

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

WEDNESDAY, THE 27TH DAY OF MAY 2015/6TH JYAISHTA, 1937

WP(C).No. 16564 of 2009 (M)

PETITIONER:

KOONICHERE LAKSHMI,
D/O.KUNHIRAMAN, AGED 66 YEARS,
PERALAM AMSOM, DESOM, ETTUKUDUKKA,
KANNUR DISTRICT.

BY ADV. SRI.V.N.RAMESAN NAMBISAN

RESPONDENTS:

1. THE DISTRICT COLLECTOR,
KANNUR.
2. THE SPECIAL TAHSILDAR (L.A.),
NAVAL ACADEMY, PAYYANNUR.

BY GOVERNMENT PLEADER SRI. GIKKU JACOB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27-05-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) EXHIBITS

- EXHIBIT P1 : TRUE COPY OF THE APPLICATION DATED 25.01.1990 PREFERRED BY THE PETITIONER ALONG WITH HIS BROTHERS AND SISTERS BEFORE THE 2ND RESPONDENT.
- EXHIBIT P2 : TRUE COPY OF ORDER NO. REF-404/97 DATED 19.04.1999 ISSUED BY 2ND RESPONDENT.
- EXHIBIT P3 : TRUE COPY OF APPLICATION DATED 05.01.2005 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.
- EXHIBIT P4 : TRUE COPY OF ORDER NO.C-1767/05 DATED 20.01.2009 ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT P5 : TRUE COPY OF PROCEEDING NO. C 1767/05 DATED 30.05.2009 OF THE 2ND RESPONDENT, SPECIAL TAHSILDAR (LA), NAVAL ACADEMY, PAYYANNUR.

RESPONDENT(S) EXHIBITS : NIL

/TRUE COPY/

P.A. TO JUDGE.

V. CHITAMBARESH, J

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Dated this the 27th day of May, 2015

JUDGMENT

Three items of property comprised in Sy. Nos. 230/1, 230/3 and 231/2 of Ramanthali village are involved in this writ petition. The petitioner filed Ext.P1 application under Section 28A(1) of the Land Acquisition Act, 1894 on 25.01.1990 in respect of the property in Sy. Nos. 230/3 and 231/2. Ext.P1 application was filed on the basis of the common judgment dated 26.07.1989 in LAR Nos. 124/1987 and 169/1987 and the same was rejected by Ext.P2 order dated 19.04.1999. The only reason stated therein is that the property in Sy. No. 231/2 is not similarly situated to that of the land involved in LAR nos. 124/1987 and 169/1987.

2. Firstly, there is no mention of the property in Sy. No. 230/3 in Ext.P2 order rejecting Ext.P1 application. Secondly it has been merely stated that the property in Sy. No. 231/2 is not similarly situated to that of the land involved in LAR Nos. 124/1987 and 169/1987 in order to maintain the application under Section 28A(1) of the Act. I do feel that Ext.P1 application

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has to be reconsidered on merits after adverting to all the contentions of the parties.

3. Ext.P3 application has again been filed under Section 28A(1) of the Act on 05.01.2005 in respect of the property in Sy. Nos. 230/1 and 230/3. Ext.P3 application has been filed on the basis of the revised judgment dated 30.08.2004 in LAR No. 6/1999. Ext.P3 application has been rejected by Ext.P4 application on the basis of Ext.P2 order and also Ext.P5 order dated 30.05.2009. I have already set aside Ext.P2 order earlier and therefore the same shall not be an impediment for considering Ext.P3 application. Ext.P5 order merely states that an application under Section 28A(1) of the Act is not maintainable on the basis of a revised judgment in a Land Acquisition Reference. Such a stand is untenable in law in view of the settled decisions of this court and the Apex Court.

4. Resultantly Exts.P4 and P5 orders are also set aside. I direct the second respondent to reconsider Exts.P1 and P3 applications afresh in respect of the property in Sy. Nos. 230/1, 230/3 and 231/2. The same shall be done after notice to the

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petitioner within a period of two months. All the legal and factual aspects shall be adverted to in reconsidering the applications for redetermination of the compensation as directed above.

The Writ Petition is disposed of. No costs.

**V. CHITAMBARESH
JUDGE**

ncd