH OF PLANK NOW ON THE WALLS OF THE AUDITORIUM OF KANIC.

- EXT.R5Z-H COPY OF THE PHOTOGRAPH OF AUDITORIUM AND MUSEUM BUILDING OF KANIC COMPLETED SHOWING LARGE NUMBER OF STUDENTS VISITING THE MEMORIAL AS PART OF THEIR EDUCATIONAL TOUR.
- EXT.R5Z-I COPY OF THE PHOTOGRAPH SHOWING THE OFFICE BUILDING OF ASAN SMARAKAM.
- EXT.R5Z-J COPY OF THE PHOTOGRAPH SHOWING A PORTION OF THE MURAL PAINTING MUSEUM AT KANIC.
- EXT.R5Z-K COPY OF THE PHOTOGRAPH SHOWING FOREIGN RESEARCH STUDENTS AT KANIC MUSEUM.
- EXT.R5Z-L COPY OF THE PHOTOGRAPH SHOWING A VIEW OF THE LIBRARY AT KANIC.
- EXT.R5Z-M COPY OF THE PHOTOGRAPH SHOWING THE OLD HOUSE CONSTRUCTED BY KUMARAN ASAN ALONG WITH AN ATTACHED BUILDING FROM WHERE THE KUMARAN ASAN IS SAID TO HAVE HIS INSPIRATION FOR HIS POEMS.
- EXT.R5Z-N COPY OF THE PHOTOGRAPH SHOWING THE WORK OF THE STATUE OF KUMARAN ASAN.
- EXT.R5Z-O COPY OF THE PHOTOGRAPH OF ONE OF THE SCULPTURE DEPICTING THE SAD PLIGHT OF A WOMAN TAKING INSPIRATION FROM THE POEMS VEENAPOOVU (FALLEN FLOWERS), KARUNA (SYMPATHY) ETC.
- EXT.R5Z-P COPY OF THE PHOTOGRAPH SHOWING SMT.NALINI VIJAYARAGHAVAN PARTICIPATING IN THE VIDHYARAMBHAM FUNCTION (INTRODUCTION TO LETTERS).
- EXT.R5Z-Q COPY OF THE AWARD DATED 13/02/2012.

//TRUE COPY//

P.S. TO JUDGE

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**C.R.**

**A.V.RAMAKRISHNA PILLAI, J**

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WPC Nos.4130, 4140, 4144  
and 4494 of 2012  
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Dated this the 20<sup>th</sup> day of May, 2015

**JUDGMENT**

Under challenge in these writ petitions is the proceedings dated 24.12.2011 of the Commissioner for Land Revenue in LR(C1) 39969/2011.

2. The petitioners are the lineal descendants of late Mahakavi Kumaran Asan, hereinafter referred as the late poet. They owned the properties in Sy.Nos.265 as well as 269 in Block No.3 of Veiloor Village in Thiruvananthapuram Taluk. The petitioners allege that with the object of preserving the house and adjoining structures used by the late poet for his residence as well as expounding his poetic genius, an extent of about 1 acre 25 cents was gifted by the petitioners and other close relatives of the late Poet to the Government of Kerala. However, certain persons who are having political power succeeded in ousting

the members of the family of the late Poet from the committee for the administration of the monument when the corrupt practices and misappropriation by the aforesaid local people were questioned by them. According to the petitioners, there were series of litigations between the petitioners with the aforesaid persons and therefore, out of revenge and as a vindictive measure, those persons influenced the Government and initiated proceedings for acquisition of the adjoining land owned by the petitioners invoking urgent clause under Section 17(4) of the Land Acquisition Act for the alleged developmental activities of the monument. This was challenged before this Court in certain writ petitions and ultimately, in Writ Appeal No.1723/2009, this Court directed the Government to inquire and find out whether there was actual public purpose and need for the land. The petitioners allege that without giving any opportunity to them, an order was passed by the Land Revenue Commissioner under Section 5A of the

Act on 24.12.2011. Though the petitioners demanded not to take any action on the basis of the said order without even passing a declaration under Section 6 and without conducting any award enquiry, the respondents are attempting to forcibly evict the petitioners from their property. This is the gist of the contents of all the writ petitions.

