

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

TUESDAY, THE 24TH DAY OF FEBRUARY 2015/5TH PHALGUNA, 1936

WP(C).No. 5559 of 2014 (T)

PETITIONER(S) :

1. AMINA, AGED 49 YEARS,
W/O.LATE P. ABDUL RAHIMAN HAJEE, RESIDING AT ASKA COTTAGE,
ITTAMMAL, KOLAVAYAL P.O, KASARAGOD DISTRICT.
2. MUHAMMED SADIQUE, AGED 24 YEARS,
S/O.LATE P. ABDUL RAHIMAN HAJEE, RESIDING AT ASKA COTTAGE,
ITTAMMAL, KOLAVAYAL P.O, KASARAGOD DISTRICT.

BY SRI.K.JAYAKUMAR (SENIOR ADVOCATE)
ADVS.SRI.T.R.RAVI
SRI.JAWAHAR JOSE
SRI.V.VINAY MENON
SMT.CISSY MATHEWS

RESPONDENT(S) :

1. THE DISTRICT COLLECTOR,
KASARAGOD, PIN- 671 121.
2. THE SPECIAL TAHASILDAR (LAND ACQUISITION),
KASARAGOD- 671 121.
3. THE ROADS AND BRIDGES DEVELOPMENT CORPORATION (RBDC),
2ND FLOOR, PREETHI BUILDINGS,
M.V. ROAD, PALARIVATTOM, ERNAKULAM- 682 025.

* ADDITIONAL R4 IMPEADED

4. AHAMED ASSLAM B.M, AGED 47 YEARD,
S/O.LATE ABDUL KHADER B.M, B.M'S MAHAL,
NEAR RAILWAY STATION, KANHANGAD, KASARGOD DISTRICT.

* IS IMPEADED AS ADDITIONAL R4 AS PER ORDER DATED 30.05.2014 IN
I.A.NO.4014 OF 2014.

R1 TO R2 BY SRI.K.A.JALEEL, ADDL. ADVOCATE GENERAL
GOVERNMENT PLEADER SRI.JOE KALLIATH
R3 BY ADV. SRI.M.VIJAYA KUMAR, S.C
ADDL. R4 BY ADVS. SRI.BABU KARUKAPADATH
SMT.M.A.VAHEEDA BABU
SRI.K.A.NOUSHAD
SRI.P.U.VINOD KUMAR
SRI.KANDAMPULLY RAHUL
SRI.MITHUN BABY JOHN
SRI.J.RAMKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 24-02-2015, ALONG WITH W.P.(C).NO.6980 OF 2014, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1:** TRUE COPY OF NOTIFICATION DATED 23/02/2011 ISSUED UNDER SECTION 4 (1) OF THE LAND ACQUISITION ACT.
- EXHIBIT P2:** TRUE COPY OF THE NOTICE DATED 14/07/2011 ISSUED IN FORM 4 (B) OF THE LAND ACQUISITION RULES.
- EXHIBIT P3:** TRUE COPY OF THE COMMON ORDER IN W.P.(C).NOS.37255/2009, 36922/2010 AND 25271/2011.
- EXHIBIT P4:** TRUE COPY OF THE JUDGMENT DATED 21/01/2013 IN W.P.(C).NO.25271/2011.
- EXHIBIT P5:** TRUE COPY OF THE NOTICE DATED 06/01/2014, ISSUED TO THE PETITIONERS IN FORM 4 (A) OF THE LAND ACQUISITION RULES.
- EXHIBIT P6:** TRUE COPY OF THE OBJECTION FILED BY THE PETITIONERS DATED 27/01/2014 TO THE NOTICE UNDER FORM 4 (A) OF THE LAND ACQUISITION RULES.
- EXHIBIT P7:** TRUE COPY OF THE NOTICE IN FORM 4 (A) OF THE LAND ACQUISITION RULES DATED 11/02/2014, DETAILING THE NAMES OF PERSONS WHO FILED THE OBJECTION AND SPECIFYING THAT THE DATE OF ENQUIRY UNDER SECTION 5A OF THE ACT IS ON 26/02/2014.
- EXHIBIT P8:** TRUE COPY OF THE JUDGMENT DATED 22/11/2011 IN W.P.(C).NO.37255/2009.
- EXHIBIT P9:** TRUE COPY OF THE JUDGMENT DATED 06/06/2013 IN W.P.(C).NO.36922/2010.
- EXHIBIT P10:** TRUE COPY OF THE ORDER DATED 10/12/2010 IN W.P.(C).NO. 36922/2010.
- EXHIBIT P11:** TRUE COPY OF THE JUDGMENT DATED 03/02/2014 IN W.P.(C).NO.26866/2013.`

RESPONDENT(S)' EXHIBITS

- EXHIBIT R4(A):** A TRUE COPY OF THE ORDER DATED 10.12.2010 IN W.P.(C).NO.36922/2010 OF THIS HON'BLE COURT.

//TRUE COPY//

P.A.TO JUDGE.

'C.R'

V.CHITAMBARESH, J.

