

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

WP(C).No. 14514 of 2013 (L)

PETITIONERS:

- 1. K.B.MUJITHA BAI
D/O.K.B.MOHAMMED BASHEER, KAVUNGADU HOUSE
THOTTAKKATTUKARA P.O, ALUVA.**
- 2. K.B.SERMINA
W/O.HAFIZ MOHAMMED, KAVUNGADU HOUSE
THOTTAKKATTUKARA P.O, ALUVA.**

BY ADV. SRI.A.A.MOHAMMED NAZIR

RESPONDENTS:

- 1. STATE OF KERALA
REPRESENTED BY ITS CHIEF SECRETARY, SECRETARIAT
THIRUVANANTHAPURAM.**
- 2. DISTRICT LEVEL PURCHASE COMMITTEE
REPRESENTED BY ITS CHAIRMAN, THE DISTRICT COLLECTOR
ERNAKULAM.**
- 3. ROADS AND BRIDGES DEVELOPMENT CORPORATION OF KERALA LTD
2ND FLOOR, PREETHI BUILDING, M.V ROAD
PALARIVATTOM, KOCHI 25
REPRESENTED BY ITS MANAGING DIRECTOR.**
- 4. TALUK LAND BOARD
ALUVA.**
- 5. SPECIAL TAHSILDAR (LA)
NO.III, KOCHI INTERNATIONAL AIRPORT, NEDUMBASSERY
NAYATHODE P.O, ERNAKULAM DISTRICT.**

WP(C).No. 14514 of 2013 (L)

*** ADDL. R6 IS IMPEADED**

**6. SPECIAL TAHSILDAR (L.R)
LAND TRIBUNAL, ERNAKULAM, TRIPUNITHURA.P.O.**

*** ADDL. R6 IS IMPEADED AS PER ORDER DATED 04/12/2013 IN IA 16051/2013.**

**R1, R2, R4 & R5 BY SPL. GOVERNMENT PLEADER SMT. SUSHEELA R. BHAT
R3 BY ADV. SRI.M.VIJAYAKUMAR, SC, RBDCK**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25-06-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

DCS

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1. COPY OF THE APPLICATION DATED 16.5.2013 FILED BY THE PETITIONERS BEFORE THE TALUK LAND BOARD, ALUVA.**
- EXHIBIT P2. COPY OF THE JUDGMENT DATED 24.11.2006 IN WPC NO.15628/2003 OF THE HONOURABLE HIGH COURT OF KERALA.**
- EXHIBIT P3. COPY OF THE PROCEEDINGS OF THE CHAIRMAN, TALUK LAND BOARD, ALUVA DATED 25.10.2012.**
- EXHIBIT P4. COPY OF THE ORDER DATED 11.6.2004 IN WPC NO.28746/2003.**
- EXHIBIT P5. COPY OF THE LETTER DATED 4.9.2012 FROM THE LAND TRIBUNAL RECEIVED BY 1ST PETITIONER.**
- EXHIBIT P6. COPY OF THE FORM GIVEN BY THE 2ND RESPONDENT FOR CONSENT LETTER.**
- EXHIBIT P7. COPY OF THE LETTER DATED 29.11.2012 SENT BY THE 1ST PETITIONER TO THE 3RD RESPONDENT.**
- EXHIBIT P8. COPY OF THE LETTER DATED 25.02.2013 OF THE 5TH RESPONDENT TO THE DISTRICT SURVEY SUPERINTENDENT.**
- EXHIBIT P9. COPY OF THE TAX RECEIPT DATED 09.4.2007 ISSUED BY THE VILLAGE OFFICER, CHOWARA IN RESPECT OF THE PROPERTIES OF THE PETITIONERS**
- EXHIBIT P9(a). COPY OF THE TAX RECEIPT DATED 09.04.2007 ISSUED BY THE VILLAGE OFFICER, CHOWARA IN RESPECT OF THE PROPERTIES OF THE PETITIONERS**
- EXHIBIT P10. COPY OF THE MAHAZAR PREPARED BY THE VILLAGE OFFICER CHOWARA ON 10.07.2012**
- EXHIBIT P11. COPY OF THE POSSESSION CERTIFICATE DATED 10.07.2012 ISSUED BY THE VILLAGE OFFICER, CHOWARA TO THE 1ST PETITIONER**