3. The petitioner in WPC No.4130/2012 alleges that she as well as her cousins, who are the grandchildren of the late Poet, have their ancestral property adjoining the said 1 acre and 25 cents and old house where the late Poet lived which was already gifted to the Government and on the strength of the order of the Commissioner for Land Revenue, the respondents are trying to take over their property.

4. The petitioners in WPC Nos.4140/2012 and 4144/2012 are also the grandchildren of the late Poet. In these writ petitions, they allege that their father late Prabhakaran has executed Ext.P1 Gift Deed in 1958 with respect to 1.25 acres of land in

Thiruvananthapuram District and the ancestral home of the late poet subject to certain conditions upon the breach of which the property would revert to the family of the donor. They would also contend that the impugned order passed by the Commissioner for Land Revenue is against the directions in the judgment in Writ Appeal No.1723/2009. They allege that on the strength of the impugned order, the respondents are trying to secure the prime land of the petitioners and other members of the family of the Poet.

5. The petitioner in WPC No.4494/2012 is another grandson of the late Poet. He alleges that at the instance of the present committee which manages the aforesaid 1.25 acres of land which started motivated actions against the properties of the petitioner, his brothers and cousin sister which were sought to be acquired on the strength of the impugned order of the Commissioner for Land Revenue.

6. The Kumaran Aasan National Institute of Culture (KANIC) which is impleaded as the 5<sup>th</sup>

respondent in the first three writ petitions and as the first respondent in WPC No.4494/2012 has filed a detailed counter affidavit. In the counter affidavit, the said respondent had admitted the execution of the gift deed by late Prabhakaran, son of the late Poet on 5.11.1958. According to the said respondent, 79 cents of property at Thonnakkal in Veiloor Village was gifted for establishing as a monument of the Poet. Later, the Government issued G.O.(MS) No.204/66/Edn. dated 30.4.1966 framing rules for management of the memorial. It was further contended that the eastern boundary of the 79 cents gifted was National Highway. However, due to the widening of the same during 1969-1970, the direct access from the National Highway to the monument was lost and on the request of the said respondent, PWD, Government of Kerala handed over a portion of the old National Highway in favour of the institute as per Ext.R5(c). The portion of a strip of land in between old National Highway and newly aligned

National Highway belonging to Muhammed Ali was also acquired. In 1998, PWD, Government of Kerala published a pamphlet envisaging the development plan for the memorial. Later, the then Finance Minister in his budget speech declared that the decision of the Government of Kerala to raise the status of Kumaran Asan Memorial into a National Level Institute of Culture. Thus, the Managing Committee took a decision to rename the Kumaran Asan Memorial as a National Institute of Culture as requested by the Government. As per order dated 10.3.1999, the Government granted administrative sanction for re-naming. In the year 2003, the institute submitted a request before the Government for acquiring 25.1 Ares of property lying as a strip of land lying between newly aligned National Highway and the old National Highway for the use of the institute. The Government granted sanction for acquisition of the aforesaid land from the land owners named Mumthaz Beegum (plot-C), Souda Beevi (plot E),

Damodaran Prabhakaran (plot-F), Sainakutty (plot G), Hameeda Beevi (Plot-H) which formed together 25.10 Ares. Later, in the year 2006, at the instance of the Department of Cultural Affairs, the Government prepared a detailed project report for the phased development of the institute. It is found that the first phase of the development was in the final stage and the second phase of the development project as part of the long term comprehensive project is to be immediately undertaken. Ext.R5(h) is the project report. The development of the institute was an item and ₹20 lakhs was provided in the budget for the financial year 2006-2007 for implementing the project. The entire fund for upkeep maintenance, construction and acquisition purpose are only the fund from the Government of Kerala. The maintenance of historically important articles are by the Archeology Department of the Government of Kerala. The Government also sanctioned an additional sum of ₹25 lakhs in the year 2007 and later in October 2009, a

