

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&**

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

WP(C).No. 8323 of 2015 (M)

PETITIONER(S):

**THE COCHIN DEVASWOM BOARD,
REP. BY ITS SECRETARY, THRISSUR.**

BY ADV. SRI.KRISHNA MENON, SC, COCHIN DEVASWOM BOARD

RESPONDENT(S):

- 1. THE DISTRICT COLLECTOR,
ERNAKULAM.**
- 2. THE SPECIAL TAHSILDAR (LA) GENERAL,
ERNAKULAM-682 011.**
- 3. THE PROJECT DIRECTOR,
NATIONAL HIGHWAY AUTHORITY OF INDIA, PROJECT OFFICE,
VYTTILA, KOCHI - 682 019.**
- 4. THE TEMPLE ADVISORY COMMITTEE,
CHERANELLOOR BHAGAVATHI TEMPLE, CHERANELLOOR.P.O.
KOCHI- 682 034.**
- 5. THE UNION OF INDIA, REP BY ITS SECRETARY,
MINISTRY OF SURFACE TRANSPORT, NEW DELHI.**
- 6. STATE OF KERALA,
REP. BY ITS SECRETARY, REVENUE DEPARTMENT,
THIRUVANANTHAPURAM-695 001.**

R5 BY ADV. SRI.M.L.SURESH KUMAR, CGC

R3 BY ADV. SRI.THOMAS ANTONY

R1,R2 BY SRI.SUSHEELA BHAT, GOVERNMENT PLEADER

R BY SRI.P.V.LONACHAN

R BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

DG

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: TRUE COPY OF THE RELEVANT PAGE OF THE BASIC TAX REGISTER.

**EXT.P2: TRUE COPY OF THE FIELD MAP IN RESPECT OF THE LAND AS AT PRESENT
AFTER ACQUISITION.**

EXT.P3: TRUE COPY OF THE REPORT OF THE HON'BLE OMBUDSMAN.

EXT.P4: TRUE COPY OF THE ORDER DTD. 13.2.2013 IN DBP 167/2012.

**EXT.P5: TRUE COPY OF THE CLAIM STATEMENT (LESS ANNEXURES) DATED 11TH
DAY OF SEPT. 2013.**

EXT.P6: TRUE COPY OF THE JUDGMENT IN LAR NOS.166/07 & 11/08.

EXT.P7: TRUE COPY OF THE COUNTER AFFIDAVIT DATED 30.7.2014 IN DBP 167/2012.

EXT.P8: TRUE COPY OF THE ORDER DTD. 9.4.2014 IN DBP 167/2012.

**EXT.P9: TRUE COPY OF THE PROCEEDINGS OF THE FIRST RESPONDENT DATED
17.10.2014.**

RESPONDENT(S)' EXHIBITS

**EXT.R1(a) : COPY OF FORM No.7 APPROVED BY SURVEY
SUPERINTENDENT.**

**EXT.R1(b) : COPY OF AREA LIST APPROVED BY SURVEY
SUPERINTENDENT SHOWING THE LAND AS PURAMBOKE.**

//TRUE COPY//

P.A TO JUDGE

**THOTTATHIL B.RADHAKRISHNAN &
SUNIL THOMAS, JJ.**

W.P.(C).No.8323 of 2015
&
D.B.P.No.167 of 2012

Dated this the 5th day of August, 2015

J U D G M E N T / O R D E R

Thottathil B.Radhakrishnan, J.

- 1.The sum and substance of the issues involved in these matters is the correctness or otherwise of Exhibit P9 in W.P.(C) No.8323 of 2015 which is an order issued by the adjudicating authority for compensation on account of an acquisition for a National Highway.
- 2.Heard the learned Special Government Pleader for Revenue, State of Kerala, learned standing counsel for the Cochin Devaswom Board and the learned counsel for the National Highway Authority of India, for short, 'NHAI'.
- 3.The acquisition is for the purpose of the NHAI. The dispute is

between the Cochin Devaswom Board and the State of Kerala. That dispute appears to be a problem in a concrete and misplaced manner only during the pendency of these matters before us. Initially, there were certain claims and objections which went up for consideration of the High Court through the learned Ombudsman for Travancore and Cochin Devaswom Boards. The Court impleaded the District Collector who was the competent authority to adjudicate the claim for compensation and relegated that matter to that authority. Thereupon, the authority concluded that the Cochin Devawom Board has not established its eligibility for compensation. There are certain sustained observations in the order which is Exhibit P8 in W.P(C).No.8323 of 2015, i.e., the earlier order of this Court. That may tend to indicate that this Court was of the view that the land belongs to the Cochin Devaswom Board. But, the State of Kerala was not a party to that litigation as such. Therefore, in the fitness of things, the District Collector as the adjudicating authority had to consider the eligibility of the Cochin Devaswom Board to claim the compensation. The Cochin Devaswom Board's materials were considered by the

District Collector, however, holding that the corrections in survey records obtained by the Cochin Devaswom Board are not reliable and no further documents have been produced to substantiate the claim for compensation. We think that such an approach cannot be have in the claims relating to Devaswom lands. The Devaswom lands have to be treated as a different category while deciding such issues. While the State may have its own case as to whether the Basic Tax Register and other records have been erroneously corrected. The fundamental issue will have to be based on as to what was the type of land or nature of land and also as to who was the holder of land at the time when the land was actually acquired. It is pointed out that the said parcel was part of a public road. Therefore, the NHAI would point out that the said area is vested in the Local Self Government Institution and the local Panchayath records show that the said road is shown as a vested road. Those materials may be relevant. However, whether there was any mistake in the re-survey will also be relevant to decide such issues. The learned Special Government Pleader for the Revenue points out that the Revenue records would indicate

that the lands are Government lands and not those belonging to the Devaswom Board. We do not think that the approach adopted in Exhibit P9 is sustainable because merely on account of non-production of further title documents, the Devaswom Board could not have demanded compensation.

4. Having regard to the aforesaid facts and factors, it is necessary that a decision de novo is taken without considering the question of any delay but considering the rival claims of the State of Kerala and the Cochin Devaswom Board and also the contentions of the NHAI that the property is actually public way or road vested in the Local Self Government Institution. To pave way for that, Exhibit P9 in W.P.(C).No.8323 of 2015 is liable to be quashed.

5. In the result, Exhibit P9 in W.P.(C).No.8323 of 2015 is quashed and the said writ petition is ordered directing that the decision de novo shall be taken in relation to the issue by the District Collector, following the earlier directions contained in Exhibit P8 in W.P.(C).No.8323 of 2015. Such decision shall be taken

after affording opportunity to all necessary parties and the decision shall be rendered within an outer limit of nine months from now. The decision so taken shall be placed in DBP.No.167 of 2012 for perusal.

Sd/-
(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

Sd/-
(SUNIL THOMAS, JUDGE)

//TRUE COPY//

P.A TO JUDGE

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