

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

WP(C).No. 25946 of 2005 (L)

PETITIONER:

**PUTHIYA NALLALA AYSHABI,
KAVARATTI, U.T.OF LAKSHADWEEP.**

**BY ADVS.SRI.S.V.BALAKRISHNA IYER (SR.)
SRI.K.JAYAKUMAR
SRI.P.B.KRISHNAN
SRI.HARISH R. MENON**

RESPONDENTS:

**1. THE ADMINISTRATOR, UNION TERRITORY
OF LAKSHADWEEP, KAVARATTI.**

**2. THE COLLECTOR, LAND ACQUISITION,
COLLECTORATE, LAKSHADWEEP.**

*** ADDL. R3 IS IMPEADED**

**3. INDIA RESERVE BATTALION (IRBn)
REPRESENTED BY ITS COMMANDANT, HQ KAVARATTI
U.T. OF LAKSHADWEEP**

*** ADDL. R3 IS IMPEADED AS PER THE ORDER DATED 30.07.2015 IN
I.A. NO. 9143 OF 2008**

**R1 & R2 ADVS. SRI.S.RADHAKRISHNAN,SC,LAKSHADWEEP ADMN.
SRI.SHAFIK M.ABDULKHADIR,SC,LAKSHADWEEP
R1, R2 & R3 BY ADVS. SRI.P.R.RAMACHANDRA MENON,SC,LAKSHADWEEP**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
30-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

DCS

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1. COPY OF THE NOTIFICATION UNDER SECTION 4(1) OF THE LAND ACQUISITION ACT DATED 26.10.2004**
- EXHIBIT P2. COPY OF THE LETTER WRITTEN BY THE 1ST RESPONDENT TO THE SECRETARY OF THE NATIONAL COMMISSION FOR SC AND ST DATED 18.08.1997**
- EXHIBIT P3. COPY OF THE OBJECTION FILED UNDER SECTION 5A OF THE LAND ACQUISITION ACT DATED 17.12.2004**
- EXHIBIT P4. COPY OF THE COUNTER-STATEMENT SIGNED BY THE COMMANDER OF IRBN DATED 16.2.2005**
- EXHIBIT P5. COPY OF THE DECLARATION ISSUED BY THE 1ST RESPONDENT DATED 7.7.2005**
- EXHIBIT P6. COPY OF THE REPRESENTATION FILED BY SHRI. P.M. KUNHIKOYA BEFORE THE LAND ACQUISITION COLLECTOR, LAKSHADWEEP DATED 3.07.2006**
- EXHIBIT P7. COPY OF THE COMMUNICATION F. NO. 34/20/2007-LR ISSUED BY RESPONDENT NO. 2 DATED 15.09.2007**
- EXHIBIT P8. COPY OF THE COMMUNICATION F. NO. 34/20/2007-LR ISSUED BY RESPONDENT NO. 2 DATED 11.09.2007**
- EXHIBIT P9. COPY OF THE INVITATION FOR THE REPUBLIC DAY CELEBRATION OF 2011**

RESPONDENT(S)' EXHIBITS:-

- EXHIBIT R1(a). COPY OF THE REQUISITION DATED 18.02.2004 PREFERRED BY THE COMMANDANT IR BN, HEADQUARTERS, KAVARATHI**
- EXHIBIT R1(b). COPY OF THE LETTER NO. U 13034/33/96-GP DATED 22.10.1997 OF THE GOVT. OF INDIA, MINISTRY OF HOME AFFAIRS**
- EXHIBIT R1(c). COPY OF THE LETTER F NO. 13014/2/94 LRD DATED 23.11.1994 OF THE GOVT. OF INDIA, MINISTRY OF RURAL DEVELOPMENT**

WP(C).No. 25946 of 2005 (L)

**EXHIBIT R1(d). COPY OF THE SECTION 4(1) NOTIFICATION PUBLISHED IN
THE LAKSHADWEEP GAZETTE DATED 04.11.2004**

**EXHIBIT R1(e). COPY OF THE PERMIT/PROCEEDINGS BEARING F. NO.
34/28/03-LR DATED 09.05.2005 OF THE 2ND RESPONDENT
ADDRESSED TO THE 1ST RESPONDENT**

/TRUE COPY/

P.A. TO JUDGE

DCS

V. CHITAMBARESH, J

W.P.(C). NO. 25946 OF 2005

Dated this the 30th day of July, 2015

JUDGMENT

The acquisition is evidently for a public purpose to house the Administration Block of India Reserve Battalion. The Ministry of Home Affairs has thought it fit to establish a Headquarters of India Reserve Battalion at Kavaratti. An extent of 6,130 Sq. Metres of land had already been acquired and an additional extent of 18,010 Sq. Metres is being acquired. The services of India Reserve Battalion is necessary to maintain the law and order in the island. The island is surrounded by turbulent sea and it is reported that the chance of piracy is high. Requisite land is necessary to provide the infrastructure for the armed personnel battalion and their family.

2. The petitioner challenges Ext. P1 notification issued under Section 4(1) of the Land Acquisition Act, 1894 (the 'Act' for short). The grievance is that Ext. P3 objection filed during the enquiry under Section 5A of the

Act was not duly considered. Hence Ext. P5 declaration made under Section 6 of the Act is also challenged. Ext. P5 declaration inter alia states as follows:-

“And, whereas the Administrator, U.T. of Lakshadweep is satisfied after considering the report made by the Land Acquisition Collector under sub-section (2) of the Section 5A of the said Act, that the land specified in the schedule below has to be acquired for a public purpose.”

3. The report made by the Land Acquisition Collector above referred is produced as Ext. R1(e). The contention that the land is available for lease from the petitioner has been rightly turned down. The points urged by the petitioner are seen adverted to in Ext. R1(e) report filed by the Land Acquisition Collector. It is on the basis of the report has Ext. P5 declaration been made. I am not satisfied that any case has been made out to annul Ext. P1 notification or Ext. P5 declaration.

4. The Supreme Court in **Union of India v. Kushala Shetty and Others [(2011) 12 SCC 69]** observed as follows:-

“The courts are not at all equipped to decide upon the viability and feasibility of the particular project and whether the particular alignment would subserve the larger public interest. In such matters, the scope of judicial review is very limited. The court can nullify the acquisition of land and, in the rarest of rare cases, the particular project, if it is found to be ex facie contrary to the mandate of law or tainted due to mala fides.”

5. There is nothing to show that the acquisition in the instant case for India Reserve Battalion is tainted with malafides. Ext. P1 notification under Section 4(1) of the Act was issued on 26.10.2004. Ext.P5 declaration under Section 6 of the Act was published on 07.07.2005. An award under Section 11 of the Act should have been passed on or before 07.07.2007. But then an interim order of stay of dispossession was passed in this writ petition on 01.09.2005. Therefore an award within the time limit specified under Section 11A of the Act could not be passed.

6. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and

Resettlement Act, 2013 came into force on 01.01.2014. Any award thereafter could only be in accordance with the new Act as stated under Section 24(1)(a) thereof. It is therefore clarified that compensation due to the petitioner has to be determined in accordance with the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

The writ petition is dismissed subject to the above observation.

**V. CHITAMBARESH
JUDGE**

DCS