further amount of ₹1 crore 40 lakhs was granted for the purpose of acquisition of 1.1 hectre of land in Veiloor Village which is the subject matter of these writ petitions. Pursuant to the allotment of fund, the Government granted sanction for acquisition of land having an extent of 1.1 hectares of land invoking urgency clause under the Land Acquisition Act stipulating that additional financial commitment also shall be met from the funds of the institute. Consequently on 14.11.2007, the Commissioner of Land Revenue passed an order in exercise of the powers under Sub Section 4 of Section 17 of the L.A. Act dispensing with hearing of objection under Section 5A of the L.A.Act. Pursuant to that, the Deputy Collector, Land Acquisition has issued Section 4(1) notification dated 15.11.2007 along with the notice under Section 6(1) of the Kerala Survey and Boundaries Act. However, the Government order was challenged in certain writ petitions and during the course of hearing, the writ petitions were amended

and challenge against the Commissioner for Land Revenue dated 14.11.2007 was also incorporated. The writ petitions were disposed of by Ext.R5(r) common judgment dated 2.9.2008 by a learned single judge of this Court. The order of the Land Revenue Commissioner was quashed and the land acquisition authority was directed to conduct an enquiry under Section 5A and to make his representation on the objections filed by the writ petitioners. Pursuant to that the Land Acquisition Collector granted an opportunity of hearing and to submit objections to the petitioners who submitted their written objections. Hearing was conducted. Ext.R5(s) report dated 28.11.2008 was submitted by the Deputy Collector (Land Acquisition). This was forwarded by the District Collector to the Commissioner of Land Revenue as per Ext.R5(t) letter dated 6.12.2008. The Land Revenue Commissioner as per order dated 9.12.2008 rejected the contentions of the petitioner against acquisition. Pursuant to that the declaration under Section 6 was

also issued by the Commissioner on 16.12.2008 as per Ext.R5(v). Subsequent to Ext.R5(v), the petitioner in WPC No.4144/2012 filed WPC No.748/2009 complaining that he received the notice, to attend the hearing on 25.11.2008, only on 6.12.2008. This Court directed the Land Acquisition Officer to hear him also with all evidence as per Ext.R5(w). Thereafter he was heard by the Deputy Collector (Land Acquisition) who rejected the contentions of the petitioner as per Ext.R5(x) dated 8.5.2009. In the meanwhile, the petitioner in WPC No.4130/2012 filed Writ Appeal No.1723/2009 against the judgment in WPC No.35419/2007. Simultaneously, she along with co-petitioners filed another writ petition as WPC No.25281/2009 challenging the subsequent order of the Land Revenue Commissioner as well as Section 6 declaration. Yet another petition was also filed as WPC No.25282/2009 challenging the order of the Commissioner for Land Revenue and Section 6 declaration by the petitioner in WPC No.4144/2012.

All the matters came before the Division Bench which as per judgment dated 23.5.2011 directed re-consideration. The Division Bench clarified that hearing is to be conducted by the designated authority under Section 5A. Thereafter hearing was conducted by the Land Acquisition Collector also submitted a report. On the basis of the report the Commissioner for Land Revenue conducted further enquiry and confirmed the findings of the Land Acquisition Collector. Therefore, the said respondent contended that there is absolutely no merit in the challenge now made by the petitioners. It was specifically contended that there is *bona fides* on the part of the petitioners in challenging the acquisition proceedings.

7. The State Government also has filed a separate detailed counter affidavit in all these writ petitions re-iterating the contentions of the respondent institute.

8. I have heard Mr.G.S.Raghunath, the learned

counsel for the petitioner in WPC No.4130/2012, Mr.V.Suresh, the learned counsel for the petitioners in WPC Nos.4140 and 4144 of 2012 and Mr.N.N.Sugunapalan, the learned senior counsel for the petitioner in WPC No.4494/2012. I have also heard Mr.K.V.Sohan, the learned counsel for the respondent Institute and Mr.Manilal, the learned Government Pleader in the matter.