RESPONDENT(S)' EXHIBITS : -

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- EXT. R2(a): TRUE COPY OF THE JUDGMENT DATED 11.9.2002 IN C.R.P. NO. 2129/1997**
- EXT. R2(b): TRUE COPY OF THE LETTER NO. LB(e) 10.10023/99 DATED 21.04.2003 OF THE LAND BOARD, THIRUVANANTHAPURAM**
- EXT. R2(c): TRUE COPY OF MAHAZAR DATED 02.05.2003 HAVING AN EXTENT OF 61.92 ARES IN SURVEY NO. 473/9 OF CHOWARA VILLAGE**
- EXT. R2(d): TRUE COPY OF MAHAZAR DATED 06.05.2003 HAVING AN EXTENT OF 40.47 ARES IN SURVEY NO. 474/1 OF CHOWARA VILLAGE**
- EXT. R2(e): TRUE COPY OF SKETCH PREPARED BY THE VILLAGE OFFICER, CHOWARA RELATING TO SURVEY NO. 473/9**
- EXT. R2(f): TRUE COPY OF SKETCH PREPARED BY THE VILAGE OFFICER, CHOWARA RELATING TO SURVEY NO. 474/1**
- EXT. R3(a): TRUE COPY OF G.O. (RT) NO. 5574/12/RD DATED 28.09.2012**
- EXT.R3(b): TRUE COPY OF THE APPROVAL OF DLPC RATES BY STATE LEVEL EMPOWERED COMMITTEE**
- EXT. R3(c): PHOTOSTAT COPY OF THE PLAN WHICH WOULD SHOW THAT THE WORK CANNOT BE COMPLETED WITHOUT TAKING POSSESSION OF THE LAND**

/TRUE COPY/

P.A. TO JUDGE

DCS

V. CHITAMBARESH, J

W.P.(C). NO. 14514 OF 2013

Dated this the 25th day of June, 2015

JUDGMENT

The property involved in this writ petition is 52 cents of land in R.S. Nos. 473/9-7, 473/9-8, 473/9-1 and 473/9-3 in Block No. 31 of Chowara Village. The property form part of a larger holding held by One Mr. K.C.M. Mather who was the assessee in the ceiling case on the file of the Taluk Land Board, Aluva. The assessee and his wife Mrs. Suharabi sold 1.83 acres therefrom to Mrs. Mariyumma under a sale deed (Document No. 1566/1974, SRO, Sreemoolanagaram). The legal heirs of Mariyumma divided the property amongst themselves under a partition deed (Document No. 2724/1981, SRO, Sreemoolanagaram).

2. The father of the petitioners Mr. K.B.M. Basheer was allotted 26 cents of land thereunder and his brother was allotted another 26 cents of land thereunder. The brother subsequently sold the extent of 26 cents of land to Mr. K.B.M. Basheer under a

sale deed (Document No. 2805/1993, SRO, Sreemoolanagaram). Mr. K.B.M. Basheer later executed settlement deeds in respect of the entire extent of 52 cents in favour of his daughters who are the petitioners herein. The settlement deed (Document No. 1046/1995) was executed in favour of the first petitioner and the settlement deed (Document No. 1126/1995) was executed in favour of the second petitioner. This was followed by a partition deed (Document No. 3854/2000) executed among Mr. K.B.M. Basheer, his wife and his children (petitioners). There can be little doubt that there has been a devolution of interest in favour of the petitioners in respect of the 52 cents of land under the various transactions aforequoted.

