

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937

WP(C).No. 11227 of 2015 (C)

PETITIONER:

**JOSE GEORGE, AGED 72 YEARS
S/O. V.J. GEORGE, VATTAKATTUSSERY HOUSE
KOLLAMKUDIMUGHAL, KAKKANAD, PIN-682030**

BY ADV. SRI.JIMMY JOHN VELLANIKARAN

RESPONDENTS:

- 1. STATE OF KERALA
REPRESENTED BY CHIEF SECRETARY TO STATE, SECRETARIAT
THIRUVANANTHAPURAM-PIN-695001**
- 2. THE KOCHI METRO RAIL PROJECT, SPECIAL THASILDAR,
(L.A) CIVIL STATION, KAKKANAD 682030**
- 3. DISTRICT COLLECTOR,
ERNAKULAM, CIVIL STATION, KAKKANAD 682030**
- 4. P.J. MARTIN, AGED 52 YEARS
S/O.LATE P.J. JOSEPH, PUTHUMANA HOUSE, KALOOR DESOM
LFC ROAD, ELAMKULAM VILLAGE, KALOOR
KOCHI-682017**
- 5. MARY JANE, AGED 46 YEARS
W/O. P.J.MARTIN, PUTHUMANA HOUSE, KALOOR DESOM
LFC ROAD, ELAMKULAM VILLAGE, KALOOR
KOCHI-682017**
- 6. MITHUN MARTIN, AGED 15 YEARS
S/O. P.J.MARTIN
-DO- REPRESENTED BY HIS MOTHER AND NATURAL GUARDIAN
MARY JANE 5TH RESPONDENT – KOCHI - 682 017**
- 7. KOCHI METRO RAIL LTD.,
REPRESENTED BY MANAGING DIRECTOR, REVENUE TOWERS
PARK AVENUE, ERNAKULAM, COCHIN-682011

R1 TO R3 BY GOVERNMENT PLEADER SRI. TOM K. THOMAS
R4-R6 BY ADVS. SRI.BASIL MATHEW
SRI.REJI GEORGE
R7 BY ADVS. SRI.K.JAJU BABU (SR.)
SMT.M.U.VIJAYALAKSHMI, SC, KOCHI METRO RAIL LTD.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
18-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: TRUE COPY OF RENT AGREEMENT DATED 4.6.1981**
- EXHIBIT P2: TRUE COPY OF RENT AGREEMENT DATED 1.11.1992**
- EXHIBIT P3: TRUE COPY OF RENT AGREEMENT DATED 01.10.2004**
- EXHIBIT P4: TRUE COPY OF LETTER DATED 23.6.2014 SENT BY PETITIONER TO 6TH RESPONDENT IN FORMING THAT HE IS VACATING THE BUILDING BY 30.6.14 AND TO MAKE PAYMENT FOR THE IMPROVEMENTS**
- EXHIBIT P5: THE TRUE COPY OF THE LETTER DATED 15.12.2014 SENT TO TAHSILDAR (LA) CLAIMING COMPENSATION FOR THE IMPROVEMENTS**
- EXHIBIT P6: TRUE COPY OF LETTER 24.12.2014 SENT BY PETITIONER TO TAHSILDAR TO MAKE PAYMENT FOR IMPROVEMENTS**
- EXHIBIT P7: TRUE COPY OF JUDGMENT DATED 19.1.2015 IN WP(C) 35089/14**
- EXHIBIT P8: TRUE COPY OF THE ORDER OF 2ND RESPONDENT DATED 11.3.2015**
- EXHIBIT P9: TRUE COPY OF THE LETTER DATED 24.3.2015 SENT BY PETITIONER TO 3RD RESPONDENT FOR FRESH HEARING.**
- EXHIBIT P10: TRUE COPY OF THE VALUATION REPORT OF KITCO DATED 16.7.2014**
- EXHIBIT P11: TRUE COPY OF THE SKETCH ON PAGE 39 OF THE REPORT PREPARED BY KITCO WHICH IS SEPARATELY MARKING THE PORTIONS OF IMPROVEMENTS MADE BY THE PETITIONER, IN ROSE COLOUR**
- EXHIBIT P12: TRUE COPY OF THE LETTER DATE NIL BY THE 4TH RESPONDENT**
- EXHIBIT P13: TRUE COPY OF THE COMPLAINT DATED 24.3.2005 SUBMITTED BY THE PETITIONER BEFORE THE DISTRICT COLLECTOR**

RESPONDENT(S)' EXHIBITS

- EXHIBIT R5(a): THE TRUE COPY OF SETTLEMENT DEED NO. 6590/2004 OF SRO ERNAKULAM**
- EXHIBIT R5(b): THE TRUE COPY OF THE ORDER DATED 19.06.2009 IN RCP 10/2008 ON THE FILE OF THE RENT CONTROL COURT, ERNAKULAM**
- EXHIBIT R5(c): THE TRUE COPY OF THE ORDER IN RCA 36/2009 DATED 47.7.2012 RENT CONTROL APPELLATE AUTHORITY, ERNAKULAM**

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EXHIBIT R5(d): THE TRUE COPY OF THE ORDER IN RCR 57/2013 DATED 2.8.2013 OF THE HIGH COURT OF KERALA

EXHIBIT R5(e): THE TRUE COPY OF THE AFFIDAVIT DATED 31.01.2014 FILED BY THE PETITIONER

EXHIBIT R5(f): THE TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE RESPONDENTS 4 AND 5

EXHIBIT R5(g): ARGUMENT NOTES SUBMITTED BY THE PETITIONER BEFORE THE SECOND RESPONDENT

/TRUE COPY/

P.A. TO JUDGE

DCS

V. CHITAMBARESH, J

W.P.(C). NO. 11227 OF 2015

Dated this the 18th day of June, 2015

JUDGMENT

The petitioner was the tenant and respondents 4 to 6 were the landlords of a non-residential building. The petitioner vacated the premises on 15.07.2014 after a long drawn rent control proceedings. The property including the structures were taken possession of on 12.12.2014 for the Kochi Metro Rail Project.

2. The total compensation payable has tentatively been fixed at 2,32,15,743/-. 80% of the said amount is now available for disbursement as per the negotiated settlement. It is beyond dispute that improvements have been effected in the property. KITCO has valued the improvements effected by the landlords at Rs. 28,21,623/- and the improvements effected by the tenant at Rs. 15,05,395/-.

3. The dispute lies in very narrow compass. The landlords dispute the value of improvements claimed by the

tenant. The landlords contend that the lease deed does not permit any such improvements. The tenant on the other hand relies on the valuation report of the KITCO. The landlords maintain that the valuation report was prepared behind their back.

4. The sum of Rs. 15,05,395/- shall be deposited in the Court of the Subordinate Judge of Ernakulam. The question as to who is entitled to the said amount can be decided by the Civil Court. It is open to the tenant to move the Civil Court for declaratory and injunctive reliefs. The amount of Rs. 15,05,395/- shall be disbursed to the landlords if no suit is filed within a period of three months. The necessity to issue notice under Section 80 of the Code of Civil Procedure is hereby waived. The disbursement of the balance amount need not however be delayed. The landlords are undoubtedly entitled to the said amount. The amount is ofcourse tentative subject to final determination of the compensation amount. The final determination can only be under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

5. 80% of the compensation payable (keeping apart Rs. 15,05,395/-) shall be disbursed to the petitioner within a

period of two weeks. This shall be done on execution of the necessary agreement and production of documents.

The writ petition is disposed of.

**V. CHITAMBARESH
JUDGE**

DCS