

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

WP(C).No. 9373 of 2012 (V)

PETITIONER(S) :

1. JOSEPH DAVID, AGED 68 YEARS,
S/O.DAVID, KANNAMPUZHA HOUSE, NJARAKKAL,
ERNAKULAM DISTRICT.

2. AUGUSTINE DAVID,
S/O.LATE DAVID, KANNAMPUZHA HOUSE, NJARAKKAL,
ERNAKULAM DISTRICT.

3. JOHN DAVID,
S/O.LATE DAVID, KANNAMPUZHA HOUSE, NJARAKKAL,
ERNAKULAM DISTRICT.

4. PAULSON DAVID,
S/O.LATE DAVID, KANNAMPUZHA HOUSE, NJARAKKAL,
ERNAKULAM DISTRICT.

BY ADVS.SRI.N.N.SUGUNAPALAN (SR.)
SRI.S.SUJIN
SMT.NITA.N.S.

RESPONDENTS:

1. THE SPECIAL TAHSILDAR,
LAND ACQUISITION (GENERAL) ERNAKULAM.

2. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.T.J. MICHAIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY
HEARD ON 03-11-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

WP(C) NO.9373 OF 2012

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1 - TRUE COPY OF THE ORDER DATED 28/1/2010 PASSED BY THE DEPUTY COLLECTOR (RR) & NODAL OFFICER - TRP CELL ON BEHALF OF THE DISTRICT COLLECTOR, ERNAKULA.

EXT.P2 - TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT DATED 25/6/2010 IN WP(C) NO.17812/2010.

EXT.P3 - TRUE COPY OF THE LAND ACQUISITION AWARD DATED 17/9/2009 PASSED BY THE 1ST RESPONDENT.

EXT.P4 - TRUE COPY OF THE NOTICE DATED 7/9/2009 ISSUED BY THE 1ST RESPONDENT.

EXT.P5 - TRUE COPY OF THE REFERENCE APPLICATION DATED 16/12/2011 SUBMITTED BY THE PETITIONERS BEFORE THE 1ST RESPONDENT.

EXT.P6 - TRUE COPY OF THE AFFIDAVIT AND PETITION DATED 16/12/2011 FILED BY THE PETITIONERS BEFORE THE 1ST RESPONDENT ALONG WITH EXT.P5.

EXT.P7 - TRUE COPY OF THE ORDER NO.LAC 46/08/D1 DATED 21/1/2012 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONERS.

//true copy//

P.S. to Judge

K. HARILAL, J.

W.P. (C) No. 9373 of 2012

Dated this the 3rd day of November, 2015

JUDGMENT

The petitioners are the claimants whose land, having an extent of 06.88 Ares, had been acquired for the purpose of acquisition under the Tsunami Rehabilitation Programme. The award has been passed on 17/9/2009. According to the petitioners, they were not aware of the passing of the said award. On 7/9/2009, when the case was posted for hearing, no hearing took place. The petitioners were not aware that just after three days the award will be passed without producing the required documents. Therefore, the petitioners strongly believe that everything was done hurriedly and behind the back

of the petitioners. However, the petitioners filed Ext.P5 application on 16/12/2011 before the 1st respondent, seeking reference of the matter, to the civil court, for enhancement of the compensation under the Land Acquisition Act with Ext.P6 petition to condone the delay, in filing the application. The petitioners were, thus, expecting for a reference of the matter to the civil court. However, the petitioners have now been served with Ext.P7 reply from the 1st respondent dated 21/1/2012 informing that immediately after passing the award on 17/9/2009, a copy of the same was affixed at the petitioners' residence on 19/9/2009 to convey the information about passing of the award, but the reference application was filed by the petitioners only on 16/12/2012, and that under Sec.18 (2) of the Land Acquisition Act, only 6 weeks, after receipt of notice under Sec.12(2) are available for submitting the application for reference and since that application was received after the said period, the same is barred by limitation. This writ petition is filed

challenging the dismissal of the reference application and the petitioner to condone the delay in filing the application.

2. Heard the learned counsel for the petitioners and the learned Government Pleader appearing for the respondents.

3. Going by Ext.P7, it is seen that the award was passed on 17/9/2009 and notice informing the passing of the award was served on the petitioners on 19/9/2009; but the application was filed by the petitioners only on 16/12/2011. Under Sec.18(2) of the Land Acquisition Act, only 6 weeks after receipt of notice under Sec.12(2) are available for considering the application for reference and since the application was received much after that, the same cannot be considered. Going by the Land Acquisition Act, I find that there is no provision for condoning the delay in filing the reference application and the said legal position is affirmed by the judicial precedents also. Therefore, the 1st respondent is justified in passing

Ext.P7 order and there is no reason to interfere with the impugned order under challenge in exercise of the jurisdiction under Art.226 of the Constitution of India.

This writ petition is dismissed.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge