

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

WP(C).No. 11476 of 2011 (H)

PETITIONERS:

- 1. M.M.JEEVAN, AGED 58 YEARS,
S/O.P.K.MADHAVAN, RESIDING AT 'ARUNA'
PERUMBAYIKKAD P.O., NEELIMANGALAM, KOTTAYAM-28.**
- 2. SUSHAMA JEEVAN, AGED 51 YEARS,
RESIDING AT 'ARUNA', PERUMBAYIKKAD P.O., NEELIMANGALAM
KOTTAYAM-28.**

BY ADV. SRI.K.JAGADEESCHANDRAN NAIR

RESPONDENTS:

- 1. STATE OF KERALA, REPRESENTED BY THE
CHIEF SECRETARY, TO GOVERNMENT OF KERALA
THIRUVANANTHAPURAM-695001.**
- 2. THE DISTRICT COLLECTOR,
KOTTAYAM- 686002.**
- 3. SPECIAL TAHSILDAR, LAND ACQUISITION,
KOTTAYAM-686002.**
- 4. THE ASSISTANT EXECUTIVE ENGINEER,
BRIDGES SUB DIVISION, KOTTAYAM-686002
(PUBLIC WORKS DEPARTMENT).**

R1-R4 BY SR. GOVERNMENT PLEADER SRI. C.S. MANILAL

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
29-07-2015, ALONG WITH W.P.(C). NO.20865/2011, W.P.(C). NO.16224/2012
AND W.P.(C). NO.31256/2012, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

DCS

APPENDIX

PETITIONER(S)' EXHIBITS

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- P1:- COPY OF THE SALE DEED NO. 3649 DATED 5.12.1986**
- P2:- COPY OF THE SALE DEED NO. 3002 DATED 29.10.1994**
- P3:- COPY OF THE SKETCH PLAN AS PREPARED BY THE 4TH RESPONDENT DATED 3.9.2010**
- P4:- COPY OF THE PLAN OF THE EXISTING PANCHAYAT ROAD ON THE WEST BANK OF THE RIVER AND LEADING FROM MC ROAD TO THE FERRY AND FORMS PART OF THE 2ND PROPOSAL**
- P5:- COPY OF THE ESTIMATE PREPARED BY THE ASSISTANT EXECUTIVE ENGINEER WITH THE ESTIMATED WITH ROUGH COST OF RS. 9 CRORES**
- P6:- COPY OF THE LETTER ISSUED TO THE 1ST PETITIONER BY THE 4TH RESPONDENT DATED 3.9.2010 FORWARDING EXT. P3**
- P7:- COPY OF THE GAZETTE NOTIFICATION DATED 5.2.2011 UNDER SECTION 4(1) OF LAND ACQUISITION ACT, 1894**
- P8:- COPY OF THE LATEST SKETCH AND PLAN TO ACQUIRE LAND AS OBTAINED BY THE PETITIONERS FROM THE 4TH RESPONDENT'S OFFICE**
- P9:- COPY OF THE NEWS REPORT PUBLISHED IN KOTTAYAM EDITION OF MALAYALA MANORAMA DAILY NEWS PAPER DATED 24TH SEPTEMBER 2011 ON THE 2ND PAGE**
- P10: SKETCH OF NEW PROPOSAL AS STATED IN EXT. P9 AND EXISTING ROAD AND EXISTING BRIDGES ON AN ALTERNATE ROUTE**
- P11: COPY OF THE LETTER DATED 24.01.2012 FROM M.M. JEEVAN TO KOTTAYAM MUNICIPALITY**
- P12: COPY OF REPLY TO THE ABOVE DATED 25.02.2012**
- P13: COPY OF LETTER BY MM JEEVAN TO THE OFFICE OF PWD ASSISTANT EXECUTIVE ENGINEER, KOTTAYAM DATED 09.02.2012**
- P14: COPY OF REPLY TO ABOVE DATED 25.02.2012**
- P15: COPY OF LETTER BY RAJ JEEVAN TO OFFICE OF THE LAND REVENUE COMMISSIONER, DATED 1.3.2012**
- P16: COPY OF REPLY TO ABOVE (ENCLOSING LETTER FROM DISTRICT COLLECTOR, KOTTAYAM) DATED 02.03.2012**
- P17: NEWSPAPER EXTRACT PAGE 2- MANGALAM DAILY DATED 20.02.2012**
- P18: ORDER OF LAND REVENUE COMMISSIONER DATED 22.01.2011**

WP(C).No. 11476 of 2011 (H)