9. The petitioners in WPC Nos.4140/2012, 4144/2012 and 4494/2012 are the sons of late Prabhakaran who was the son of late Poet. Admittedly, the aforesaid Prabhakaran executed Ext.R5(a) gift deed dated 5.11.1958 by which a portion of his property along with the old house used by the Poet was given to be kept as a monument of the Poet. Though the petitioners allege that the extent of property so gifted is 1.25 acres, it could be seen from Ext.R5(a) that the extent gifted is 95 cents of property. The execution of the gift deed was for a specific purpose embodied in the entrustment itself.

It was a conditional gift for the purpose of establishing a memorial in the name of the Poet. The subject of the gift was the property comprising the site and the building where the Poet lived and drew inspiration for his immortal poetic compositions. The purpose of the gift was to preserve the same in the same condition as a historic monument in the memory of the Poet. The deed imposed a specific condition that the premises described in the schedule shall always be kept as a monument as mentioned above and if not, the property would revert to the owners. Therefore, according to the petitioners, the monument of late Poet embodied the entrustment of the said property and the residence was intended only for the beneficial purposes mentioned in the deed and the conversion of the property to any purpose alien to those expressed in the entrustment are impermissible and illegal. Initially, the memorial was known as Kumaran Asan Memorial, the administrative management of which was vested in a committee. Thereafter the

Government as per Ext.R5(b) order dated 30.4.1966 framed rules for the working of the committee. Admittedly, the memorial continued to be as an autonomous institution regulated by its own bylaws and rules. Ext.R5(b) describes the committee as a corporate entity and it derives its existence to the entrustment embodied under Ext.R5(a) gift deed. As per Ext.R5(b), the Government nominate the committee members every three years. The committee consists of 11 members including officials, non-officials and a member of the family of the late Poet. The functioning of the committee is subject to the control of the Government. In Ext.R5(b), it is also stated that the proprietary right over the property of the memorial shall be vested in the Government.

10. According to the respondents, in October 1998, the Public Relations Department of the Government of Kerala published Ext.R5(d) pamphlet which envisaged a development plan for the memorial and thereafter there was a budget speech by the then

Finance Minister declaring the decision of the Government to raise the status of the Kumaran Asan Memorial as National Institute of Culture. The respondents point out that on the basis of the same, the Managing Committee took a decision to rename the Kumaran Asan Memorial as National Institute of Culture and requested the Government to grant permission for re-naming the same as Kumaran Asan National Institute of Culture (KANIC) which was accepted by the Government and permission was granted as per Ext.R5(e). The said institute represented by its Secretary is the main contesting respondent in these writ petitions. Now, the internal management is regulated by the rules drawn up as per Ext.R5(e) G.O.

11. One of the main argument advanced by the learned counsel appearing for the petitioners in these writ petitions is that the respondent institute is an autonomous institution governed and regulated by its own rules and the State of Kerala does not have any

authority over the administration of the management of the 5<sup>th</sup> respondent. The definite stand taken by the respondents is that the respondent institute is not a corporation owned or controlled by the State as defined in Section 3(cc) of the Land Acquisition Act.

12. As already pointed out, the respondent institute functions within its own premises in the property covered by Ext.R5(a) gift deed executed by late Sri.Prabhakaran. The land takes in the memorial buildings comprising the office of the respondent institute, a library, conference hall etc. Undoubtedly, the amenities are incidental to the primary objectives of preservation of the memorial of the deceased illustrious ancestor of the petitioner.

13. The petitioners allege that the respondent institute started to divert the property and the buildings for certain unauthorised commercial purposes having utterly no nexus or link with the primary objectives in Ext.R5(a) gift deed. The family members of the late Poet found the same

objectionable. It is, here, the shoes started to pinch.