W.P (C) Nos.5559/2014 & 6980/2014

Dated this the 24th day of February, 2015

J U D G M E N T

The land acquisition proceedings initiated for constructing a railway over bridge are impugned solely on the ground of the bar of limitation under the Land Acquisition Act, 1894 ['the Act' for short]. The plea of malafides in the land acquisition proceedings in question has already been turned down by this Court in a series of writ petitions. The contention of the petitioners is that more than one year has elapsed since the date of notification under Section 4 without any declaration under Section 6 of the Act. The petitioners seek a declaration that the land acquisition proceedings have lapsed and to quash the notification under Section 4(1) of the Act.

2. A declaration under Section 6 of the Act is required to be made for a public purpose before the expiry of one year from the date of publication of the notification under Section 4(1) of the Act. This is evident by proviso (ii) to Section 6(1) of the Act subject of course to Explanation 1 and Explanation 2

found therein. Explanation 1 which operates in the case on hand is extracted hereunder:-

Explanation 1- In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under section 4, sub-section (1), is stayed by an order of a Court shall be excluded. (emphasis supplied)

The petitioners contend that the instant land acquisition proceedings are not saved by Explanation 1 to Section 6(1) of the Act which is however emphatically refuted by the respondents.

3. I heard Mr.K.Jayakumar, Senior Advocate on behalf of the petitioners, Mr.K.A.Jaleel, Additional Advocate General on behalf of the State and Mrs.Vaheeda Babu, Advocate on behalf of the Additional respondent.

4. W.P(C) No.36922/2010 and W.P(C) No.37255/2009 were pending on the file of this Court when notification under Section 4(1) of the Act was published on 14.3.2011. An interim order was first passed on 10.12.2010 in W.P(C) No.36922/2010 staying the acquisition of the land belonging to the petitioner therein initially for two months. Interim orders were

later passed in W.P(C) Nos.36922/2010, 37255/2009 and 25271/2011 on 2.11.2011 staying the acquisition proceedings for the railway over bridge. It may at once be noticed that the property involved in these three writ petitions are taken in by the common notification under Section 4(1) of the Act.

5. The railway over bridge at level cross No.274 cannot be constructed without the acquisition of the property of the petitioner in W.P(C) No.36922/2010 in R.S.Nos.62/1 and 75 of Balla Village. The interim order staying the acquisition of the land undoubtedly attracts Explanation 1 to Section 6(1) of the Act since 'acquisition' is an action or proceeding to be taken in pursuance of Section 4(1) notification. It does not matter even if the order of stay of the action or proceeding had been passed on 10.2.2010 much before the date of notification under Section 4(1) of the Act on 14.3.2011. The Legislature has cautiously used the words 'any action or proceeding to be taken in pursuance of the notification' and not action or proceeding pursuant to the notification.

6. The land acquisition for the railway over

bridge is an integral scheme and any stay in regard to a portion of the same would put the entire process in limbo as in the instant case. It is not possible to dissect the order of stay as applicable to the petitioner in W.P(C) No.36922/2010 only without any impact in W.P(C) Nos. 37255/2009 and 25271/2011. Similar view has been taken by the Full Bench of the Delhi High Court in B.R.Gupta's case [AIR 1987 Delhi 239] in regard to the effect of the order of stay in land acquisition cases. The Supreme Court approved the view in Om Prakash v. Union of India and others [AIR 2010 SC 1068] and observed as follows in paragraph 87 thereof:-

“87. Perusal of the opinion of Full Bench in B.R.Gupta-I (AIR 1987 Del 239) would clearly indicate with regard to interpretation of the word 'any' in Explanation 1 to the first proviso to Section 6 of the Act which expands the scope of stay order granted in one case of land owners to be automatically extended to all those land owners, whose lands are covered under the notifications issued under Section 4 of the Act, irrespective of the fact whether there was any separate order of stay or not as regards their lands.....”

7. W.P(C) Nos.36922/2010, 37255/2009 and 25271/2011 were disposed of on 6.6.2013, 22.11.2012 and 21.1.2013 respectively and the period of one year would start from 6.6.2013 only. The respondents assert that it would suffice if the declaration under Section 6(1) of the Act is published on or before 5.6.2014 to save the bar of limitation. But then interim orders of stay were again granted in these writ petitions [W.P(C) Nos.5559/2014 and 6980/2014] on 25.2.2014 and 13.3.2014 respectively. The period of one year has not expired between 6.6.2013 and 25.2.2014 and there is time enough for the respondents to publish the notification under Section 6(1) of the Act if they so desire.

8. The contention that the land acquisition proceedings have lapsed for not publishing the notification under Section 6(1) within one year of the notification under Section 4(1) of the Act fails. The compensation shall be determined under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-Settlement Act, 2013. This is in view of the provisions contained in Section 24(1)(a) of the said Act since an Award has hitherto not been

W.P(C) No.5559/2014 & 6980/2014

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passed under Section 11 of the Act.

The writ Petitions are dismissed. No costs.

Sd/-
V.CHITAMBARESH,
Judge.

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