P19: COPY OF NOTIFICATION DATED 13.10.2011

RESPONDENT(S)' EXHIBITS:-

R4(a):- SKETCH OF THE PROPOSED ALIGNMENT

R4(b):- COPY OF THE AWARD NO. 4/2012 (7,8) DATED 10.12.2012

R4(c):- COPY OF THE AWARD NO. 4/2012 (9) DATED 10.12.2012

R4(d):- COPY OF THE AWARD NO. 4/2012 (10) DATED 10.12.2012

R4(e):- COPY OF THE AWARD NO. 4/2012 (11) DATED 10.12.2012

R4(f):- COPY OF THE AWARD NO. 4/2012 (12) DATED 10.12.2012

RESPONDENT'S ANNEXURES:-

ANNEXURE A:- COPY OF REQUEST DATED 02.08.2014

ANNEXURE B:- COPY OF 1ST PLAN SUBMITTED BY SRI. M.M. JEEVAN

ANNEXURE C:- COPY OF 2ND PLAN SUBMITTED BY SRI. M.M. JEEVAN

ANNEXURE D:- COPY OF THE REQUEST DATED 01.08.2014

ANNEXURE E:- COPY OF THE 1ST ALTERNATIVE PLAN

ANNEXURE F:- COPY OF THE 2ND ALTERNATIVE PLAN

**ANNEXURE G:- COPY OF PLAN REGARDING THE OFFICIALLY APPROVED
ALIGNMENT**

**ANNEXURE H:- COPY OF 1ST SUGGESTION/PROPOSAL OF PETITIONERS
DOTTED IN RED INK IN THE PLAN**

**ANNEXURE I:- COPY OF 2ND SUGGESTION OF PETITIONER DOTTED IN
RED INK IN THE PLAN**

/TRUE COPY/

P.A. TO JUDGE

DCS

“C.R”

V.CHITAMBARESH, J.

W.P (C) Nos.11476/2011, 20865/2011,
16224/2012 & 31256/2012

Dated this the 29th day of July, 2015

J U D G M E N T

It was a treat to hear Mr.K.Jagadeesachandran Nair and Mr.K.Ramakumar who are doyens of the Bar as well as Mr.K.Manilal, Senior Government Pleader.

2. The effect of the proviso to Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (the 'Act' for short) falls for consideration. The statutory provision is extracted hereunder:-

“24. Land acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases:-

(1) x x x x

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the

proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under Section 4 of the Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.”

The following conditions should be satisfied for Section 24(2) of the Act to apply in which case only can the proceedings under the Land Acquisition Act, 1894 be deemed to have been lapsed:

- i) The land acquisition proceedings should have been initiated under the Land Acquisition Act, 1894.
- ii) An award under Section 11 thereof should have been passed five years or more prior to the commencement of the Act (01.01.2014)
- iii) The physical possession of the land should not have been taken or the compensation should not have been paid.

3. The proviso only confers the benefit of Section 24(2) of the Act to the minority of land holders who have been paid the compensation when the majority of land holders have not been paid. The minority and the majority of the land holders covered by the same notification would then be entitled to compensation in accordance with the Act. This is to iron out the anomaly in the payment of compensation in respect of the lands covered by the same notification under Section 4 of the Land Acquisition Act, 1894. Nevertheless the award under Section 11 of the Land Acquisition Act, 1894 should have been passed five years or more before 01.01.2014 for the proviso to apply. The words 'where an award has been made' occurring in the proviso has to be understood as where an award has been made five years or more prior to the commencement of the Act. This is the intent and purpose of the proviso when read in conjunction with Section 24 (2) of the Act even if the effect is to carve out an exception in law. The proviso cannot dangle in the air without reference to Section 24(2) of the Act and cannot operate independently as is argued by the counsel for the petitioners. The award in the instant

case was passed under Section 11 of the Land Acquisition Act, 1894 on 10.12.2012 well within the period of five years from 01.01.2014. Therefore the petitioners are not entitled to compensation under the Act in accordance with the proviso to Section 24(2) of the Act even if no compensation was paid.

4. I am guided in this conclusion by the following excerpt from Maxwell on the Interpretation of Statutes:-

Difficulties some times arise in construing provisos. It will, however, generally be found that inconsistencies can be avoided by applying the general rule that the words of a proviso are not to be taken 'absolutely in their strict literal sense', but that a proviso is 'of necessity limited in its operation to the ambit of the Section which it qualifies'. And, so far as that Section itself is concerned, the proviso again receives a restricted construction: where the section confers powers, 'it would be contrary to the ordinary operation of a proviso to give it an effect which would cut down those powers beyond what compliance with the proviso renders necessary'.

Thus a proviso only embraces the field which is covered

by the main provision and it carves out an exception to the main provision to which it has been enacted as a proviso and to no other. The petitioners are disentitled to the benefit of the proviso to Section 24 (2) of the Act on the allegation that compensation amount was not deposited in their account.

5. The acquisition is for the purpose of construction of approach roads to Vattamoodu Bridge across the Meenachil River and the property of the petitioners would be consumed. Section 17(2) of the Land Acquisition Act, 1894 permits invocation of the urgency clause for taking immediate possession of any land for road communication. The legal consequence is dispensing with the enquiry under Section 5A of the Land Acquisition Act, 1894 about which the petitioners cannot lament. Still this Court by interim order dated 24.07.2014 granted liberty to the petitioners to put forward their suggestions regarding the re-alignment of the approach road. The Assistant Executive Engineer (Bridges Division) was directed to consider the viability of the suggestions and file a detailed report. A detailed report after consideration of the suggestions has since been filed on 12.08.2014

supplying three sketches - the proposed alignment and the suggested alignments. The report reflects that the alternate alignments suggested necessitate sharp curves at the places where the approach roads are linked to the bridge. The Assistant Executive Engineer has also opined that such sharp curves are not allowable as per IRC Standards and will hinder the vehicular traffic. I am not to sit in judgment over the expertise of the officials when the alignment has been finalised taking note of technical feasibility and economic viability. I am not satisfied that the proceedings which started on 03.01.2011 by the issue of notification under Section 4 (1) of the Land Acquisition Act, 1894 are vitiated. The writ petitions alleging mala fides in the alignment and acquisition and in the alternative claiming compensation under the Act are misconceived.

The writ petitions fail. Dismissed. No costs.

Sd/-
V.CHITAMBARESH,
Judge.

DCS.