14. The petitioners pointed out that the unauthorised purposes like the construction of a series of statues by Sri.Kanai Kunjiraman, a well known sculpturist in Kerala, a hall for solemnization of functions such as weddings etc. and also to enable movie/television film producers to use the premises of the memorial for filming of movies and television serials which are anathema to Ext.R5 gift deed were sought to be imposed by some of the members of the managing committee. As the petitioners found that the hallowed residence of their illustrious ancestor was being diverted for uses alien to the purposes authorised by the entrustment in Ext.R5(a), they opposed the course of action of the respondent institute which led to a series of confrontations between the family members of the late Poet and the 5<sup>th</sup> respondent and therefore, the petitioners were being viewed as a thorn in the flesh by the committee members of the 5<sup>th</sup> respondent institute. Therefore,

the management of the 5<sup>th</sup> respondent found the presence of the petitioners irksome and they wanted to eliminate the petitioners from the vicinity. This led to the filing of O.S.No.143 of 2004 before the Sub Court, Attingal and WPC No.5385/2004 before this Court by the petitioners in WPC No.4130/2012 and in WPC No.4494/2012.

15. The definite case of the petitioners is that with the latent purpose of expelling the petitioners from the scene and from the adjoining properties belonging to them, the members of the committee of the respondent institute cooked up the idea of developing the memorial by submitting a requisition to the State for acquiring 10 acres of land for constructing an auditorum, open air theatre, statute of Kumaran Asan and Narayana Guru, Ten Kerala Style Cottages, IT Block with library, restaurant, sanskrit and dravidian centre, Meditation Hall, public toilets, parking area etc. The fact that the requisition was for the aforesaid purpose is revealed from Ext.R5

(h) project report submitted by the respondent institute in June 2006 to the Government of Kerala. On receipt of the same, the State of Kerala issued an order of sanction on condition that the entire compensation for the land acquisition must be paid by the respondent institute. It was on the basis of the same, Ext.R5(q) which is Section 4(1) notification for the acquisition of land was issued by the Deputy Collector (Land Acquisition). The Commissioner of Land Revenue (Kerala) had also issued Ext.R5(p) order dated 14.11.2007 dispensing with the inquiry under Section 5A of the Land Acquisition Act by invoking Section 17(4) of the Act. Here, it is crucial to note that what is stated in Ext.R5(h) project report is that for fulfilling the target of the National Institute, an additional land of 10 acres adjacent to the memorial building was urgently needed (see page-6 of Ext.R5 (h)). It can be seen from the said project report that the development activities in the second phase are projected as the urgent need. Challenging the

notification, WPC No.35419/2007 was filed before this Court wherein a learned Single Judge of this Court granted a stay order on 30.11.2007. The aforesaid writ petition was filed by the petitioners in WPC No.4140/2012, 4494/2012 and WPC No.4130/2012. The petitioner in WPC No.4144/2012 filed a separate writ petition as WPC No.37333/2007. Both the writ petitions were heard together by a learned Single Judge who passed the judgment on 2.9.2008 as per Ext.R5(r). Therefore, it can be seen that the stay which was originally granted was in force from 30.11.2007 to 2.9.2008 i.e. for a period of 274 days. Pursuant to Ext.R5(r) judgment, hearing was conducted by the Deputy Collector (Land Acquisition) under Section 5A on 25.11.2008 and on 28.11.2008. He submitted the enquiry report (Ext.R5(s) along with the recommendation under Section 5A. This was forwarded by the District Collector to the Commissioner of Land Revenue, who, as per Ext.R5(u) dated 9.5.2008 rejected the contentions of the

petitioners. This was followed by Ext.R5(v) declaration under Section 6 of the Act on 6.12.2008. Ext.R5(v) declaration was challenged by the petitioner in WPC No.4144/2012 before this Court in WPC No.748/2009. He alleged that he received the notice to attend the hearing only on 6.12.2008, though the hearing was held on 25.11.2008. This Court by Ext.R5(w) judgment dated 20.2.2009 in WPC No.748/2009 directed the Land Acquisition Officer to hear that petitioner also. Accordingly, he was heard by the Deputy Collector (Land Acquisition) who submitted a report to the Commissioner for Land Revenue who concluded the proceedings as per Ext.R5(x) dated 8.5.2009 stating that there is no substance in the complaint.

