

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 24TH DAY OF MARCH 2015/3RD CHAITHRA, 1937

WP(C).No. 18606 of 2014 (A)

PETITIONER:

**AYISHA,
W/O. LATE ABDUL KHADER,
RESIDING AT AYYAMBARATH HOUSE, PERINGAZHA KARA,
HMT COLONY P.O., KALAMASSERY-683 503.**

**BY ADVS.SRI.P.A.ABDUL JABBAR
SRI.MUHAMMED SHAFFI
SRI.ANAND PARATHARA**

RESPONDENTS:

- 1. THE DISTRICT COLLECTOR,
ERNAKULAM, CIVIL STATION, KAKKANADU,
PIN-685 030.**
- 2. THE SPECIAL THAHASILDAR (LA NO.3 K.I.A. NEDUMBASSERY),
CIVIL STATION, KAKKANADU, PIN-685 030.**
- 3. ROADS & BRIDGES DEVELOPMENT CORPORATION OF KERALA LTD.,
PALARIVATTOM, KOCHI, PIN-682 025.**

**R1 & R2 BY GOVERNMENT PLEADER SRI.V.K.RAFEEK
R3 BY ADV. SRI.M.VIJAYA KUMAR, SC, RBDCK**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 24-03-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

sts

WP(C).No. 18606 of 2014 (A)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1- TRUE COPY OF THE CONSENT LETTER GIVEN BY THE PETITIONER AND OTHER LEGAL HEIRS. DATED 20/02/2014
- EXHIBIT P2- TRUE COPY OF THE REPRESENTAATION SUBMITTED BY THE PETITIONER AND OTHERS BEFORE THE 1ST RESPONDENT. DATED 5/03/2014.
- EXHIBIT P3- TRUE COPY OF THE LETTER RECEIVED FROM THE 1ST RESPONDENT. DATED 13/06/2014
- EXHIBIT P4- TRUE COPY OF THE SKETCH SHOWING THE LYING OF THE PROPERTY OF THE PETITIONER AND HER HUSBAND.
- EXHIBIT P5- TRUE COPY OF THE COMMISSION REPORT SUBMITTED IN L.A.R.NO. 17/2012 BEFORE THE SUB COURT, ERNAKULAM. DATED 29/11/2013.

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.A.TO JUDGE

sts

A.V.RAMAKRISHNA PILLAI, J

WPC No.18606 of 2014

Dated this the 24th day of March, 2015

JUDGMENT

The petitioner, whose property which was originally belonged to the petitioner's husband was acquired for the formation of 2nd phase of Sea Port-Airport Road, has approached this Court for getting Ext.P3 quashed and also for directing the respondent to award the petitioner the same value that has been allotted to the petitioner's property, i.e. ₹65,000/- per cent to the property of the petitioner's husband also.

2. The petitioner alleges that the property of the husband is having access to the Municipal road only through the property of the petitioner/wife. Both properties are lying together contiguously without any discernible demarcation. The petitioner's husband died and his property is now devolved on the petitioner and her children. Accordingly, both the properties are lying together under the common ownership of the petitioner and others.

3. The respondents had discussions with the petitioner and others so as to fix the value of the property to be acquired on mutual consent. Accordingly, Ext.P1 consent letter was given agreeing to surrender the land for the value fixed by the district level purchase committee. Later, ₹5,65,000/- per cent was fixed to the petitioner's property and ₹4,95,000/- was fixed for the husband's property stating that one is having municipal road access and the other property is not having such advantages. Ext.P2 representation was submitted to fix the same value for both the properties as per the dictum laid down in **Lillykutty v State of Kerala** (2012(4) KLT 428). As per Ext.P3, the said request was rejected. Ext.P4 is the sketch showing the lie of the properties. Ext.P5 is the commission report filed in another case showing the lie of both the properties. The petitioner alleges that she is entitled to get same value for both the properties.

4. In the counter affidavit filed by the third respondent, they have contended as follows:

It is stated that the third respondent had sent a requisition for acquisition of 13.1700 hectares of land

comprised in various survey numbers of Thrikkakkara North Village, Kanayannur Taluk, Ernakulam District on 24.2.2012. The Government as per G.O.(Rt) No.715/2000/PWD dated 24.7.2000, G.O.(Rt) No.517/2001/PWD dated 9.5.2001 and G.O.(Rt) No.1096/2013/PWD dated 7.8.2013 has accorded administrative sanction issued invoking urgency clause. As per proceedings No.C6.39315/11 dated 4.4.2012 of District Collector, Ernakulam, Special Tahsildar (LA), KIA Nedumbassery was appointed as Land Acquisition Officer for doing land acquisition works. The High level Committee as per Government order G.O.(Rt) No.4486/RD dated 7.8.2013 has approved the starting of land acquisition proceedings. Notification under Section 4(1) of the Land Acquisition Act was published in the Kerala Gazette on 3.9.2013 and the same was published in two dailies dated 14.9.2013 (Kerala Kaumudi) and 15.9.2013 (Mathrubhumi). The Commissioner of Land Revenue published the declaration under Section 6 of the Land Acquisition Act in the Extra ordinary gazette on 5.7.2014 and published in two dailies on 31.7.2014. The District

