

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937

WP(C).No. 4024 of 2014 (C)

PETITIONER :

**SAJAN P.M.,
S/O. LATE MADHAVAN, RESIDING AT 'GITHANJALI',
ARUNAPURAM.P.O., PALA, KOTTAYAM DISTRICT.**

**BY SRI.N.N.SUGUNAPALAN,SENIOR ADVOCATE
ADV. SRI.S.SUJIN**

RESPONDENT(S):

- 1. THE LAND ACQUISITION OFFICER,
SPECIAL TAHSILDAR, LAND ACQUISITION, PALA,
KOTTAYAM DISTRICT.**
- 2. CHIEF ENGINEER,
PUBLIC WORKS DEPARTMENT (ROADS AND BRIDGES),
THIRUVANANTHAPURAM.**
- 3. THE EXECUTIVE ENGINEER,
PUBLIC WORKS DEPARTMENT (ROADS AND BRIDGES),
KOTTAYAM.**
- 4. THE ASSISTANTE EXECUTIVE ENGINEER,
PUBLIC WORKS DEPARTMENT (ROADS AND BRIDGES), PALA,
KOTTAYAM.**
- 5. DISTRICT COLLECTOR, KOTTAYAM.**
- 6. PRINCIPAL SECRETARY, PUBLIC WORKS DEPARTMENT,
GOVT. OF KERALA, SECRETARIAT, THIRUVANANTHAPURAM-695 001.**
- 7. STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY TO GOVERNMENT,
GOVT. SECRETARIAT, THIRUVANANTHAPURAM-695 001.**
- 8. KURIAKOSE PADAVAN, PADAVIL HOUSE, KIZHATHADIYIL, PALA.**

R1 TO R7 BY SPL.GOVERNMENT PLEADER SRI.MANILAL

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 05-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- P1. TRUE COPY OF THE PLAN SHOWING THE EXISTENCE OF THE ROADS AND ALSO THE PROPOSED ROAD WHICH CUTS ACROSS THE PETITIONERS PROPERTY.
- P2. TRUE COPY OF THE PLAN.
- P3. TRUE COPY OF THE NOTIFICATION PUBLISHED BY THE RESPONDENTS UNDER SECTION 4(1) OF THE LAND ACQUISITION ACT, 1894.
- P3(A). TRUE COPY OF THE OBJECTION FILED BY PETITIONER.
- P4. TRUE COPY OF THE SAID ORDER DATED 19/4/2013 AS MODIFIED BY THE ORDER DATED 7/10/2013.
- P5. TRUE COPY OF THE OBJECTIONS RAISED BEFORE THE GOVERNMENT BY THE PETITIONER ON 28/8/2012
- P6. TRUE COPY OF THE REPRESENTATION WAS SUBMITTED BEFORE THE HON'BLE MINISTER ON 7/10/2011
- P7. TRUE COPY OF THE NEWS ITEM PUBLISHED IN THE MATHRUBHUMI DAILY DATED 15/7/2014
- P8. TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER DATED 22/8/2013
- P9. TRUE COPY OF THE AWARD IN LAC.NO.67/2015
- P10. TRUE COPY OF THE AWARD IN LAC.NO.68/2015
- P11. TRUE COPY OF THE NOTICE DATED 17/09/2015

RESPONDENT(S)' EXHIBITS

- R4(A). COPY OF THE PLAN AS PER THE PROPOSAL OF THE DEPARTMENT.
- R4(B). COPY OF THE PLAN DRAWN IN ACCORDANCE WITH THE SAID PROPOSAL.
- R4(C). COPY OF THE PROCEEDINGS OF THE CHIEF ENGINEER

/TRUE COPY/

P.A.TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

.....
WP(C).No.4024 of 2014

.....
Dated this the 5th day of October, 2015

J U D G M E N T

The petitioner is a resident of Pala Municipality in Kottayam district. In the writ petition, the petitioner initially challenged the very proposal for acquisition of his property in connection with the proposal of the Government to construct a new road within the limits of the Pala Municipality. While the writ petition was pending consideration before this Court since 2014, in the absence of any order staying further proceedings, the acquisition proceedings initiated by the respondents continued to proceed ahead. The petitioner, therefore, at various stages amended the writ petition so as to incorporate challenges against the Notification issued under Section 4 (1) and also the award that was subsequently passed in terms of the Land Acquisition Act, 1894. The last amendment to the writ petition was in September, 2015, when the petitioner incorporated a challenge to Exts.P9 and P10 awards that were passed by the respondents under the Land Acquisition Act, 1894. He has also raised a challenge against Ext.P11 notice that requires him to hand over vacant

possession of the property on 06.10.2015. Although various contentions are raised in the writ petition, the arguments at this stage are confined solely with respect to the legality of Exts.P9 and P10 awards that have been passed by the respondents. Senior counsel appearing for the petitioner would contend that inasmuch as Exts.P9 and P10 awards have been passed after the coming into force of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'the 2013 Act'), by virtue of Section 24 of the said Act, the provisions of the 2013 Act relating to determination of compensation have to be applied while passing an award, pursuant to acquisition proceedings that were initiated under the old Act. It is also the contention of the learned Senior counsel that unless and until an award has been passed in accordance with Section 24 (1) (a) of the 2013 Act, the respondents cannot proceed with Ext.P11 notice seeking to dispossess the petitioner from the property in question.

2. Per contra, the learned Government Pleader

appearing for the respondents would admit that Exts.P9 and P10 awards have not been passed after determining the compensation payable to the petitioner in terms of the provisions of the 2013 Act, and that, the dispossession of the petitioner will be done only after passing a supplementary award taking into account the principles for determination of compensation as prescribed under the 2013 Act.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that in terms of Section 24(1) (a) of the 2013 Act, where no award under Section 11 of the Land Acquisition Act, 1894 has been made after the coming into force of the 2013 Act, all provisions of the 2013 Act relating to the determination of compensation shall apply to pending proceedings. In the light of the specific provision, therefore, it is clear that any award passed by the respondents, in respect of Land Acquisition proceedings initiated under the 1894 Act, but not concluded with the passing of an award therein till the coming into force of the 2013 Act, must determine the compensation amount payable in accordance with the principles for determination of

compensation as stipulated in the 2013 Act. Inasmuch as the said exercise has not been done while passing Exts.P9 and P10 awards, the same cannot be construed to be awards within the meaning of the term under the 2013 Act. I therefore dispose the writ petition with a direction to the 1st respondent to pass fresh awards in relation to the property acquired from the petitioner, by applying the principles relating to determination of compensation as provided under the 2013 Act. The 1st respondent shall pass fresh awards, as directed, within a period of three months from the date of receipt of a copy of this judgment. I make it clear that, proceedings for taking possession of the property pursuant to Ext.P11 notice shall stand deferred till such time as awards are passed as directed and communicated to the petitioner.

A.K.JAYASANKARAN NAMBIAR
JUDGE

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