16. In the meantime, the petitioner in WPC No.4130/2012 challenged Ext.R5(r) judgment dated 2.9.2008 in WPC No.35419/2007 and connected case by preferring Writ Appeal No.1723/2009. She challenged the finding of the learned single judge that the public nature of the purpose of acquisition cannot

be disputed. Subsequently, the petitioner in WPC No.4130/2012 along with co-petitioners filed WPC No.25281/2009 challenging the subsequent order of the Land Revenue Commissioner as well as Section-6 declaration. The petitioner in WPC No.4144/2012 also filed another writ petition as WPC No.25282/2009 challenging the order of the Commissioner for Land Revenue and Section-6 declaration. These writ petitions came for consideration before the Division Bench along with Writ appeal No.1723/2009.

17. Here, it is crucial to note that while admitting WPC Nos.25281/2009 and 25282/2009, the learned Single Judge had granted an order of stay on 7.9.2009. The writ petitions as well as the writ appeals were disposed of by the Division Bench of this Court on 23.5.2011 as per Ext.R5(y) judgment. Therefore, during the second spell ranging from 7.9.2009 to 23.5.2011, the stay was in force for a period of 622 days. Therefore, during an aggregate period of 896 days the stay orders of this Court were in force. It

was found by the Division Bench in Ext.R5(y) judgment that the observation in paragraph 9 of Ext.R5(r) judgment dated 2.9.2008 recording a finding regarding the existence of a public purpose in the acquisition was erroneous. It was also observed that the finding recorded in the report of Deputy Collector, Land Acquisition is untenable in law. It was observed that the existence of a public purpose does not depend upon the decision of the Government, but must depend upon some criteria independent of the decision of the Government. It was also observed that in the context of the present acquisition, what is the nature of the expansion which is proposed to be undertaken and what is the extent of land required for such an extension of the institution are some of the more relevant considerations for deciding whether a public purpose is involved in the matter. Therefore, the respondents were directed to consider afresh the questions of existence of a public purpose in acquiring the land in question. Pursuant to Ext.R5(y) judgment,

the Land Revenue Commissioner called for a fresh enquiry report. Accordingly, the Deputy Collector (Land Acquisition) held a fresh hearing and submitted their fresh report. It appears from record that the Commissioner for Land Revenue was not satisfied with the report. Therefore, she gave a notice to the petitioners and other affected parties. A site inspection was conducted by the Assistant Commissioner for Land Revenue and ultimately, the impugned order was passed by the Land Revenue Commissioner rejecting the claim of the petitioners.

18. The definite stand taken by the petitioners is that in spite of the impugned order, no declaration under Section 6(1) of the Act has been published till date. The respondents actually acted as if Ext.R5(v) declaration dated 16.5.2008 based on the order dated 9.12.2008 continues to remain intact. In fact Ext.R5 (v) was set aside in WPC Nos.25281/2009 and 25282/2009. Hence, even if the time during which the interim orders in WPC No.35419/2007, Writ Appeal

No.1723/2009 and WPC No.25281/2009 were in force are excluded, the period of time prescribed by clause (ii) in the first proviso to Section 6(1) of the Act expired. In as much as no declaration has been made under the Act, Ext.R5(q) which is the 4(1) notification dated 15.11.2007 for the acquisition of land of the petitioners must be deemed to have elapsed, as no proceedings for land acquisition would be maintainable in the absence of a declaration under Section 6(1) of the Act.