Collector conducted District Level Purchase Committee meeting on 13.2.2014 and fixed the land value after discussion with the land owners. The proposal for the land value fixed by the District Level Purchase Committee was sent to the Principal Secretary, Revenue (B) Department, Trivandrum for the approval of State Level Empowered Committee on 3.4.2014 and approved the land value by SLEC on 11.8.2014. As per District Level Purchase Committee, the land value has been fixed as follows:

<u>CATEGORY I</u>	<i>Land value as per DLPC/Cent</i>
Dry land having PWD Road frontage	Not fixed, this land belongs to HMT
<u>CATEGORY II</u>	
Dry land having municipal road/NAD Ground/frontage	Rs.5,60,000/-
<u>CATEGORY III</u>	
Dry land having private road/Kinfra road frontage	Rs.4,95,000/-
<u>CATEGORY IV</u>	
Wet now dry land and having Municipal road/Kinfra road/Thodu/Varampu frontage	Rs.3,10,000/-
<u>CATEGORY V</u>	
Wet land having proposal Kinfra road/Private road/thodu/Varampu frontage	Rs.2,65,000/-
<u>CATEGORY VI</u>	
Wet land	Rs.2,02,000/-

5. The second respondent has filed a counter affidavit justifying Ext.P3 and the differential treatment of

the petitioner's property as well as the property of the petitioner's husband.

6. Arguments have been heard.

7. As per Ext.P3, a separate value was fixed in the case of the property of the petitioner's husband. It can be seen from Ext.P4 plan and Ext.P5 commission report that the property of the petitioner and the property in the name of her husband are lying together as a single plot without any demarcation with common access to the Municipal road.

8. A Division Bench of this Court of which I was party (See ***Lillykutty v State of Kerala*** (2012(4) KLT 428) had occasion to consider a similar situation. In that case, it was in evidence that the properties were lying contiguously and that the husband and wife were enjoying the properties as common holding of the family. Whatever advantages the husband's property was enjoying were available to the wife's property also through her husband's property. Therefore, it was held that under the social conditions prevailing in the State, there is justification for treating the properties of husband

and wife, lying together and contiguously as one single holding of the family. Therefore, it was held that both the properties could be included in one and the same category.

9. The facts in the present case is similar to that of the aforesaid decision. The statement in Ext.P3 that the property of the petitioner is put in 2nd category as it is having municipal road access. However, the property of the petitioner's husband comprised in Sy.No.208/8 included in category III for the reason that it is not having access to municipal road. Such a clarification is incorrect because both the properties are having access to the municipal road. It is true that a portion of the land comprised in Sy.No.208/8 was acquired for the road. However, the said road has not been formed. The only access to the said property is the municipal road on the other side.

10. The learned Government Pleader would strenuously argue that the petitioner has given consent and therefore, the petitioner is estopped from challenging the value fixed by the State. It is true that the petitioner

has given Ext.P1 consent, but that does not give powers to the respondent to fix different values without any rhyme or reason. Even in the counter affidavit filed by the respondents, though they say that the petitioner's property has been included in category-2 and the petitioner's husband's property was included in category-3, they would admit that both the properties are lying contiguously without any demarcation in the field. Though the property of the petitioner and her husband were obtained by separate sale deeds, now, the property of the petitioner's husband is possessed by the petitioner and her legal heirs. A flimsy reason is stated in the counter affidavit for including the property comprised in Sy.No.208/8 in category No.3. The site plan also would indicate that both the properties are lying together and these properties are bounded on one side by the municipal road. There is a clear admission in paragraph-8 of the counter affidavit that though the properties are shown separately in the FMB sketch, but they are not lying separately in the field. Therefore, evidently, the demarcation was only to fix a different value to the

property of the husband.

11. On a consideration of the entire materials now placed on record, this Court is of the view that the petitioner is entitled to succeed.

In the result, the writ petition is allowed. Ext.P3 is quashed. The respondents are directed to fix the same value of the property acquired for the formation of the 2nd phase of Sea Port - Air Port Road belonging to the petitioner and her husband comprised in Sy.No.208/8 and 208/11 as they are lying contiguously as one single holding with access to the same public road.

sd/- A.V.RAMAKRISHNA PILLAI
JUDGE

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true copy

P.S.TO JUDGE