3. The petitioners subsequently claimed the benefit of Section 7E of the Kerala Land Reforms Act, 1963 (the 'Act' for short). Ext. P1 application was filed before the Taluk Land Board claiming the benefit of Section 7E of the Act followed by W.P.(C). No. 15628/2003 on the file of this Court. This Court by Ext. P2

judgment directed the Taluk Land Board to consider Ext. P1 application within a period of six months. It was clarified therein that the interim stay of dispossession of the petitioners passed in the said writ petition would continue pending disposal of Ext. P1 application by the Taluk Land Board. The Taluk Land Board by Ext. P3 order 'admitted' the claim put in by the petitioners under Section 7E of the Act. It was however stated that exemption could be granted only on production of a certificate of title from the Land Tribunal under Section 106 B of the Act.

4. This Court in **Rajeev v. District Collector [2014 (4) KLT 209]** has held that the grant of a certificate of title under Section 106 B of the Act by the Land Tribunal is not sine qua non to get the benefit of deemed tenancy under Section 7E of the Act. There is therefore no necessity for the petitioners to obtain a certificate of title from the Land Tribunal which can also be superfluous after having admitted the claim under Section 7E of the Act. I should note that the State

unsuccessfully challenged Ext. P3 order in C.R.P.(L.R.). No. 564/2014 on the file of this Court. The Civil Revision Petition was dismissed by order dated 11.12.2014 on the premise that the order impugned was not final. It is true that Rules under Section 106 B of the Act have been framed subsequently regulating the grant of certificate of title by the Land Tribunal. There is no reason as to why the benefit of deemed tenancy under Section 7E of the Act shall not be extended to the petitioners. There are no supervening factors to deny the benefit of Section 7E of the Act as delineated in **State of Kerala v. Thomas Kurian [2014 (4) KLT 417]**. The fact that the physical possession of the petitioners were protected even in Ext. P2 judgment of this Court has already been narrated above. Added to this is the fact that the Village Officer, Chowara has acknowledged the possession of the petitioners in Ext. P10 mahazar as well as in Ext. P11 possession certificate. Ext. P10 mahazar and Ext. P11 possession certificate was prepared at the time when the petitioners moved the Land Tribunal for obtaining a

certificate of title under Section 106B of the Act. But then the applications were not proceeded further since the Rules under Section 106 B of the Act had not then been framed. Ext. P10 mahazar would at best show that the lands claimed by the petitioners have been included as excess land on the file of the Taluk Land Board about which there is no quarrel at all. This is discernible from Ext. P5 letter issued by the Special Tahsildar of the Land Tribunal to the first petitioner in this writ petition.

5. 49 cents out of the 52 cents of land was earlier included in the notification issued under Section 4(1) of the Land Acquisition Act, 1894. Emergency clause was also seen invoked since the property was needed for Phase – II of the Seaport-Airport Road. The petitioners were invited for a negotiated settlement offering a sum of Rs. 4,50,000/- for the 49 cents of land earlier earmarked. But then the land of the petitioners were not included in the declaration issued under Section 6 of the Land Acquisition Act, 1894 on the premise that it belonged to the government. This was done without acknowledging

the right of deemed tenancy of the petitioners under Section 7E of the Act. The amount earlier offered was neither paid nor was the property included in the declaration under Section 6 of the Land Acquisition Act, 1894.

6. The third respondent Corporation maintains that the land in question is very much needed for the Seaport-Airport Road and that all other adjacent lands have been assumed possession of. The only course open under such circumstances is to either go in for a negotiated settlement or initiate proceedings for land acquisition afresh. Any proceedings for acquisition can ofcourse be under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 only. The petitioners lament that three cents of land lying in a strip (52 cents - 49 cents) will go waste if the alignment is finalised as proposed. The petitioners have offered to surrender the said extent of three cents also on the same price for the purpose of the road and the same has been duly recommended by

the Special Tahsildar as evidenced by Ext. P8 letter. It is for the respondents to decide as to whether the said extent of three cents of land is also required for the road lest it remains priceless with the petitioners. The petitioners shall not be dispossessed from the property except after resorting to any of the courses available as indicated above. The third respondent is permitted to surge ahead with the proceedings after paying the requisite compensation to the petitioners.

The writ petition is disposed of. No costs.

**V. CHITAMBARESH
JUDGE**

DCS