19. Though it was argued by the learned counsel for the respondent institute and the learned Senior Government Pleader that the acquisition was for the public purpose, the same was seriously challenged by the learned counsel appearing for the petitioners. As already pointed out, in Ext.R5(h) project report, the respondent institute has projected the need for additional land of 10 acres adjacent to the memorial building. It was submitted in June 2006. It has to be noted that the respondent institute is not a

Government department. Ext.R5(h) report was prepared and submitted by the respondent institute to the Government. Ext.R5(o) is the copy of the G.O by which the Government has accorded sanction for the purpose. Ext.R5(o) was issued on 29.10.2009. The reference first cited in Ext.R5(o) are the representations dated 2.8.2006, 3.9.2006, 16.10.2006 and 5.5.2007 from the Secretary of the respondent institute. Ext.R5(o) was issued after a lapse of about 16 months. Thereafter urgent rule was resorted for dispensing with the enquiry. It appears that now the expenses will have to be met by the respondent institute only and the Government is wriggling out of the responsibility of releasing the funds as it can be seen from Ext.R5(o) that the additional financial commitment involved in the land acquisition and for settlement of LAR cases, if any, would be borne from the fund of the institute.

20. Though the learned senior Government Pleader as well as the learned counsel for the

respondent institute heavily relied on Ext.R5(n) G.O. that the funds would be met by the Government, it is crucial to note that the said G.O. was issued on 30.9.2009 i.e. when the matter has become *sub judice*.

21. Mr.V.Suresh, the learned counsel appearing for the writ petitioner in WPC No.4140/2012 invited my attention to Ext.P9 in that writ petition, which is the copy of the counter affidavit filed by the Government in WPC No.35419/2007, which contains an admission in paragraph-4 that the entire money would stem out of the institute. Ext.P14 in the said writ petition is the copy of the counter affidavit filed by respondents 3 and 4 in WPC No.25281/2009. In paragraph-7 of the said document, it is stated that the requisitioning authority, i.e. the respondent institute had deposited an amount of ₹1 crore 75 lakhs towards the payment of compensation.

22. As already pointed out, the statutory declaration under Section 6 [Ext.R5(v)] was quashed

in the previous writ petitions. There was a clear direction by the Division Bench of this Court as to how the matter has to be dealt with. The Land Revenue Commissioner obtained a site inspection report through the Assistant Commissioner (Land revenue). Copy of the report is produced as Ext.P18 in WPC No.4140/2012. In the impugned order, the land revenue commissioner makes a reference to the site inspection report. In the impugned order, objection filed by the petitioner in WPC No.4140/2012 is referred to. But the actual objection is Ext.P11. A comparison of Ext.P11 with the discussions in the impugned order would indicate that those objections were not dealt with at all. Though evidence had to be taken from the objectors, all that has been done was to decide to go ahead with the project. As the petitioners have a genuine case that the 5<sup>th</sup> respondent's need cannot be classified as a public purpose, the same should have been considered elaborately by the Land Revenue Commissioner

before taking a decision in the matter. In fact Ext.R5 (h) project report projects the need of the 5<sup>th</sup> respondent Institute.

23. As observed by the Apex Court in **(Hindustan Petroleum Corporation Limited v Darius Shapur Chenai and others)** 2005(7) SCC 627, the State is required to apply its mind not only on the objections filed by the owner of the land, but also on the report which is submitted by the Collector upon making other and further enquiries therefor as also the recommendations made by him in that behalf. Such a process has not been undertaken by the Land Revenue Commissioner while issuing the impugned order. In **(Surinder Singh Brar and others v Union of India and others )** 2013(1) SCC 403, the Apex Court observed that there cannot be any legitimate ground to approve the reports prepared by the Land Acquisition officer without even a semblance of consideration of the objections filed by the appellants therein and other land owners. Therefore,

it was held that the Land Acquisition Officer failed to discharge the statutory duty cast upon him to prepare a report after objectively considering the objections filed under Section 5A(1) and submissions made by the objectors during the course of personal hearing. The Land Revenue Commissioner decided to acquire the land irrespective of the objections raised by the petitioners. As it appears that the only goal was to acquire the land irrespective of the objections, no attempts have been made by the Land Revenue Commissioner to ascertain whether there is any puthuval land or other reclaimed land to which the site inspection could have focused on. The respondent institute is neither a company nor a corporation owned or controlled by the State. They should have taken a decision at least at the stage of section 5A enquiry as to under what nature the acquisition actually falls.

24. Ext.P8 produced in WPC No.4140/2012 is the copy of a letter dated 12.11.2007 issued by the

respondent institute to the Deputy Collector, Land Acquisition forwarding a cheque for ₹35 lakhs paying compensation amount for the acquisition of land for the institute. However, such a procedure can happen only when the acquisition is for a company. The answer to the same by the learned counsel for the respondent institute is that it is part of the fund granted to the respondent institute by the Government. Now, the question is how far this contention could be accepted.

25. The Apex Court had occasion to consider a fact situation akin to the mirror image of the fact situation in this case. In ***Pratibha Nema and others v State of M.P. and others*** (2003(10) SCC 626), the Apex Court has observed (see paragraph 25 of the judgment) that the genesis of the fund is not the determinative factor, but it is its ownership in *praesenti* that matters. In that case, the company gave a premium to a 'nigam' which in turn was passed as compensation by the 'nigam'. On facts, it was

decided by the Apex Court that it becomes the fund of the 'nigam' and when such fund is utilized for the purpose of payment of compensation, it satisfies the requirements of the second proviso to Section 6(1) explanation 2. The fact situation in the present case is just opposite to the fact situation in the aforesaid case. Here, even if it is contended that the amount is deposited by the Government, once it comes to the hands of the respondent institute which is an autonomous body, it becomes the fund of the institute as the source is irrelevant.

26. The respondent institute has filed an additional counter affidavit along with Annexure R1(z) (q) which is the true copy of the award dated 13.2.2012. In the light of the same, Mr.K.V.Sohan, the learned counsel for the respondent institute submitted that as the writ petitions were filed after the award has been passed, the same is not maintainable at all. Reliance was also placed on the decision of the Apex Court in ***Municipal Council, Ahmednagar and***

***another v Shah Hyder Beig and others*** (AIR 2000 SC 671(1). However, this Court is of the definite view that the aforesaid decision cannot be applied to the fact situation in the present case for the following reasons:

27. In ***Shah Hyder Beig's*** case (supra), the award was published in the year 1976 and the writ petition was filed almost 16 years thereafter, i.e. in the year 1992. Execution application regarding the award, also moved by the petitioners during the pendency of the writ petition and also a further civil revision application before the High Court. In the present case, the petitioners were vigilant enough in prosecuting their case. Therefore, the plea of laches on the ground that the award has been passed is totally misplaced and the observations in ***Shah Hyder Beig's*** case is clearly distinguishable from the facts of the present case. In ***Shah Hyder Beig's*** case, the length of time as well as the concept of approbation and reprobation has totally been ignored

by the High Court. Therefore, the Apex Court was of the view that the appellant was entitled to succeed.

28. The petitioners in these writ petitions were adhering to a consistent stand that the respondents have acted as if Section 6 declaration (Ext.R5(b) dated 16.12.2008 continues to remain intact though in fact the same has been set aside in WPC No.25281/2009 and connected case. No further declaration under Section 6(1) has been passed till today.

29. As already pointed out, even if the time during the interim orders in the previous writ petitions were in force are excluded, the period prescribed by clause (ii) under the first proviso to Section 1 of the Act has already elapsed. As no declaration has been made, the notification under Section 4(1)(a) of the Act must be deemed to have elapsed and therefore, no proceedings for land acquisition would be maintainable.

30. As the impugned order passed by the Land Revenue Commissioner itself is incompetent, this

Court is of the definite view that the petitioners cannot be non-suited on the ground that an award has been passed.

31. On a consideration of the entire materials now placed on record, this Court is of the definite view that the petitioners are entitled to succeed.

In the result, these writ petitions are allowed. The order of the Commissioner for Land Revenue dated 24.12.2011 in LR(C1)39969/2011 (Ext.P11 in WPC No.4130/2012)/Ext.P19 in WPC No.4140/2012 and 4144/2012 and the consequential proceedings are hereby quashed.

**sd/- A.V.RAMAKRISHNA PILLAI**  
**JUDGE**

css/

true copy

P.S.TO JUDGE